



NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 22 NUMBER 22
November 19, 1990 Indexed 22 N.J.R. 3421-3606

(Includes adopted rules filed through October 25, 1990)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: SEPTEMBER 17, 1990

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT OCTOBER 15, 1990

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **December 19, 1990**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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

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The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, \$90 (\$180 by First Class Mail); back issues when available, \$10 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 45-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to six volumes depending on the Department coverage desired.

EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR

Governor James J. Florio

Executive Order No. 18(1990)

New State-Employee Sick Leave Injury Pilot Program

Issued: October 17, 1990.

Effective: October 17, 1990.

Expiration: Indefinite.

WHEREAS, the New Jersey State Government is committed to providing a safe and healthy working environment for its employees and to improving methods of administration to promote efficiency and economy in its operations; and

WHEREAS, the State of New Jersey provides sick leave injury benefits to employees for injury or illness directly caused by and arising from State employment; and

WHEREAS, the total annual cost of providing State employee sick leave injury benefits is approximately \$30 million which includes costs for lost work days, overtime usage, temporary workers, medical expenses and program administration; and

WHEREAS, the Governor's Management Review Commission, in cooperation with the Department of Personnel, has undertaken a comprehensive operational review of the State employee sick leave injury program; and

WHEREAS, this review has disclosed a need for greater supervisory and managerial accountability, a Statewide information system to monitor sick leave injury usage, loss control efforts and employee health, safety and accident prevention programs; and

WHEREAS, this review has also shown that improvements in the sick leave injury program can result in Statewide significant reductions in sick leave injury usage and costs; and

WHEREAS, the Commissioner of Personnel has instituted a pilot program to review the current Statewide sick leave injury program to develop methods for reducing costs and expediting benefits where appropriate;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby Order and Direct:

1. The Commissioner of Personnel shall establish a new pilot program which shall incorporate all of the areas under review in the current sick leave injury pilot program and shall also include:

a. a review of the State employee workers' compensation and temporary disability insurance programs and appropriate consolidation in these areas; and

b. a structural and operational analysis to determine the administrative functions of the State sick leave injury program and the appropriate agency to which responsibility for the program should be assigned.

2. The Commissioner of Personnel shall establish a Task Force, which he or a designee shall chair, to be comprised of the State Treasurer or a designee, the Commissioners of Transportation, Labor, Human Services and Corrections, or their designees, and other individuals deemed appropriate by the Commissioner of Personnel. The Task Force shall review and evaluate the current sick leave injury program and make recommendations regarding its future to the Commissioner of Personnel.

3. After reviewing Task Force recommendations, the Commissioner of Personnel shall prepare and implement:

a. a Statewide policy for a comprehensive disability management program focusing on insuring the general health and safety of the State's work force;

b. a data base for employee sick leave injury and disability leave usage;

c. standard reporting, operating and auditing procedures for employee sick leave injury and disability leaves and workers' compensation;

d. control processes to reduce overtime and productivity losses;

e. health, safety, training and accident prevention programs; and

f. coordination of standard medical review procedures for handling claims and sharing of medical facilities among agencies.

4. The Commissioner of Personnel shall implement this Executive Order and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to coop-

erate with the Commissioner of Personnel and to make available to him such information, personnel and assistance as necessary to accomplish the purposes of this Order.

5. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR

Governor James J. Florio

Executive Order No. 19(1990)

Senior Executive Service

Issued: October 17, 1990.

Effective: October 17, 1990.

Expiration: Indefinite.

WHEREAS, the State of New Jersey is committed to an economical and effective State government and recognizes that the employment of competent senior managers who are accountable for their performance is indispensable to the achievement of this goal; and

WHEREAS, the Senior Executive Service (SES) was established by the 1986 Civil Service Reform Act to attract, retain and develop professional senior level managers with demonstrated skills and expertise for leadership positions in New Jersey State Government; and

WHEREAS, the Governor's Management Review Commission and the Commissioner of Personnel have reviewed the operation of the current SES program and recommend a centralized, Statewide system rather than the current departmentally focused process; and

WHEREAS, there is a need to develop appropriate criteria for SES positions as well as a performance based compensation system and to establish a talent bank, procedures for mobility assignments and succession planning for SES employees;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby Order and Direct:

1. The Senior Executive Service system of high level managers shall be implemented on a Statewide basis and administered by the Commissioner of Personnel.

2. The compensation program for SES managers shall be designed to insure high performance standards, documented achievement and fair and consistent salaries, and shall be administered from a central salary account by the Department of Personnel.

3. The Commissioner of Personnel shall establish executive development programs to ensure that the SES appointees are well-trained, competent managers.

4. The Commissioner of Personnel shall develop and implement an SES plan which shall include:

a. criteria for identifying SES positions and making appointments;

b. a review of current SES positions and redesignation of positions where appropriate;

c. a compensation and benefits program based on performance standards and achievement;

d. an executive development program for SES members;

e. the optimal use of mobility assignments and the development of succession plans; and

f. a Human Resource Information System including a talent bank to be used for, among other things, SES selection, mobility assignments and succession planning.

5. The Commissioner of Personnel shall prepare an implementation plan and schedule for achieving the directions contained in this Order within 60 days of this Order.

6. The Commissioner of Personnel shall implement this Executive Order and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commissioner of Personnel and to make available to him such information, personnel and assistance as necessary to accomplish the purposes of this Order.

7. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR**Governor James J. Florio****Executive Order No. 20(1990)****Delaware Bay Weakfish Action Commission**

Issued: October 18, 1990.

Effective: October 18, 1990.

Expiration: Indefinite.

WHEREAS, the Delaware Bay is generally divided in the middle by the boundary between the State of New Jersey and the State of Delaware; and

WHEREAS, the State of New Jersey and the State of Delaware have attempted to independently manage the harvest of weakfish in the Delaware Bay through divergent laws and regulations; and

WHEREAS, despite these efforts, the number of weakfish that use the Delaware Bay as their principal spawning area declined dramatically in 1989 and there are indications that this decline will continue in the future; and

WHEREAS, threats to the weakfish population and the environmental integrity of the Delaware Bay are a bi-state concern which, if not addressed, could result in a negative impact upon the recreational and commercial fishing industry, as well as affect the overall economies of the State of New Jersey and the State of Delaware; and

WHEREAS, weakfish have been a significant recreational and commercial fish in the Delaware Bay during the last two decades; and

WHEREAS, the management and protection of the Delaware Bay and its natural resources are of great concern to the governments of both States; and

WHEREAS, the State of Delaware has enacted House Joint Resolution No. 29, approved by the Governor of the State of Delaware on July 26, 1990, which Resolution requested that the State of New Jersey enter into a joint commission to investigate the causes of the decline of the weakfish population and to stem the tide of that decline; and

WHEREAS, it is imperative that action must be taken before the beginning of the 1991 spawning season to ensure the conservation of the weakfish;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established a joint study commission with the State of Delaware, which commission shall be known as the Delaware Bay

Weakfish Action Commission with a membership of 22 members. The 11 members appointed from the State of New Jersey shall consist of:

a. The Commissioner of the Department of Environmental Protection or her designee;

b. Two members of the Senate, to be appointed by the Governor, each a member of a different political party; two members of the General Assembly to be appointed by the Governor, each a member of a different political party;

c. Six public members to be appointed by the Governor, two members shall be licensed commercial fishermen who net weakfish in the Delaware Bay, two shall be recreational fishermen who use hook and line to harvest weakfish in the Delaware Bay, and two members shall be boating captains who utilize the Delaware Bay.

2. In addition to the 11 voting members, two non-voting members shall be appointed by the Governor, and both non-voting members shall be employed by an institute of higher education with technical experience in the field of marine studies.

3. The Commission shall convene as soon as practicable after the appointment of its members, to select a co-chairperson who shall serve jointly with the co-chairperson selected by the members of the Commission appointed by the State of Delaware.

4. It shall be the duty of the Commission to investigate the status and management of the weakfish that inhabit the Delaware Bay, as well as the cause of the decline of the weakfish population in the Delaware Bay, and to inquire into ways in which the decline of this weakfish population may be corrected.

5. The Department of Environmental Protection and the Marine Fisheries Council shall provide the members of the Commission appointed from this State with whatever staff assistance that the Commission may require in order to properly perform its duties;

6. The Commission shall issue a preliminary report of its findings, conclusions and recommendations to the Governors and the Legislatures of both States by January 15, 1991. The Commission shall issue a final report of its findings, conclusions and recommendations along with any proposed legislation which it may desire to the Governors and the Legislatures of the respective States by March 1, 1991. Recommendations submitted in the final report must be approved by at least 12 voting members of the Commission.

7. Meetings of the Commission shall be held alternately in each State.

8. This Order shall take effect immediately and shall supersede any prior Executive Order with which it may be inconsistent.

RULE PROPOSALS

BANKING

(a)

DIVISION OF LEGAL AFFAIRS

General Provisions

Proposed Readoption with Amendments: N.J.A.C. 3:1

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

Authority: N.J.S.A. 17:1-8; 17:1-8.1; 17:1B-2; 17:2A-1 et seq.; 17:9-41; 17:9A-11D et seq.; 17:9A-24(a); 17:9A-24(b); 17:9A-25.2; 17:11A-54(a); 17:11B-5; 17:11B-13; 17:12B-20 et seq.; 17:12B-48(21); 17:16F-11; 17:16L-16; and 17:16L-2.

Proposal Number: PRN 1990-575.

Submit comments by December 19, 1990 to:

Robert M. Jaworski, Assistant Commissioner
Division of Legal Affairs
Department of Banking, CN-040
20 W. State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), Chapter 1, General Provisions of N.J.A.C. Title 3 will expire on January 6, 1991. The Department has reviewed each of these subchapters and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated.

Subchapter 1, entitled Interest and Usury, establishes maximum interest rates on certain types of loans and is promulgated pursuant to N.J.S.A. 31:1-1. It has undergone frequent amendments, over the years, as a result of fluctuating interest rates.

Subchapter 2 specifies procedures for applying to the Department for charters, branches, and other types of facilities. It also specifies procedures for publishing notice of applications as well as procedures for hearings where the applications are contested. The amendments to subchapter 2, proposed herein, would delete the requirement that applications for branches include an executed indicia of title for the property for the proposed office. The requirement has been cumbersome for institutions and no regulatory need has been found for it. The proposed amendment at N.J.A.C. 3:1-2.21, changing the amount of stated capital from \$2,000,000 to \$7,000,000, reflects current Departmental standards.

Subchapter 3 regulates the making of mortgage loans in disaster areas. Corrections to several internal cites are being made in Subchapter 3.

Subchapter 4 implements the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq., and regulates the securing of governmental deposits. The Department previously proposed amendments to subchapter 4 at 22 N.J.R. 1809(a) which are currently pending. The Department will adopt those amendments prior to adopting this readoption. Therefore, this proposal will readopt the newly amended sections.

Subchapter 5 prohibits lenders from taking information regarding birth control practices from mortgage applicants.

Subchapter 6 authorizes the Department to charge specified fees for its services.

Subchapter 7 authorizes the Department to charge specified "miscellaneous fees" for its services.

Subchapter 8 requires lenders to obtain basic information in their credit and loan applications.

Subchapter 9 implements the Home Mortgage Disclosure Act, N.J.S.A. 17:16F-1 et seq., which act requires lenders to submit quarterly reports on the geographical distribution of their mortgage applications and loans. The purpose of the rules is to regulate the collection of data which could substantiate "redlining" lending practices by the institution. The subchapter also prohibits "redlining" and other illegal lending practices, and establishes an investigation and hearing procedure for alleged violations of the law.

The proposed amendments to subchapter 9 include the changing of language having to do with hearings to clarify that two levels of hearings are intended. The first level of hearing is investigatory and the second is contested cases which are 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.

In addition to quarterly reports, the rules currently require institutions to submit annual reports to the State, which transmits the reports to the Federal government to satisfy Federal reporting requirements. However, because of amendments to the Federal home mortgage disclosure regulations (effective January 1, 1990), institutions which had previously sent their annual report to the Federal government through the State now send those reports directly to the Federal government. Therefore, the Department proposes to delete the requirement in subchapter 9 which mandates the submission of an annual State report. This will reduce the reporting burden on depository institutions.

Subchapter 10 requires a bank, savings bank, or savings and loan association which applies to the Department for a charter, branch, or other facility, and which intends to purchase or lease the real estate for the facility from an affiliated person, to file with its application a detailed real estate application for the purpose of convincing the Commissioner that the transaction is in the best interest of the institution and that the terms of the transaction are equal to or better than the institution could have gotten in an arm's length transaction.

Subchapter 11 prohibits banks, savings banks, savings and loan associations, and their affiliates from purchasing or making a loan involving a director, executive officer, or affiliated person unless the terms of the loan are comparable to those prevailing for non-affiliated persons.

Subchapter 12 regulates multiple party deposit accounts. The amendment proposed to subchapter 12 would correct a technical error. Reference to Appendix A is being added at N.J.A.C. 3:1-12.4(b) in order to integrate the material with the rule.

Subchapter 13 prohibits a banking institution, holding company, or other lender from requiring a borrower to obtain insurance from an agent controlled by the lender.

Subchapter 14 regulates revolving credit equity loans.

Subchapter 15 requires that banking institutions disclose their funds availability policies to their customers. On the Federal level, Regulation CC, implementing the Expedited Funds Availability Act, 12 U.S.C. §229 et seq., also requires that funds availability policies be disclosed, in addition to requiring that funds from items deposited for collection be made available to depositors within specified time limits. Therefore, the Department proposes to amend subchapter 15 to provide that compliance with Regulation CC, or its successor regulation, will constitute compliance with this subchapter. The proposed amendments would also include language reflecting the difference between "banking hours" and "business hours".

Subchapter 16 regulates the fees, charges, and obligations connected with applications for closed-end residential mortgage loans secured by first liens.

Appendix A contains sample forms for joint accounts, P.O.D. accounts and trust accounts. The appendix is being proposed for readoption as part of Chapter 1 and a reference to it is proposed at N.J.A.C. 3:1-12.4.

Social Impact

The rules which the Department proposes to readopt concern vital activities of both the Department and the private sector. They regulate the industry's applications for banking facilities, provide for securing deposits made by governmental units, authorize fees to fund the Department's provision of various services, mandate disclosure of the geographical distribution of loans made by institutions in order to protect against redlining, control insider real estate transactions and lending by depository institutions, regulate multiple party deposit accounts, authorize revolving credit equity loans, and establish procedures and fees related to applications for first lien residential mortgage loans. The readoption of the regulations on these vital subjects is necessary in order to prevent serious disruptions in both the public and private sectors.

Economic Impact

The proposed readoption of Chapter 1 substantially readopts existing provisions, and will not, therefore, cause any new economic impacts on the State, consumers, or private industry. The readoption will allow the Department to continue to collect the fees which are specified in

subchapters 6 and 7, and to thereby defer the expenses for the services provided.

A failure to readopt the rules in Chapter 1 would either curtail State services or would shift the cost of the services from users to other providers of State revenue. In addition, a failure to readopt would have many disruptive effects on those in the private sector, for example, with regard to expanding banking facilities, governing of multiple party deposit accounts, and making revolving credit equity loans.

Regulatory Flexibility Analysis

Due to the nature of the financial services industry, a large percentage of the businesses covered by the rules proposed for readoption fall into the category of small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption do impose record keeping, reporting and compliance requirements on the regulated institutions. The Department is concerned with the impact these rules have on the institutions. However, it has concluded that separate or differing standards for small businesses would not effectively safeguard the soundness of the institutions and the security of the banking public. For the above stated reasons and the instances explained below, no differentiation in compliance or application of rules is proposed.

Subchapter 2 requires that applications submitted to the Department for expansions of banking facilities include certain information. The Department proposes to delete the requirement that applications for branches include executed indicia of title to the property for the proposed office. As all of the other information requested is needed to provide the Department with an adequate basis for reaching a decision on the application, the Department favors retaining the current requirements for all applicants and establishes no differing standards.

Subchapter 4 requires public depositories to file a report with the Commissioner twice a year giving the balance of public funds on deposit in the institution. The submission of this information is necessary in order for the Department to monitor deposits of public funds in depository institutions. Therefore, the Department favors retaining this requirement for all public depositories. Subsection 4 also requires public depositories to file a certified statement if they have on deposit public deposits exceeding 75 percent of the capital funds of the depository. The Department thinks that this requirement should be retained for all public depositories so that it can be notified of high levels of public deposits.

Subchapter 9, pursuant to the mandate of the Home Mortgage Disclosure Act, N.J.S.A. 17:16F-1 et seq., requires certain depository institutions (that is, those having assets of \$10,000,000 or more) to file quarterly reports with the Department. The purpose of the law is to provide data on which a determination can be made regarding whether the institution is engaging in "redlining". Subchapter 9 requires institutions to submit an annual report to the State in addition to the quarterly reports solely for the purpose of assisting institutions in meeting their Federal reporting requirements. However, because of recent amendments to the Federal home mortgage disclosure regulations, institutions which had previously sent their annual report to the Federal government through the State will send that report directly to the Federal government. Therefore, the Department proposes to delete the requirement in subchapter 9 which mandates the submission of an annual State report. This will reduce the reporting burden on depository institutions.

Subchapter 10 requires institutions which file applications for additional facilities, and which wish to purchase or lease the real estate for the facility from an affiliated person, to file with its application a detailed real estate application for the purpose of convincing the Commissioner that the transaction is in the best interest of the institution and that the terms of the transaction are equal to, or better than, the institution could have gotten in an arm's length transaction with a non-affiliated party. The Department favors retaining the current requirement that a detailed real estate application be submitted with all applications because of the importance of monitoring real estate transactions between institutions and affiliated persons.

Subchapter 15, pursuant to statutory mandate, requires institutions to disclose their funds availability policies to their depositors. On the federal level, Regulation CC of the Expedited Funds Availability Act, 12 U.S.C. §229 et seq., requires that funds availability policies be disclosed, in addition to requiring that funds from items deposited for collection be made available to depositors within specified time limits. Because customers receive adequate disclosure pursuant to Federal law, the Department proposes to amend subchapter 15 to provide that compliance with Regulation CC, or its successor regulation, will constitute compliance with this subchapter. This would reduce the burdens of making funds

availability disclosures which are placed on institutions, many of which are small businesses as defined in the Regulatory Flexibility Act.

Subchapter 16 requires that certain lenders of first lien residential mortgage loans make disclosures to borrowers, limit their fees to those designated, and collect those fees only at permissible points in the application process. The basic purpose of this subchapter is to establish a comprehensive system of regulation for first lien residential mortgage transactions. To exempt lenders which are small businesses would frustrate the purpose of the rules.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:1.

Full text of the amendments to the readoption follows (additions shown in boldface **thus**; deletions shown in brackets [thus]):

3:1-2.1 Applications; acceptance

(a) All branch applications shall include the following before they will be accepted by the [department] **Department**:

1.-2. (No change.)

3. An original certification of a copy of the resolution authorizing the application; **and**

[4. Executed indicia of title to the property for the proposed office which can be an option to lease or purchase or formal letter of intent; and]

[5.] **4.** Any and all other documentation, including feasibility reports, the applicant wishes the [department] **Department** to consider.

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

3:1-2.21 Minimum stock subscription for capital stock associations

(a) Each charter application for a capital stock association shall provide for stated capital of [\$2,000,000] **\$7,000,000**, or such amount as required by the Commissioner.

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

3:1-3.2 Duties of Commissioner

(a) (No change.)

(b) If the Commissioner determines that real property within the disaster area, constituting the security of mortgage loans held by financial institutions has been destroyed, damaged or materially affected by the disaster, he may authorize financial institutions to exercise emergency mortgage powers as enumerated in [Section 3.3] **[N.J.A.C. 3:1-3.3 Emergency mortgage powers exercisable by financial institutions()]** of this Chapter.

(c) (No change.)

(d) When any financial institution shall exercise or use any emergency mortgage powers, as enumerated in this subchapter, the Commissioner shall ascertain and determine in connection with and as part of the usual examinations and audits conducted by the Department of Banking concerning the affairs, conditions and status of such financial institutions, whether such financial institution has complied with the requirements enumerated in **N.J.A.C. 3:1-3.3** [Section 3.3 (Emergency mortgage powers exercisable by financial institutions) of this Chapter].

3:1-3.3 Emergency mortgage powers exercisable by financial institutions

(a) When at any time the Commissioner, pursuant to [Section 3.2 (Duties of Commissioner) of this Chapter] **N.J.A.C. 3:1-3.2**, has declared that this Subchapter shall become operative and effective, a financial institution may exercise and use the emergency mortgage powers enumerated in [subsection] (b) **below** [of this Section].

(b) The emergency mortgage powers which a financial institution may exercise and use pursuant to this subchapter shall consist only of the following:

1.-2. (No change.)

3. If a mortgage loan is secured by real property which, when originally made was represented by improvements other than those described in [paragraphs] (b)1 and 2 **above** [of this subsection], a financial institution may make an additional mortgage loan. The total of any such additional mortgage loan, together with the unpaid or unamortized principal balance due upon the existing mortgage loan or loans, shall not exceed 133⅓ percent of the appraised value according to the appraisal certification on file with the financial institution.

4.-7. (No change.)

3:1-3.4 Preliminary requirements

(a) (No change.)

(b) In addition to the requirements enumerated in [paragraphs 1 and 2 of subsection (a) of this Section] **(a)1 and 2 above**, a financial institution, prior to the exercise or use of any emergency mortgage powers, shall undertake and complete any and all investigations, appraisals and other precautions which it would ordinarily require in making a mortgage loan not otherwise provided by N.J.S.A. 17:2A-1 et seq., and this Subchapter.

3:1-9.6 Filing requirements; processing fee

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

[(d) Every depository institution shall file three copies of each disclosure statement containing the preceding calendar year's mortgage loan data with the Department of Banking by March 31 starting with the data for calendar year 1982. This is to comply with Federal requirements for data aggregation and dissemination to data repositories.]

3:1-9.10 [Hearings] Investigatory hearings; presiding officer

Any **investigatory** hearing held pursuant to this [regulation] **subchapter** may be conducted by the Commissioner[,], or Deputy Commissioner [or an Administrative Law Judge].

3:1-9.11 Presiding officer's powers

(a) It shall be the duty of the [hearing] **presiding** officer to inquire fully into the facts as they relate to the matter before him **or her**. With respect to cases assigned to him **or her**, the [hearing] **presiding** officer shall have the authority, subject to the provisions of this subchapter and the Act, to:

1.-5. (No change.)

6. Regulate the course of the **investigatory** hearing, and, if appropriate or necessary, exclude persons or counsel from the **investigatory** hearings for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper question;

7.-9. (No change.)

10. Request the parties at any time during the **investigatory** hearing to state their respective positions concerning any issue in the case or theory in support thereof; and

11. Take any other action necessary to effectuate the purposes of the Act or to provide for a full and fair **investigatory** hearing.

3:1-9.12 [Hearing] Investigatory hearing procedure

(a) (No change.)

(b) The parties shall not be bound by rules of evidence, whether statutory, common law or adopted by the rules of court. All relevant evidence is admissible. The [hearing] **presiding** officer may, in his **or her** discretion, exclude any evidence or offer of proof if he **or she** finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion. The [hearing] **presiding** officer shall give effect to the rules of privilege recognized by law. Every party, through counsel, shall have a right to present his cause by oral and documentary evidence and to submit rebuttal evidence. Every party, through counsel, and the [hearing] **presiding** officer shall have the right to examine and cross-examine as may be required for a full and true disclosure of the facts.

3:1-9.13 Report of presiding officer

In any case where a person, other than the Commissioner, shall sit as [hearing] **presiding** officer, he **or she** shall submit a written report of his **or her** findings and conclusions to the Commissioner together with a recommendation as to the disposition of the matter, unless the Commissioner directs otherwise. Copies shall at the same time be forwarded to all parties appearing at the hearing.

3:1-9.14 Exceptions to report of presiding officer

A original and one copy of any exceptions to the [hearing] **presiding** officer's report and recommendation may be filed by any party with the Commissioner within seven days after service of the report and recommendation.

3:1-9.15 Decision by the Commissioner

(a) [In cases where the] **The** Commissioner [has acted as presiding officer, he] shall issue a written decision and order. He **or she** shall mail copies to the parties by certified mail, return receipt.

(b) Upon receipt of the [hearing] **presiding** officer's report and recommendation and any exceptions filed thereto, the Commissioner shall issue a decision and order which shall either:

1. Adopt in toto the findings of the fact and conclusions of law of the [hearing] **presiding** officer; or

2. Reject the report and recommendation of the [hearing] **presiding** officer and make specific, detailed findings of fact and conclusions of law; or

3. Adopt, reject or modify each of the [hearing] **presiding** officer's findings of fact and conclusions of law.

(c) If the Commissioner adopts either in whole or in part the report and recommendation of the [hearing] **presiding** officer, it shall not be necessary for him **or her** to repeat those facts and conclusions in his **or her** order, and they shall automatically be considered part thereof.

3:1-9.16 Continued violation of Act; penalty

(a) (No change.)

(b) If the Commissioner determines that a depository institution is continuing to violate the provisions of the Act or [section 9 of this subchapter] N.J.A.C. 3:1-9.7 after being ordered to cease such practices, he **or she** shall issue and serve such depository institution by certified mail, return receipt requested, an order to pay the applicable penalties assessed against the depository institution.

3:1-9.17 Notice of [hearing] charges; continued violation of Act

(a) If it appears to the Commissioner that a depository institution, other than a national bank, is continuing to violate the provisions of the Act or [section 9 of this subchapter] N.J.A.C. 3:1-9.7 after being ordered to cease such practices, he **or she** shall issue and serve upon such depository institution by certified mail, return receipt requested, a notice of [hearing] **such charges**.

(b) The notice [of hearing] shall include:

[1. The date, time, place and nature of the hearing;

2. The legal authority and jurisdiction under which the hearing is held;]

[3.]1. The particular sections of the statutes and rules involved; [and]

[4.]2. A copy of the detailed statement of facts constituting the basis of the alleged violation[.]; and

3. A statement that the depository institution has the right to request a hearing on the charges by submitting a written request for a hearing within 10 days of receipt of the charges; however, the time period may be extended at the discretion of the Commissioner. The hearing shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

3:1-9.18 [Hearing procedure] (Reserved)

[The hearing shall be conducted in accordance with the provisions of N.J.A.C. 3:1-9.10 through 3:1-9.15 of these regulations.]

3:1-9.19 [Administrative Procedure Act] (Reserved)

[Except as otherwise provided in the Act and these regulations, the procedures followed by the Commissioner shall conform to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.)]

3:1-12.4 Specific content of deposit contract

(a) (No change.)

(b) **Model forms may be found in Appendix A to this chapter, incorporated herein by reference.**

3:1-12.6 Change in contract

No financial [station] **institution** or party may change the form of contract without the written notice required in the Act.

3:1-15.1 Definitions

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

"After hours deposits" means a deposit received after the banking institution's established closed of [business] **banking** hour for any business day. Such hours may vary at different offices of an institution. After hours deposits shall also include deposits received on a Saturday, Sunday or legal holiday. All after hours deposits shall be deemed to have been deposited on the next [business] **banking** day of the banking institution.

"Banking institution" means any State or Federally chartered commercial bank, savings bank or savings and loan association.

3:1-15.8 Compliance with Federal law

Compliance with Federal Regulation CC, or with a successor to that regulation, shall be deemed to be compliance with this subchapter.

(a)

DIVISION OF REGULATORY AFFAIRS

Savings and Loan Associations: General Provisions

Proposed Readoption with Amendments: N.J.A.C. 3:26

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

Authority: N.J.S.A. 17:1-8.1; 17:12B-48(21); 17:12B-197; 17:29-11.

Proposal Number: PRN 1990-576.

Submit comments by December 19, 1990 to:

Robert M. Jaworski, Assistant Commissioner
Department of Banking
CN 040

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules at N.J.A.C. 3:26, concerning savings and loan associations, will expire on December 31, 1990. The Department of Banking has reviewed these rules and determined them, in general, to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

Subchapter 1 establishes a minimum record retention schedule for State chartered associations. The proposed amendments either maintain or reduce the time periods set forth in the rules. The following retention periods have been reduced: (1) payment slips from six years to two years; (2) coupons used with club accounts from two years to one year; (3) coupons used with mortgage accounts from three years to two years; (4) withdrawal slips (if only record) from 20 years to 10 years; (5) roll books from 20 years to 10 years; (6) general ledger books from permanent to 10 years; (7) tellers' proof sheets from permanent to six years; (8) cancelled checks from permanent to six years; (9) share certificates from permanent to 10 years; (10) account transfer or share assignment records of roll book accounts from 20 years to 10 years; (11) corporate minutes from permanent to 10 years; (12) examination and audit reports from permanent to 10 years; (13) monthly reports to directors from five years to three years; (14) records of original entry form permanent to 10 years; (15) journal vouchers from six years to three years; and (16) inheritance tax waivers and surrogates' certificates from 10 years to six years; (17) trustee account ledger from permanent to 10 years. All other record retention schedules remain the same.

Subchapter 2 limits to \$5.00 the amount a lender or other servicing entity may charge for substitution by the mortgagor in mid term of an insurance policy or policies.

Subchapter 3 requires every State association to notify the Commissioner by telephone of the detection or discovery of suspected criminal

activity affecting the association. The rules also require that the association file a written report with the Commissioner.

Subchapter 4 affords State savings and loan associations parity with Federal associations. In particular, a State association may exercise any power, right, benefit or privilege which is now or hereafter authorized for Federal savings and loan associations pursuant to Federal law.

The proposed amendments remove all reference in these rules to the Federal Home Loan Bank Board. The proposed amendments instead refer to "any appropriate Federal agency." Much of the authority of the Federal Home Loan Bank Board has been transferred to the Office of Thrift Supervision. In addition, the proposed amendments remove the reference to the Savings Banks' Association of New Jersey and replace it with New Jersey Council of Savings Institutions, the current name of this trade group.

Social Impact

These rules require an association to notify the Commissioner of suspected criminal acts perpetrated on the institution. Through early notification, potential losses to associations are minimized. In addition, this assists law enforcement authorities to apprehend those engaging in this type of criminal conduct in a timely manner. The maintenance of records allows for proper examination of the soundness of an institution and provides for responding to consumer inquiries, complaints or possible litigation.

Economic Impact

The rules proposed for readoption apply to all State chartered associations. They require that an association maintain records for specified minimum periods. To maintain these records, associations incur storage and other administrative costs. To reduce these costs, the Department proposes to reduce the minimum periods set forth in these rules.

The rules also limit to \$5.00 the amount a lender or servicer may charge for substitution in mid term of an insurance policy. This limit has a negative economic impact on lenders and servicers, and there is a corresponding positive economic impact on borrowers.

Regulatory Flexibility Analysis

The rules proposed for readoption place reporting, record keeping and compliance requirements on savings and loan associations, approximately 50 percent of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The schedule in subchapter 1 requires an association to maintain records for specified minimum periods. The Department deems the periods set forth in the proposed readoption of the rules to be consistent with prudent banking practice. These records must be maintained so that they are available to the Department and other regulators who examine the soundness of the institution. In addition, the association must maintain the records in order to respond to consumer inquiries or complaints, and to protect itself from litigation. For the above stated reasons no differing requirements are established.

The maximum charge of \$5.00 established in subchapter 2, is felt to be a reasonable charge and appropriate for covering administrative costs of the transaction. It is felt to be not unduly burdensome to either small institutions nor large.

Pursuant to Subchapter 3, the association must notify the Department of suspected criminal violations. An association will incur minimum compliance costs satisfying this provision. The Department deems this necessary, however, so as to minimize the impact such a violation will have on the institution and the public and therefore establishes no differing standards.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:26.

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

3:26-1.1 Records retention schedule

(a) A savings and loan association shall maintain its records for the following minimum periods:

Description of Books, Records, Etc.	Period to be Retained
1. Payment slips	[6] 2 years
1A. Coupons used with club accounts	[2 years] 1 year after payout of club account
1B. Coupons used with mortgage accounts	[3] 2 years, where a copy of the statement of the mortgage account is submitted annually to the mortgagor and a copy of said statement is retained in the association's file
2. Withdrawal slips	
[(a)] i. Supported by checks	6 years
[(b)] ii. If only record	[20] 10 years
3. Subsidiary ledgers, etc.	
[(a)] i. Individual account cards and sheets	6 years after account is closed
[(b)] ii. Roll books (Shareholders' ledgers)	[20] 10 years
4. General ledger: books, cards or sheets	[Permanently] 10 years
5. Tellers' Proof Sheets used as posting media	[Permanently] 6 years
6. (No change.)	
7. Cancelled checks, including dividend and trust account checks	[Permanently] 6 years
8.-10A. (No change.)	
10B. Share certificates	[Permanently] 10 years
11. Account transfer or share assignment records	
[(a)] i. Individual accounts cards or sheets	10 years
[(b)] ii. Roll book accounts	[20] 10 years
12.-22. (No change.)	
23. Corporate minutes: directors, executive committee and members' meetings	[Permanently] 10 years
24. Reports	
i. Examination reports	[Permanently] 10 years
ii. Audit reports	[Permanently] 10 years
iii. Annual reports to Department	10 years
25. Monthly reports to directors (one copy)	[5] 3 years
26. Records of original entry—general journal, cash receipts and disbursements journal, etc.	[Permanently] 10 years
27.-28. (No change.)	
29. Journal vouchers	[6] 3 years
30. (No change.)	
31. Inheritance tax waivers and surrogates' certificates	[10] 6 years
32.-33. (No change.)	
34. Trustee account ledger	[Permanently] 10 years
35. (No change.)	

3:26-3.1 Action upon detection or discovery of crime

(a) Every State association, including any service corporation which is owned, wholly or jointly, by a State association, shall immediately notify the Commissioner by telephone of the detection or discovery of any embezzlement, defalcation, misapplication, or misuse of funds by any director, officer, employee, attorney or agent of the State association or service corporation. As soon thereafter as is practical, the association's or service corporation's management or auditor shall submit to the Commissioner a written report of the crime or crimes discovered or detected, including the names of the individuals involved, the extent of any loss, and the method used to effectuate the embezzlement, defalcation, misapplication or misuse. Compliance with the requirement in this subsection for a written report shall be evidenced:

1. By the filing of a copy of any forms required under rules adopted by [the FHLBB] **any appropriate Federal agency** concerning internal crimes; or

2. By filing Department of Banking Form No. S.L. 4.

(b) (No change.)

(c) Every State association shall notify the Commissioner in the manner described in (a) above, [of this section] of every crime either attempted or perpetrated against the association or service corporation by individuals other than an officer, director, employee, attorney or agent of the association irrespective of the amount of loss. In the case of a robbery, burglary or non-employee larceny, compliance with this subsection shall be evidenced by the filing with the Commissioner of a copy of any form required under rules adopted by [the FHLBB] **any appropriate Federal agency** concerning external crimes or by filing with the Commissioner Department of Banking Form No. S.L. 5.

3:26-4.1 State Savings and Loan Association parity with Federal savings and loan associations

In addition to other authority granted by law, and unless contrary to State law, a savings and loan association may exercise any power, right, benefit or privilege which is now or hereafter authorized for Federal savings and loan associations pursuant to Federal law or rules and regulations of [the Federal Home Loan Bank Board] **any appropriate Federal agency**. Any such power shall be exercised upon the same terms and subject to the same conditions as are authorized for Federal savings and loan associations. The powers, rights, benefits or privileges shall be automatically exercisable upon the expiration of 30 days from the date of adoption by the Federal regulatory agency, except if the Commissioner of Banking within that 30-day period provides notice that the power shall not be granted to State savings and loan associations. Such notice shall be provided to each savings and loan association, and to the trade publications of the [Savings Banks' Association of New Jersey] **New Jersey Council of Savings Institutions**, the New Jersey Bankers Association and the New Jersey Savings League for publication. The Commissioner of Banking may permit savings and loan associations to begin exercise of a power prior to the expiration of the 30-day period by providing notice of permission to each savings and loan association and to the above mentioned trade publications.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Maintenance of Hotels and Multiple Dwellings Ceiling Heights in Multiple Dwellings

Proposed Amendment: N.J.A.C. 5:10-22.5

Authorized By: Melvin R. Primas, Jr., Commissioner,

Department of Community Affairs.

Authority: N.J.S.A. 55:13A-7.

Proposal Number: PRN 1990-566.

A public hearing on this proposal will be held on Tuesday, December 4, 1990, at 10:00 A.M., at the offices of the Department of Community Affairs, 101 South Broad Street, Trenton, New Jersey.

Submit written comments by December 19, 1990 to:

Michael L. Ticktin, Esq.

Chief, Legislative Analysis

Department of Community Affairs

CN 802

Trenton, NJ 08625

The agency proposal follows:

Summary

Rooms, spaces and portions thereof in multiple dwellings are currently deemed to be habitable only if there is a ceiling height of not less than seven feet. As a result of comments on an amendment proposed at 22 N.J.R. 2207(a), the Department has become aware of numerous multiple dwellings in shore areas where units with lower ceiling heights are occupied. The phenomenon, like that of the seasonal hotels dealt with in the previous rulemaking, (see 22 N.J.R. 2207(a), 22 N.J.R. 3363(b)), is sufficiently widespread to make it impractical to handle by use of exceptions in accordance with N.J.S.A. 55:13A-11. The Department is, therefore, modifying the rule to allow continued occupancy of multiple dwelling units with substandard ceiling heights in shore municipalities under certain circumstances. Occupancy will be allowed with a ceiling height of not less than six feet, four inches so long as there is no clear and present danger to the health or safety of the occupants. Occupancy will be allowed with a ceiling height of not less than five feet, 10 inches so long as the volume of the unit, as measured in cubic feet, is not less than seven times the minimum square footage required for the number of occupants in the unit. Occupancy will be allowed with a ceiling height of less than five feet, 10 inches on an exception basis pursuant to N.J.S.A. 55:13A-11 only.

Social Impact

The proposed amendment would give owners of older shore area multiple dwellings, many of which are historic structures, assurance that they can rent units with ceiling heights under seven feet. The rules will still provide protection against the unsafe or unhealthful conditions addressed by ceiling height requirements.

Economic Impact

Since inadequate ceiling height is virtually impossible to correct in most cases, this amendment will allow multiple dwelling owners to continue to rent out units that would otherwise be of no economic value to them. Tenants now living in those units which will not have to move and potential tenants, particularly those who are not so tall as to be inconvenienced by reduced ceiling height, will have more opportunity to find housing than would otherwise be the case. This proposed amendment would have a favorable economic effect on owners of older shore area multiple dwellings.

Regulatory Flexibility Analysis

The proposed amendment would require that those who rent out space in multiple dwellings rent space with a ceiling height of less than seven feet only under certain conditions. The current minimum requirement is seven feet, with exemptions granted as deemed appropriate by the Department. The amendment will apply to any business which rents multiple dwelling unit space, most or all of which are small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment benefits these small businesses, allowing them to use space previously unusable, if they meet certain requirements. There are no additional professional services required as a result of the amendment.

No differential requirements based upon business size can be provided, beyond what has been offered in the amendment, due to an overriding concern for public health and safety.

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

5:10-22.5 Required ceiling height

(a) Except as otherwise provided in (a)1 and 2 below, no room or space or portion of a room or space shall be considered habitable unless that room or space or portion of a room or space has a clear ceiling height of at least seven feet, zero inches.

1. (No change.)

2. Dwelling units and portions of dwelling units in multiple dwellings located in municipalities bordering on the Atlantic Ocean shall be deemed to be habitable with a ceiling height of less than seven feet, zero inches provided that the dwelling unit was occupied prior to the effective date of this amendment and is in conformity with any applicable mercantile license requirement prior to May 27, 1991 and:

i. The ceiling height is less than seven feet, zero inches but at least six feet, four inches and there is no clear and present danger to the health or safety of the occupants;

ii. If the ceiling height is less than six feet, four inches but at least five feet, 10 inches, there is no clear and present danger to the health or safety of the occupants and the volume of the unit, as measured in cubic feet, is at least seven times the minimum square footage required for the number of occupants in the unit; or

iii. If the ceiling height is less than five feet, 10 inches, an exception is granted by the Bureau in accordance with N.J.S.A. 55:13A-11 and N.J.A.C. 5:10-1.15.

(b) (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Petition for Delisting of Hazardous Waste at Beecham Laboratories

Proposed Amendment: N.J.A.C. 7:26-8.17

Proposed New Rule: N.J.A.C. 7:26-8 Appendix I

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 037-90-10.

Proposal Number: PRN 1990-571.

Submit comments, identified by the Docket Number above, by January 18, 1991 to:

Administrative Practice Officer

Office of Policy and Planning

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to add a new Appendix I to N.J.A.C. 7:26-8 which will list facility-specific waste streams excluded from regulation as a listed hazardous waste by operation of N.J.A.C. 7:26-8.17, the delisting procedure, which is amended to incorporate the Appendix. The appendix is necessary since the Department is proposing to delist approximately 2,400 cubic yards of soil contaminated with listed solvents located at Beecham Laboratories, Piscataway, New Jersey. Whenever a solid waste is mixed with a hazardous waste listed at N.J.A.C. 7:26-8.13, 8.14, 8.15, or 8.20 ("listed waste"), then the entire mixture is regulated as that listed waste by operation of the "mixture rule" at N.J.A.C. 7:26-8.1(a)2iii. The delisting procedure at N.J.A.C. 7:26-8.17 allows persons to petition the Department to exclude their listed waste from regulation as a listed waste under N.J.A.C. 7:26 if they can demonstrate the waste is not hazardous.

The Beecham Laboratories Piscataway facility is primarily involved in the production of synthetic oral and injectable forms of penicillin. Thirteen 6000-gallon underground tanks stored virgin product and spent solvent wastes until 1978. The solvents stored were methanol, methyl isobutyl ketone, acetone, methylene chloride and toluene.

In November 1985, these tanks were removed and approximately 2,400 cubic yards of soil were excavated in the process. The excavated area was backfilled with the excavated soil. In June, 1986, the soil was re-excavated and stockpiled on-site in 24 100-cubic yard storage cells constructed below grade. The storage cells are underlined with plastic, separated with plywood and covered with a geotextile fabric.

The excavated soil was sampled between June 3 and June 11, 1986 according to Department waste classification guidelines and analyzed for acetone, methyl isobutyl ketone, methylene chloride and toluene. The soil in 21 of the 24 cells contained less than one part per million (ppm) of total volatile organics while three piles contained between two ppm and five ppm of total volatile organics. On May 27, 1987, the Department notified Beecham that the soils were classified as hazardous because the soils contained detectable quantities of chemicals listed in N.J.A.C. 7:26-8.15, which are hazardous when spilled, leaked or otherwise discharged to soil. The excavated soil was designated with hazardous waste codes U002 (Acetone), U080 (Methylene chloride), U161 (Methyl isobutyl ketone) and U220 (Toluene).

Under the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., states may seek authorization from the Federal government, through the United States Environmental Protection Agency (USEPA), to carry out the RCRA regulatory program for hazardous waste management. The Department became authorized to implement the delisting procedure on August 10, 1988. Prior to that time, in December of 1987, Beecham requested that USEPA review their analytical data and render an opinion as to the degree of hazard presented by this waste. After analyzing the data obtained from the Organic Leachate Model (OLM) (51 Fed. Reg. 27061, July 29, 1986) and the Vertical-Horizontal Spread Model (VHS) (50 Fed. Reg. 48886, November 27, 1985), the USEPA determined that the modeled concentrations of the four compounds were below federal regulatory levels for drinking water and "thus, in themselves, would not cause a delisting petition to fail." (Letter from USEPA to Beecham's Consultant, December 17, 1987.)

In July 1989, Beecham re-sampled the piles at the request of the Department and found that two piles contained acetone at 3.0 ppm and 4.7 ppm, respectively, one pile contained 2.1 ppm of methyl isobutyl ketone and one pile contained 1.4 ppm of toluene. The remaining piles contained less than one ppm of each of the three solvents. None of the piles contained methylene chloride at one ppm or greater. In August 1989, Beecham submitted the formal delisting petition to the Department.

The Department has determined that the delisting petition meets all the requirements established at N.J.A.C. 7:26-8.17 for delisting this material. Additionally, the Department subjected the positive results to the OLM and VHS models, and it was determined that the contaminants' corresponding health-based standards would not be exceeded at the VHS model's theoretical compliance point. A survey of scientific literature indicated that there are no adverse toxicological or environmental effects to be expected from the solvent-contaminated soil because of the low concentrations involved.

Although the Beecham soil contains small quantities of acetone, methylene chloride, methyl isobutyl ketone and toluene, the soil contains such low concentrations of these solvents that the soil should not be considered hazardous waste. Therefore, the Department proposes a one-time delisting of approximately 2,400 cubic yards of soil located at Beecham Laboratories in Piscataway, New Jersey.

This solid waste has been determined to be non-hazardous for the following reasons: (1) the soil is contaminated with very low levels of the listed solvents, (2) the VHS model indicated that the solvents' corresponding health-based standards would not be exceeded at the model's theoretical compliance point, (3) the soil was determined to be non-hazardous according to N.J.A.C. 7:26-8.8(a)3, and (4) the soil did not display any of the hazardous waste characteristics identified in N.J.A.C. 7:26-8.9 through 8.12.

Social Impact

The proposed delisting will not have any significant social impact. The soil will be managed as a solid waste and should pose no threat to human health or the environment due to the low concentrations of the solvents involved. The Department believes this material can be properly managed under the State's solid waste management scheme.

Economic Impact

This delisting may have a beneficial economic effect upon Beecham Laboratories since they will be able to dispose of approximately 2,400 cubic yards of contaminated soil as solid waste rather than as hazardous waste. This delisting will not affect any other business in New Jersey.

Environmental Impact

In regard to Beecham Laboratories, no negative environmental effect is foreseen. The level of contamination in the soil being delisted is not expected to cause any harm to human health or the environment. It has been determined that this soil is non-hazardous and can be disposed of safely in accordance with non-hazardous solid waste rules.

Regulatory Flexibility Statement

The proposed new rule will have no impact on "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This delisting proposal is company-specific and site-specific for Beecham Laboratories in Piscataway, New Jersey and, therefore, does not affect any small businesses. Therefore, a regulatory flexibility analysis is not required.

This is a one-time delisting for this particular batch of material, totaling approximately 2,400 cubic yards of soil. Based on the evidence before the Department, it is acceptable to dispose of it as non-hazardous solid waste.

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

7:26-8.17 Delisting procedure

(a)-(k) (No change.)

(l) The Department shall give public notice of proposed delistings by publication in the New Jersey Register. A period of at least 30 days shall be allowed for public comment. Public hearings will be scheduled, if in the discretion of the Department, the public comment has raised issues affecting the public health and safety, and/or the environment. Public comments will be reviewed and answered in the final notice. A proposed delisting will become effective upon publication of the final notice in the New Jersey Register, and the delisting will be described in Appendix I of this subchapter, incorporated herein by reference.

APPENDIX I

WASTES EXCLUDED UNDER N.J.A.C. 7:26-8.17

Table 1—Wastes Excluded From Non-Specific Sources

Facility (Reserved)	Address	Waste Description
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Table 2—Wastes Excluded From Specific Sources

Facility (Reserved)	Address	Waste Description
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Table 3—Wastes Excluded From Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof

Facility	Address	Waste Description
Beecham Labs	Piscataway, New Jersey	Contaminated soil (approximately 2,400 cubic yards) which contains acetone, methylene chloride, methyl isobutyl ketone and toluene each in concentrations of 4.7 ppm or less.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Notice of Extension of Public Comment Period Permit Applications, Operating Standards, and Recordkeeping Requirements

Proposed Amendments: N.J.A.C. 7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2 and 12.4

Take notice that the Department of Environmental Protection is extending until December 19, 1990 the comment period of the rule published at 22 N.J.R. 3186(a) on October 15, 1990 (DEP Docket Number: 031-90-09). The comment period was originally scheduled to end Novem-

ber 14, 1990. Notice of the proposal and the extended comment period will appear in the Newark Star Ledger and the Trenton Times newspapers. The proposed amendments will address various standards for hazardous waste treatment storage and disposal facilities. Some of the specific requirements included in these amendments are: requirements for double liners at new or expanded surface impoundments or landfills, a prohibition on road oiling, a prohibition on placing hazardous wastes in salt domes, caves or underground mines, a prohibition on the disposal of free liquids in landfills, and establishes procedures for correcting a hazardous waste facility Part A application that the Department believes deficient.

Submit comments by December 19, 1990 to:
The Administrative Practice Officer
Office of Policy and Planning
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

(a)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Pre-Proposed Amendments: N.J.A.C. 7:50-2.11; 7:50-4.66(a), (b) and (d); and 7:50-6.13(a)

Authorized By: New Jersey Pinelands Commission,
Terrence D. Moore, Executive Director.

Authority: N.J.S.A. 13:18A-6j.

Pre-Proposal Number: PPR 1990-12.

Take notice that, under the State Pinelands Protection Act, the Pinelands Commission is required to grant exemptions (waivers of strict compliance) from the Pinelands Comprehensive Management Plan's development controls in special cases. Because of concerns that large numbers of exemptions might significantly harm the environment over the long term, the Pinelands Commission is considering changes to its exemption program. These changes would limit the circumstances under which public agencies, property owners and developers would qualify for exemptions.

Exemptions are granted when either an "extraordinary hardship" or "compelling public need" exists and when the project will **not** "substantially impair" the resources of the Pinelands. Changes being considered would tighten the tests for establishing an extraordinary hardship and generally allow less relaxation of normal development standards when either an extraordinary hardship or compelling public need is found to exist. The effect of the changes would be to reduce the number of exemptions granted and provide for better protection of Pinelands wetlands, water quality and other important natural resources.

These potential changes and relevant background information are outlined below. Comments from interested persons and organizations are being sought before the Pinelands Commission decides to consider these or other changes further.

A **public meeting** concerning this pre-proposal will be held on:
Tuesday, December 4, 1990
5:00-8:00 P.M.
Atlantic County Library
Mays Landing, N.J.

Interested persons who wish to provide comments may submit in writing, data, draft rules, views and arguments relative to the pre-proposal on or before December 20, 1990. These submissions, and any inquiries, should be submitted to:

John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, N.J. 08064

The agency pre-proposal follows:

LIMITING WAIVERS OF STRICT COMPLIANCE FROM THE PINELANDS COMPREHENSIVE MANAGEMENT PLAN

INTRODUCTION

The Pinelands Comprehensive Management Plan (CMP) has been guiding land use and development activities in the Pinelands since January 14, 1981. The CMP relies upon land use standards which control the type and amount of development in the Pinelands and a series of management programs (or performance standards) which are designed to minimize environmental harm when development activities do take place. These latter standards prohibit incompatible development in and around wetlands, regulate the type and location of septic systems, control storm-water runoff, and protect a number of important natural resources.

The CMP relies upon municipal and county governments to incorporate these land use and development standards into their local ordinances and to follow them when considering subdivision and site plans, zoning and building permits, and other types of local permits. The Pinelands Commission exercises oversight responsibility of these local permitting activities. In addition, the Commission is also responsible for deciding when a development project may be exempted from these regional standards.

These exemptions, required by the 1979 Pinelands Protection Act, are called "waivers of strict compliance." Waivers are somewhat similar, although not identical, to zoning variances which municipalities are authorized to grant. Unlike variances, however, waivers of strict compliance are exemptions from CMP standards and can only be granted by the Pinelands Commission to alleviate extraordinary hardships or satisfy compelling public needs. In addition to several other tests which must be met, the Commission must also determine that granting a specific waiver will not result in the substantial impairment of Pinelands resources and will not be inconsistent with the purposes, objectives or general spirit of the Pinelands Protection Act, the Federal Act or the Comprehensive Management Plan. (These two requirements will be referred to as substantial impairment). Then, and only then, can the Commission grant a waiver of strict compliance.

For the past six months, the Commission has been evaluating its waiver program and is considering several important changes to it. These possible changes are embodied in the attached set of draft regulations and are primarily intended to more closely scrutinize environmental impacts in order to avoid granting waivers which might substantially impair Pinelands resources. However, before the Commission formally considers these or other changes, it is interested in obtaining public comments on them.

BACKGROUND

Through September 19, 1990, the Commission has approved 924 applications for waivers of strict compliance and denied another 621 applications. (This ratio of approvals to denials is somewhat misleading since many people failed to complete their waiver applications once it was apparent their applications would be denied.) Most waivers are sought to permit the development of single family homes.

The 924 approved waivers permit 13,624 homes to be built. When the CMP was first adopted, many extraordinary hardship waivers were granted for larger residential projects because they had already received most of the local approvals needed to build. These projects were approved under a CMP provision which no longer exists yet they involved 12,744 of the total 13,624 residential units approved via the waiver process.

The Commission's concern at this time is focused on the remaining type of extraordinary hardship waiver which the Commission continues to consider. In the last three years, 232 of these other types of waiver applications have been approved which involve 334 homes. Although the average number granted each year (77) is not exorbitant, there is concern that the **cumulative** effect over the next decade or two may be significant.

This concern is heightened when the amount of development meeting Pinelands standards is considered. Over this same three year period, an additional 2,415 applications for development not requiring waivers have been approved which involve 3,887 homes as well as a number of commercial and industrial developments.

Although development which meets Pinelands standards can and should continue to be approved in the coming decades, the Commission must consider whether it's wise to continue to approve development which **deviates** from the standards. Although there will always be a need to grant some waivers (as the Commission is obligated by law to consider them), *the Commission has tentatively decided that the standards for waiver*

approvals should be tightened so that they are granted only in those situations where a truly extraordinary hardship exists and when the development being proposed clearly won't substantially impair the Pinelands.

THE WAIVER PROCESS

The Pinelands Protection Act requires that the Commission make two affirmative findings before it approves a waiver.

The first finding is whether an extraordinary hardship or a compelling public need exists. Since the Commission is infrequently asked to consider waivers because of compelling public needs, primary attention has been focused on the issue of extraordinary hardship.

The second finding is that the waiver, if granted, will not substantially impair the resources of the Pinelands. This test only comes into play **after** extraordinary hardship or compelling public need is established. In other words, the Commission must decide whether a waiver should be denied because of environmental concerns even though an applicant has already demonstrated that an extraordinary hardship or a compelling public need exists. If such a denial becomes necessary, some other form of relief for the hardship may then be necessary.

The following sections describe the changes which the Commission is considering in its standards for extraordinary hardship, substantial impairment, and the type of relief granted when a substantial impairment is found to occur. Please remember that these changes, if adopted, will apply only when exemptions from the general land use and development policies of the CMP are requested. They will not apply to all development in the Pinelands but are intended to be used by the Commission only when dealing with exceptional situations.

EXTRAORDINARY HARDSHIP

Extraordinary hardship has always focused on the particular characteristics of the **property** in question without taking into account the personal circumstances of the property owner. This approach allows the Commission to make objective, rather than subjective, decisions on waiver applications.

If a property, because of its location, size, shape or other characteristics, does **not** have a beneficial use if developed in line with Pinelands standards, an extraordinary hardship is found to exist. An extraordinary hardship may exist, for example, when an undersized lot is surrounded by homes and can't be developed unless a waiver is granted. Beneficial use means that a property has a reasonable economic use; it does not mean highest and most profitable use. Oftentimes, a property owner will seek a waiver to permit a more economically profitable use, but the Commission can only consider whether or not the property has a **beneficial** use. If it does, an extraordinary hardship does **not** exist and the Commission cannot approve a waiver.

Contiguous Land Availability

In evaluating the reasonableness of potential uses, the Commission not only considers the property in question but also considers the applicant's ability to purchase vacant contiguous land. Smaller properties generally have less development or use options than larger properties and the effect of this standard is to "enlarge" properties and reduce the likelihood that a waiver will be necessary. The more broadly contiguous land is viewed, therefore, the less likely it is that a property will qualify for a waiver. This approach has required many landowners seeking a waiver to first attempt to purchase contiguous vacant land.

The Commission is considering broadening its definition of available contiguous land in two ways.

First, adjoining properties (either vacant or developed) owned by the same applicant on or after January 14, 1981 will be considered to be reasonably available unless the presence of a substantial physical barrier (for example, road, stream) wider than 50 feet means that the properties can't be considered as a single functional parcel. Currently, most barriers (whether or not they are substantial in width) would result in the properties being considered discontinuous.

Second, adjoining undeveloped property which is owned by someone else who is willing to sell it will be considered available unless it is separated from the applicant's property by a physical barrier wider than 50 feet. Currently, these adjoining properties are not considered available if physical barriers exist.

It is important to note that the changes being considered here relate only to how a property is separated from adjoining land. By changing these standards, more land will be considered available than is the case now and fewer properties will be able to demonstrate that an extraordinary hardship exists.

Buying or Selling Contiguous Land

Once it has been determined that contiguous land is available, the Commission's long standing policy has been to require the individual seeking a waiver to (1) offer to buy any contiguous land until the parcel conforms to all standards or until no more contiguous land is available, or (2) offer to sell his property to the owner of contiguous land. As stated earlier, this process ensures that the largest possible parcel of land is considered. Not only does this often negate the need for a waiver, it also reduces the number of separately owned properties which, over time, could each receive a waiver.

One important consideration in this process is the price of the land to be bought or sold. Obviously, it's unfair to disqualify a property owner from receiving a waiver because he refuses to purchase a neighboring property for an exorbitant price. Nor is it reasonable to expect the property owner to sell his property to someone else for a fraction of its fair market value.

To remove uncertainty about what a reasonable price is for a parcel of land, the Commission is considering defining a property's fair market value on the basis of its worth if developed **without** a waiver of strict compliance. If a given property cannot be developed unless a waiver is approved, its value would be based upon the extent to which it can be combined with other property(ies) to form a developable parcel. A simple example may help explain this: two adjacent half acre lots without environmental limitations located in a one acre zoning district would each have 50 percent of the value of a developable one acre lot.

PDC Entitlement As A Component of Beneficial Use

The Comprehensive Management Plan allocates transferable development rights, called Pinelands Development Credits (PDC), to properties located in the Preservation Area, Special Agricultural Production Area and Agricultural Production Area. When an owner of property in one of these areas applies for a waiver, the amount of PDCs allocated to the property is evaluated (in combination with the other uses to which the property may be put) in order to determine whether a beneficial use of the property exists. The Commission is proposing to make this consideration explicit in the wording of the waiver regulations.

Non-Contiguous Lot Options

Some Pinelands municipalities have a density transfer program where two or more separate (non-contiguous) properties can be considered as one lot in order to meet density standards. Density standards dictate how much land must be available for each home (for example, one home for every five acres) and are established in municipal zoning ordinances.

Although density standards generally apply only to the property proposed for development, several municipalities permit non-contiguous land to be considered as a single lot. Suppose, for example, the density standard permits one home for every five acres and you own a 2.5 acre lot. Under normal circumstances, you could not build a home on that lot unless a waiver of strict compliance is approved by the Pinelands Commission. However, the zoning ordinance may allow you to buy another 2.5 acre lot somewhere else in the municipality and build one home on either (but not both) of the lots.

In such a case, the Commission is considering not granting waivers for a lot (contiguous or not) if that lot, when used in tandem with another lot, has a beneficial use. This would, of course, only apply in municipalities which have such a non-contiguous lot provision in their ordinances.

SUBSTANTIAL IMPAIRMENT

Even if an extraordinary hardship or compelling public need is demonstrated, the Commission must still determine that a waiver will not substantially impair (harm) the resources of the Pinelands before that waiver can be approved. This "substantial impairment" standard is of greatest concern to the Commission and is being considered for the most significant change.

At the present time, CMP rules do not expressly define substantial impairment, and the Commission is considering spelling out explicit standards for this. In doing so, the Commission is also considering whether these standards should be made more stringent than past practice. Since the Pinelands Protection Act requires that some relaxation of CMP standards be allowed on an exceptional basis, the definition of substantial impairment must recognize that environmental policies designed to apply in normal circumstances (and which on the whole serve to protect the Pinelands) should not always apply in abnormal (that is, extraordinary hardship or compelling public need) circumstances. In other words, it is advisable as a general rule to avoid certain environmen-

tal impacts so as to protect the Pinelands, but some additional impact (or deviation from the general standards) must be permitted if extenuating circumstances exist. In no case, however, can the result of these deviations substantially impair Pinelands resources.

Wetlands Protection Tests

Different types of wetlands in the Pinelands such as cedar and hardwood swamps help reduce water pollution, prevent flooding, and serve as the home for many of the region's rare plants and animals. For these reasons, the CMP normally prohibits development within 300 feet of wetlands.

As a matter of policy and practice, the Commission does **not** currently approve waivers which would result in development on wetlands which are part of larger, undisturbed wetlands complexes. However, if an extraordinary hardship or compelling public need exists, the Commission has permitted development on what are considered as "disturbed" wetlands. The Commission also permits buffers (undeveloped zones around wetlands) to **all** wetlands to be reduced, in some cases permitting development immediately adjacent to a wetlands. To avoid misconceptions about this policy, the reader should remember that such reduced buffers are only considered **after** an extraordinary hardship or compelling public need has been demonstrated.

In the last three years, the prohibition against development on wetlands was waived in 15 cases and wetlands buffers were reduced in 104 cases. The Commission is concerned that the **cumulative** effect of waivers like these might result in substantial impairment and is considering defining the standard more narrowly as it relates to wetland protection.

Under the proposal being considered, encroachment directly on a wetland would only be considered if the wetland is "impaired", for example, not functioning as a healthy ecosystem due to the occurrence of long term changes. A rather strict test involving three parts would be applied to determine whether a wetland is impaired. As long as a wetland is not unusual or uncommon (a series of characteristics are spelled out in the definition to determine this), and it meets two other limiting tests, it would be viewed as an impaired wetland. These other two tests effectively limit impaired wetlands to those which are small (less than one acre in size) **and** which are already permanently affected (such as those located in a developed area, those which have been filled, or those which are located within a non-berry agricultural field). Of course, if development on an impaired wetland might be permitted it follows that a reduced buffer to that same wetland could be permitted as well.

Such a relaxation of the buffer requirement could also be permitted for somewhat higher quality wetlands, although encroachment on the wetland itself would not be permitted. These wetlands could be referred to as "impacted" wetlands, for example, wetlands more healthy than "impaired" ones but still not of special quality. They could include any small wetlands (less than one acre) as well as larger wetlands located within an impacted area (for example, developed areas, cultivated farm field, or filled areas). Unusual or uncommon types of wetlands within impacted areas would not qualify for reduced buffers.

The net effect of these proposed changes would sharply limit the amount of wetlands which could be harmed as a result of waivers. It is estimated that as many as 107 of the 119 applications for waivers from the CMP's wetlands standards during the last three years would not have been approved if these more restrictive standards were in place.

Groundwater Protection Test

Nitrate-nitrogen from septic tanks is a pervasive pollutant in the Pinelands and indicates the presence of other pollutants as well. Nitrate-nitrogen can cause serious health problems and environmental damage.

Under normal circumstances, septic systems and other wastewater treatment facilities must be located and designed so that the level of nitrate-nitrogen in the groundwater at the edge of the property does not exceed two parts per million. Where extraordinary hardships or compelling public needs have been demonstrated, this level has been relaxed to 10 parts per million, equaling the Federal drinking water standard.

In the last three years, the Commission waived the two parts per million standard in 66 cases. Because water quality plays a pivotal role in the maintenance of the Pinelands environment and because the two parts per million standard already exceeds the nitrate-nitrogen level of undisturbed Pinelands water, the Commission is considering adopting a policy which concludes that any nitrate-nitrogen level above three parts per million in designated development areas, or two parts per million in any of the other more conservation oriented management areas would substantially impair the resources of the Pinelands.

The effect of this policy would prohibit any residential development on lots smaller than one acre in the Preservation Area, Forest Area, Agricultural Production Area, Special Agricultural Production Area and Rural Development Area, unless the property is serviced by a central sewer system. Slightly smaller lots (about 0.59 acre in size) could be served by septic systems in Regional Growth Areas, Pinelands Towns and Pinelands Villages. Of the 66 water quality waivers issued in the past three years, only 13 would have been approved if this substantial impairment test had been in place.

Threatened and Endangered Plants and Wildlife Preservation Tests

The Pinelands contains more than 90 plant and animal species which are considered to be threatened or endangered. Historically, the Commission's policy has been that any waiver which would eliminate a threatened or endangered plant or wildlife population results in a substantial impairment of Pinelands resources. Consequently, no waivers have been approved which violate this fundamental standard. The proposed policy would expressly state this in the regulations.

Groundwater Levels Test

Septic systems are best located in areas where the water table is not within five feet of the natural surface of the ground. Therefore, in locations where septic systems are to be installed, the CMP requires that the groundwater level not rise to within five feet of the ground surface during the wettest part of the year. This level is referred to as seasonal high water table.

This water table standard has been waived when an extraordinary hardship or compelling public need exists. In virtually all waiver cases, the seasonal high water table has been no closer than two feet from the surface, and a mounded septic disposal field has been required to elevate the point above groundwater where the septic effluent is discharged.

The Commission is considering a new standard which would prohibit any waiver which would necessitate the placement of a septic disposal field in an area where the seasonal high water table is within two feet of the surface. Department of Environmental Protection standards that apply throughout the State generally preclude installation of any disposal field where the water table is within two feet of the natural ground surface. Anything closer than two feet would be considered to represent a substantial impairment of Pinelands resources.

None of the 97 waivers from the five-foot requirement approved in the last three years would have been affected by this proposed change since all had groundwater levels more than two feet from the surface.

Stormwater Test

Development normally reduces the amount of rainwater which seeps into the ground, replenishing the Pinelands' aquifer. Storm sewers normally carry rainwater away and discharge it into streams. This results in a lowering of the ground water level and introduces pollutants directly into streams.

As a general policy, the CMP requires that stormwater be retained on site for infiltration into the ground. The direct discharge of stormwater into streams, lakes, and other surface waters is prohibited.

The Commission has not approved any waivers which necessitate additional stormwater discharges into surface waters because alternative management techniques are generally found to be feasible. The Commission is considering making that policy explicit by concluding that direct discharges of stormwater into surface waters substantially impair Pinelands resources.

Other Tests

Although the proposed changes better define what constitutes a substantial impairment, they do not and can not address every possible occasion which might result in substantial environmental harm. The Commission must continue to be able to evaluate special or unusual circumstances insofar as they might raise out-of-the-ordinary environmental concerns. The changes under consideration would expressly reserve this opportunity for the Commission.

Resource Enhancement Measures

Unlike extraordinary hardships which might be alleviated without permitting the land to be developed, compelling public needs (once demonstrated) can only be satisfied if development of the property is allowed. Since these public need projects are usually multi-faceted, the Commission is considering an additional standard for evaluating substantial impairment when the waiver is otherwise needed to satisfy a compelling public need.

The standard, if adopted, would permit an applicant whose project otherwise violates one of the specific tests for substantial impairment to demonstrate that the overall project actually improves the resources of the Pinelands. As an example, the clean up of a hazardous waste site might require that a wetlands area be disturbed. Although such a proposal might violate one of the specific standards to measure substantial impairment of a wetland, the overall effect of the project would be to improve the resources of the Pinelands.

LINEAR DEVELOPMENT

The Commission is considering changes both to clarify existing development standards for linear improvements and to indicate that the construction of such facilities should not be automatically subject to the above described tests for substantial impairment. Because of the extensive nature of the wetlands in the Pinelands, linear improvements (for example, roads, utilities, etc.) often involve some effect on wetlands. Since the standards for linear improvements require that, among other things, alternatives be evaluated and mitigation measures be employed, linear projects would not be subjected to the same types of substantial impairment tests as are other projects. Substantial impairment could, however, still be found in special or unusual circumstances.

TYPE OF RELIEF GRANTED

A waiver is approved only when the Commission has determined that an extraordinary hardship or compelling public need exists **and** that the relaxation of CMP standards would not result in substantial impairment. When those tests are met, the relief granted now generally permits some development of the property which would not normally be permitted.

In situations where an extraordinary hardship exists but where the desired relief (some on-site development) would result in substantial impairment, an alternate mechanism to help alleviate the hardship is warranted. Although the CMP does currently have a rather open-ended development transfer program for use in these situations, it has not proven to be particularly helpful. Instead, the Commission is considering a change to the CMP which would automatically allocate PDCs (the established, region-wide transfer of development program) to these types of properties. PDCs would, therefore, be allocated to all properties which meet the tests for extraordinary hardship but fail to meet the tests for avoiding substantial impairment.

The standard would guarantee an allocation of one-quarter of a PDC to each such property but allow a larger allocation in certain cases. Adaptation of the normal CMP formula for allocating PDCs would result in properties located in development oriented areas (Regional Growth Areas, Pinelands Towns and Pinelands Villages) being eligible to receive proportionately more PDCs than properties in more conservation oriented areas (Forest Areas and Rural Development Areas).

Again, it's important to note that this special PDC allocation would be made to properties **only** when an extraordinary hardship has been established and when on-site development is unsuitable due to environmental concerns.

EXPIRATION OF WAIVERS

Currently, the waivers approved by the Commission are valid in perpetuity. However, the Commission believes that it is necessary to periodically reevaluate the conditions under which waivers are granted in order to ensure that potential environmental changes and amendments to the CMP are given adequate consideration. Therefore, a new standard is being considered which would set a five-year expiration date for all waivers granted to relieve extraordinary hardships. This change would mean that such waivers would expire five years from the date of the Commission's approval unless all necessary construction permits had been issued. It should be noted that applicants would retain the right to reapply for waivers should they expire although approval would not be guaranteed.

NEXT STEPS

As described above and spelled out in the pre-proposed amendments below, the changes being considered by the Commission are intended to reduce the number of waivers of strict compliance which will be granted in the future. Before the Commission considers further whether to adopt these or other changes, obtaining your comments is crucial.

The Commission needs to know your thoughts and suggestions on this important issue. Although comments on any aspect of the proposed waiver changes will be appreciated, several questions have been identified which are of utmost importance.

(1) Do you believe that too many waivers (77 each year) are being granted each year?

(2) Do you believe a continuation of this trend over a 10- to 20-year period would substantially impair the resources of the Pinelands?

(3) Given that a property owner applying for an extraordinary hardship waiver must attempt to purchase adjoining properties or sell his own property to the owners of adjoining properties, how would you define "adjoining property"?

(4) What types of physical barriers prevent two adjoining properties from being combined into one functional property?

(5) If adjoining properties are available to be purchased, do you think the proposed definition of fair market value is reasonable?

(6) Should the owner of a small lot be given a waiver to develop that lot even if the municipal zoning ordinance allows him to buy another small lot elsewhere in the township and combine the two together?

(7) To what extent, if any, should the following existing environmental standards be relaxed once an extraordinary hardship or compelling public need is found to exist?

- prohibition against development on wetlands
- maintenance of up to a 300-foot undeveloped buffer to wetlands
- water quality standard of two parts per million of nitrate-nitrogen
- prohibition against development that would eliminate populations of threatened or endangered plant or animal species
- requirement that septic disposal fields be located in areas with five feet to groundwater
- prohibition against direct discharge of stormwater to streams, lakes, and other surface waters

(8) Is the definition (see N.J.A.C. 7:50-2.11) being considered for "impaired" wetlands appropriate? (Development which encroaches on wetlands would be permitted **only** when an extraordinary hardship exists **and** the wetland is impaired.)

(9) Is the definition (see N.J.A.C. 7:50-2.11) being considered for "impacted" wetlands appropriate? (Development on these wetlands would not be permitted even if an extraordinary hardship exists, but the designated buffer to these types of wetlands could be reduced.)

(10) Do you believe that projects which serve a compelling public need could, through some off-setting actions, result in a net improvement to the environment even though one of the specific measures for "substantial impairment" may not be met?

(11) If an extraordinary hardship exists, do you believe that the allocation of Pinelands Development Credits is better than permitting development on a property which might substantially impair Pinelands resources?

(12) If Pinelands Development Credits are to be allocated, is the formula (see N.J.A.C. 7:50-4.66(b)4) being considered a good one?

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

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings herein ascribed to them.

"Fair market value" means the value of a parcel determined based on the ability of a parcel to be developed without a Waiver of Strict Compliance. If the parcel is not developable, the determination of fair market value shall include consideration of the extent to which the parcel would contribute to the value of a developable parcel if combined with one or more contiguous parcels.

"Wetlands, impacted" means any wetlands that meets both of the following tests:

1. The wetland meets at least one of the following five criteria:
 - i. The entire wetland is less than one acre;
 - ii. The overall wetland area is larger than one acre but the portion of the wetland that is to be directly impacted is less than one acre and the impacted area is separated from the remainder of the wetland by a substantial hydrologic barrier;
 - iii. The proposed development parcel is within an area that is predominantly developed, has direct access to a paved public road and is serviced by a municipal wastewater treatment system;
 - iv. The wetland was filled prior to February 8, 1979, the fill is at least one foot in depth, and the seasonal high water table is not within one foot of the altered land surface; or

v. The wetland is an actively cultivated non-berry agriculture field which was cleared and in agricultural production prior to February 8, 1979; and

2. The wetland is not:

- i. An Atlantic white cedar swamp;
- ii. A wetland which is flooded for extended periods during the growing season;
- iii. A herbaceous or shrub dominated wetland type found in naturally occurring circular or nearly circular depressions within upland or wetland complexes;
- iv. Located within 300 feet of a permanent stream; or
- v. A wetland supporting plant species which are designated as endangered pursuant to N.J.S.A. 13:1B-15.151 et seq. or supporting plant or wildlife species designated as threatened or endangered pursuant to N.J.A.C. 7:50-6.24 and N.J.A.C. 7:50-6.33.

"Wetlands, impaired" means any wetland that meets each of the following three tests:

- 1. The wetland meets at least one of the following two criteria:
 - i. The entire wetland is less than one acre; or
 - ii. The overall wetland area is larger than one acre but the portion of the wetland that is to be directly impacted is less than one acre and the impacted area is separated from the remainder of the wetland by a substantial hydrologic barrier; and
- 2. The wetland meets at least one of the following three criteria:
 - i. The wetland is within an area that is predominantly developed, has direct access to a paved public road and is serviced by a municipal wastewater treatment system;
 - ii. The wetland was filled prior to February 8, 1979, the fill is at least one foot in depth, and the seasonal high water table is not within one foot of the altered land surface; or
 - iii. The wetland is an actively cultivated non-berry agriculture field which was cleared and in production prior to February 8, 1979; and
- 3. The wetland is not:
 - i. An Atlantic white cedar swamp;
 - ii. A wetland which is flooded for extended periods during the growing season;
 - iii. A herbaceous or shrub dominated wetland type found in naturally occurring circular or nearly circular depressions within upland or wetland complexes;
 - iv. Located within 300 feet of a permanent stream; or
 - v. A wetland supporting plant species which are designated as endangered pursuant to N.J.S.A. 13:1B-15.151 et seq. or supporting plant or wildlife species designated as threatened or endangered pursuant to N.J.A.C. 7:50-6.24 and N.J.A.C. 7:50-6.33.

7:50-4.66 Standards

(a) An application for a waiver shall be approved only if the applicant satisfies (b) below and either an extraordinary hardship or compelling public need is determined to have been established under the following standards:

1. **Extraordinary hardship:** The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this Plan are literally enforced. The necessity of acquiring additional land to attempt to meet the minimum lot size requirements or management standards of this Plan or to increase the parcel size so it is capable of having a beneficial use without the necessity of a waiver shall not be considered an extraordinary hardship, unless the applicant can demonstrate that there is no contiguous land which is reasonably available. [Any contiguous lands in common ownership at any time on or after January 14, 1981, shall be considered to be reasonably available.] An applicant shall be deemed to have established the existence of extraordinary hardship only if he demonstrates, based on specific facts that have been verified by the Pinelands Commission, that the subject property, along with any contiguous lands which are either in common ownership or are reasonably available, [does] may not have [any] a beneficial use, if used for its present use or developed as authorized by the provisions of this Plan[, and that]. In determining whether a parcel has a beneficial use, the following factors shall be considered:

i. All contiguous lands which are reasonably available shall be considered in determining whether a parcel has a beneficial use. Contiguous lands include lands which become contiguous as a result of the acquisition of other contiguous lands. The following criteria shall determine whether a contiguous parcel is reasonably available:

(1) Any contiguous lands in common ownership on or after January 14, 1981 shall be considered to be reasonably available except if separated by a stream, paved road including its right-of-way or other similar physical features which are greater than 50 feet wide and form such a substantial barrier as to preclude the land from being used as a functional unit; or

(2) Any contiguous lands with no substantial physical improvements located on them, except for lands which are separated from the subject parcel by a stream, paved road including right-of-way or other similar physical features which are greater than 50 feet wide, shall be considered to be reasonably available if the owner is willing to sell some or all of the contiguous parcel for its fair market value;

ii. The allocation of Pinelands Development Credits to the parcel made pursuant to N.J.A.C. 7:50-5.43(b);

iii. The ability of the property owner to sell the subject parcel to the owner of a contiguous parcel for its fair market value;

iv. The ability of the property owner to either buy non-contiguous land or sell the subject property to a non-contiguous property owner under a transfer of density provision contained in a certified municipal land use ordinance;

v. Any [this] inability to have a beneficial use results from unique circumstances peculiar to the subject property which:

[i.](1) Do not apply to or affect other property in the immediate vicinity;

[ii.](2) Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and

[iii.](3) Are not the result of any action or inaction by the applicant or the owner or [his] any predecessor[s] in title including any transfer of any contiguous lands which were in common ownership on or after January 14, 1981 or the refusal of the applicant, the owner or any predecessor-in-title to either sell the subject parcel for its fair market value or to buy a reasonably available contiguous parcel on or after January 14, 1981.

2. **Compelling Public Need:** An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, one of the following:

i.-ii. (No change.)

(b) An application for a waiver shall be approved only if it is determined that the following additional standards also are met:

1. The granting of the waiver will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the Pinelands Area;

2. The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the Pinelands Protection Act, the Federal Act or this Plan; and

3. The existence of special or unusual circumstances will be evaluated in determining whether the standards set forth in (b)1 and 2 above are met. The following circumstances do not comply with the requirements of (b)1 and 2 above unless an applicant who qualifies for a waiver of strict compliance based upon compelling public need pursuant to (a)2 above demonstrates based on particular facts that the development, when evaluated in its entirety, including any special measures that are part of the development proposal, will result in an overall improvement to the resources of the Pinelands Area:

i. Any development, except for development permitted in wetlands pursuant to N.J.A.C. 7:50-6, which will be located on any wetland other than an impaired wetland;

ii. Any development, except for development permitted in wetlands buffers pursuant to N.J.A.C. 7:50-6, which will be located within any wetland buffer designated pursuant to N.J.A.C. 7:50-6.14, unless that wetland is either an impacted or impaired wetland;

iii. Any development for which the applicant cannot demonstrate that the average concentration of nitrate-nitrogen in the ground water at the applicant's property line will not exceed three ppm if the property is

located in a Regional Growth Area, Pinelands Town or Pinelands Village or will not exceed two ppm if the property is located in any other management area as a result of both the proposed development and any existing development on the parcel unless the development is consistent with an adopted Pinelands Commission study of an experimental individual on-site waste water treatment system;

iv. Any development which will violate the threatened and endangered species protection requirements contained in N.J.A.C. 7:50-6.24 and N.J.A.C. 7:50-6.33;

v. Any development which will require the location of an onsite sewage disposal system in an area where the seasonal high water table is within two feet of the natural ground surface;

vi. Any development which will result in a new direct discharge of storm water into any surface water body; or

vii. Any development for which the applicant cannot demonstrate that the average concentration of nitrate-nitrogen entering any surface water body will not exceed two ppm as a result of the proposed development or any existing development on the parcel.

[3.]4. The waiver is the minimum relief necessary to[:] relieve the extraordinary hardship[, which may include the granting of a residential development right to other lands in the Protection Area that may be transferred or clustered to those lands in accordance with N.J.A.C. 7:50-5.30,] or to satisfy the compelling public need. **An application for a Waiver which meets the requirements of (a)1 above but does not meet the requirements of (b)1 or (b)2 above shall be entitled to an allocation of Pinelands Development Credits. For property located in Rural Development Areas and Forest Areas, the allocation shall be calculated pursuant to N.J.A.C. 7:50-5.43(b)1 as if the property is located in the Preservation Area District with a minimum of 0.25 Pinelands Development Credits being assigned. For property located in Regional Growth Areas, Pinelands Towns and Pinelands Villages, the allocation shall be calculated pursuant to N.J.A.C. 7:50-5.43(b)2 as if the property is located in an Agricultural Production Area with a minimum of 0.25 Pinelands Development Credits being assigned. In either instance, the property shall be deed restricted as set forth in N.J.A.C. 7:50-5.47(b)1 when the Pinelands Development Credits are transferred.**

(c) (No change.)

(d) Any waiver approved pursuant to (a)1 above after the effective date of this amendment shall expire five years after the Waiver is approved unless all necessary construction permits have been issued within said five-year period and no such permit is allowed to expire or lapse after the end of the five-year period.

7:50-6.13 [Public] Linear improvements

(a) Bridges, roads, trails and utility transmission and distribution facilities and other similar linear facilities shall be permitted in wetlands provided that:

1. There is no feasible alternative route [or site] for the facility that does not involve development in a wetland or, if none, that another feasible route [or site] which results in less significant adverse impacts on wetlands does not exist;

2. The public need for the proposed linear improvement cannot be met by existing facilities or modification thereof;

3. The use represents a need which overrides the importance of protecting the wetland;

4. Development of the facility will include all practical measures to mitigate the adverse impact on the wetland; and

5. The resources of the Pinelands will not be substantially impaired as a result of the facility and its development as determined exclusively based on the existence of special and unusual circumstances.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Tuition Policies for Public Institutions

Proposed Readoption with Amendments: N.J.A.C. 9:5

Authorized By: Board of Higher Education, Edward D. Goldberg, Acting Chancellor and Secretary.

Authority: N.J.S.A. 18A:62-3, 18A:62-4, 18A:64-13.4.

Proposal Number: PRN 1990-573.

Submit comments by December 19, 1990 to:

Grey J. Dimenna, Esq.

Administrative Practice Officer

Department of Higher Education

20 West State Street

CN 542

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the provisions of Executive Order No. 66(1978), the rules regarding Tuition Policies for Public Institutions expire on January 21, 1991. The Board of Higher Education reviewed the rules and, with the following exceptions, determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

Two amendments are proposed to subchapter 1, entitled "Student Residency." The first change deals with the name of the subchapter. The sections within the subchapter concern various policies affecting tuition at public institutions of higher education such as New Jersey resident tuition, proof of domicile, tuition for foreign nationals, and free tuition for senior citizens. Since these areas exceed the topic of student residency, it is proposed that the name of the subchapter be changed to "Public College and University General Tuition Policies," which more accurately reflects the substance of the subchapter.

Secondly, Subchapter 1, at N.J.A.C. 9:5-1.1, defines dependent/independent student. The definition included here is identical to the language found within the Student Assistance Board's rules at N.J.A.C. 9:7-2.6. Thus, this section has been deleted and the section shall remain reserved for future use. This deletion reflects the Department's continuing efforts to streamline rules and reduce duplication. The proposed deletion of N.J.A.C. 9:5-1.1 requires a technical modification to the language of N.J.A.C. 9:5-1.2. The remaining sections of subchapter 1 are unchanged.

Subchapter 2 of the rules, entitled "Tuition Policies for Unemployed Persons: Job Training Program," deals with the statutorily mandated program of providing free tuition for unemployed persons in job training courses offered by the State colleges, county colleges and the New Jersey Institute of Technology (NJIT).

The current rules have been circulated among the presidents of the public colleges and universities for their comments and suggestions. Among their recommendations are three which are incorporated as amendments to the rules. The amendment included in N.J.A.C. 9:5-2.1(b) would require that the proof of unemployed status from the State's Employment Service be dated no later than 30 days prior to registration day for the semester.

The second change, which appears at N.J.A.C. 9:5-2.3(a), specifies that job training courses are all courses ordinarily offered by the colleges except customized courses that are underwritten by specific employers for the benefit of their respective employees. The final change is the addition of N.J.A.C. 9:5-2.6, which would permit those who enroll for credit through this program to be included by the institutions in their enrollment counts. This change would alter the distribution of State aid among county colleges if any college enrolled proportionately more unemployed persons than other colleges did.

Social Impact

The proposed readoption with amendments sets forth general tuition policies which are applicable at New Jersey public colleges and universities. These policies relate to tuition for residents of the State, proof of domicile, remission of non-resident fees for foreign nationals, and free

tuition for senior citizens and unemployed persons enrolled in job training courses.

Subchapter 1 will continue to proscribe uniform tuition policies for the State's public institutions of higher education regarding the determination of tuition for New Jersey residents, foreign nationals, senior citizens and the procedure by which New Jersey domicile is established. The rules will allow certain groups, including New Jersey residents, senior citizens and foreign nationals to attend these institutions at a lower tuition level.

Subchapter 2 permits an unemployed person who has been in the labor market for at least two years to enroll without payment of tuition in a job training course offered by the State colleges, county colleges and NJIT, provided that he or she is not eligible for any available State or Federal student financial aid, available classroom space permits and tuition paying students constitute the minimum number required for the course. This proposed readoption will continue to provide the opportunity for unemployed persons to acquire training in areas which will enhance occupational success and facilitate reentry into the job market.

Economic Impact

Subchapter 1, which provides for free tuition for senior citizens, reduced tuition for New Jersey residents and fees remission for foreign nationals will allow individuals in these categories to ascertain the cost of tuition at State public institutions of higher education. In addition, the limitations on tuition for members of these groups will make public higher education more affordable for individuals residing in our State.

The proposed amendments to subchapter 2, specifically N.J.A.C. 9:5-2.6, allow colleges to include unemployed persons who enroll for credit through the job training program to be included by the institution in their enrollment counts. This inclusion may change the amount of State aid received by those county colleges which enroll proportionately more unemployed persons in job training courses. Additionally, the proposed readoption will have a positive economic impact on the lives of unemployed residents and assist in the development of a trained labor force to meet the needs of the State's business community.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed readoption with amendments does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter sets forth the criteria for New Jersey resident tuition, proof of domicile, remission of fees for foreign nationals and free tuition for senior citizens and unemployed persons attending the State's public colleges and universities. These entities do not constitute small businesses within the meaning of the statute.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:5.

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

SUBCHAPTER 1. [STUDENT RESIDENCY] PUBLIC COLLEGES AND UNIVERSITIES—GENERAL TUITION POLICIES

9:5-1.1 [Dependent/independent student defined] (Reserved)

[(a) The term independent when used with respect to a student means any individual who:

1. Is 24 years of age or older by December 31 of the award year; or

2. Meets the requirements of (b) below.

(b) Except as provided in (c) below, an individual meets the requirements of this subsection if such individual:

1. Is an orphan or ward of the court; or

2. Is a veteran of the Armed Forces of the United States; or

3. Is a graduate or professional student who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year; or

4. Is a married individual who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year; or

5. Has legal dependents other than a spouse; or

6. Is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for

income tax purposes for the two calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the two calendar years preceding the award year in which the initial award will be granted by demonstrating annual total resources (including all sources of resources other than parents) of at least \$4,000; or

7. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For purposes of receiving state student assistance as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i. The student has been separated from his or her parents due to an unsafe home environment or has been institutionalized in a correctional facility. Documentation of such status must be received from a court, social service agency, or other similar source acceptable to the director of the applicable student assistance program within the Department of Higher Education.

ii. The student is a recipient of either Aid to Families with Dependent Children (AFDC) or general assistance in his or her own name and complies with the provisions of (b)6 above except for the resource requirement set forth therein.

iii. The student is from a foreign country but has established permanent residency in the United States, is a refugee or has received political asylum, and complies with the provisions of (b)6 above except for the resource requirement set forth therein. For the purposes of eligibility under this subparagraph, the student's parents must reside outside of the United States.

iv. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5, or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education, is living with a relative who is providing support to the student, and complies with the provisions of (b)6 above except for the resource requirement set forth therein.

v. The student was considered as an independent student for the purposes of New Jersey state student assistance programs during the 1986-87 academic year, and complies with the provisions of (b)6 above except for the resource requirement set forth therein. This provision will be effective for the 1987-88 academic year only.

vi. The student's economic and personal circumstances are of such a unique or unusual nature that denial of independent student status would create an unjust hardship upon the student. Eligibility under this subparagraph is subject to the approval of the director of the applicable student assistance program within the Department of Higher Education.

(c) An individual may not be treated as an independent student described in (b)3, 4 and 6 above if the financial aid administrator determines that such individual was treated as an independent student during the preceding award year, but was claimed as a dependent by any other individual (other than a spouse) for income tax purposes for the first calendar year of such award year.

(d) The financial aid administrator may certify an individual described in (b)3, 4, and 6 above on the basis of a demonstration made by the individual but no disbursement of an award may be made without documentation.

(e) A dependent student shall be any student who does not meet any of the eligibility criteria listed in (a) or (b) above for independent student status.]

9:5-1.2 Eligibility for New Jersey resident tuition

(a) (No change.)

(b) Any dependent student, as defined in N.J.A.C. [9:5-1.1] 9:7-2.6, who is domiciled in this State for tuition purposes and who is enrolled in an institution of higher education in New Jersey shall continue to be eligible for New Jersey resident tuition status despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year.

(c) (No change.)

9:5-2.1 Proof of eligibility

(a) (No change.)

(b) Eligible individuals currently employed must submit proof of recognition of their unemployed status by the New Jersey Department of Labor, Division of Employment Services, to the institution. **Said proof of eligibility must be dated no earlier than 30 days prior to the college's course registration day for the semester in which the job training course is to be taken.**

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

9:5-2.3 Eligible coursework

(a) Each institution shall [provide a list of courses which shall be designated as job training courses] **ordinarily designate all of its course offerings for eligibility under this program. Customized courses that are underwritten by specific employers for the benefit of their respective employees may be exempted from eligibility under this program.**

(b) (No change.)

9:5-2.6 Inclusion of program in college enrollment count

All enrollments in credit bearing courses through this program may be included in the college's official enrollment count.

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

C. Clyde Ferguson Law Scholarship

Proposed New Rules: N.J.A.C. 9:11-3

Authorized By: Board of Directors of the Educational Opportunity Fund, Judith Cambria, Chairperson.

Authority: N.J.S.A. 18A:71-40.7.

Proposal Number: PRN 1990-574.

Submit comments by December 19, 1990 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 18A:71-40.1 et seq. creates the C. Clyde Ferguson Law Scholarship Program which provides a scholarship of up to the full tuition, fees and the maximum amount charged for on-campus housing at Rutgers School of Law-Newark for qualified minority or disadvantaged students enrolled in the Minority Student Program at Rutgers Law School-Newark, and enrolled in the Rutgers School of Law-Camden and Seton Hall University School of Law. The program seeks to increase the number of lawyers practicing in New Jersey from minority or disadvantaged backgrounds. The proposed new rules set forth rules for program eligibility, grant amounts and the application of other EOF rules.

Social Impact

The C. Clyde Ferguson Scholarship Program was established to increase the number of attorneys from particular underrepresented minority and disadvantaged groups. The underlying intent of the legislation is that a more diverse representation of lawyers from all ethnic, gender and other groups is beneficial to the state as a whole. In many cases, these groups are unable to attend law school due to economic barriers. This program and the proposed new rules seek to address this area of concern by increasing the representation of lawyers in the State from such groups.

Economic Impact

The proposed new rules and underlying program will assist minority or disadvantaged groups with paying the costs of law school. Grant amounts, depending upon annual appropriations, will be determined by the Board of Directors of the Educational Opportunity Fund up to a maximum of full tuition, fees and on-campus housing charged at the Rutgers School of Law-Newark.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board of Directors has determined that the

proposed new rules will not impose reporting, record keeping, or other compliance requirements on small businesses. The proposed new rules provide for increased eligibility for minority or disadvantaged students attending a participating law school in New Jersey.

Full text of the proposed new rules follows:

SUBCHAPTER 3. C. CLYDE FERGUSON LAW SCHOLARSHIP

9:11-3.1 Student eligibility

(a) To be eligible for a C. Clyde Ferguson Law Scholarship, a student shall demonstrate that he or she:

1. Is or has been a legal resident of the State of New Jersey for at least one year immediately prior to receiving the scholarship;

2. Is a student who meets the requirements of N.J.A.C. 9:11-1.5 and falls within one of the following categories:

i. A minority or disadvantaged student who is traditionally underrepresented in the law profession and has demonstrated financial need;

ii. A former or current recipient of the New Jersey EOF undergraduate grant; or

iii. A student who would have been eligible as an undergraduate for a New Jersey EOF; and

3. Is or will be a full-time student enrolled in the Minority Student Program at Rutgers, The State University School of Law-Newark, and enrolled in Rutgers, The State University School of Law-Camden, or Seton Hall University School of Law. Students shall be in a post-baccalaureate program of study leading toward an initial law degree.

9:11-3.2 Grant amounts

(a) The maximum and minimum award ranges for a Ferguson Scholarship shall be annually established by the Board of Directors of the New Jersey Educational Opportunity Fund but shall not exceed the maximum amount of tuition, fees, room and board charged at the Rutgers University School of Law-Newark.

(b) The amount of each Ferguson Scholarship shall be based on the financial need of the student as determined pursuant to N.J.A.C. 9:11-1.7(a), (b), (c) and (f).

9:11-3.3 Rules incorporated by reference

The following provisions of subchapter 1 of this chapter, N.J.A.C. 9:11-1, governing the EOF Program shall also apply to grants made under the C. Clyde Ferguson Law Scholarship program unless they are inconsistent with, or otherwise excepted within, the provisions of this subchapter: N.J.A.C. 9:11-1.2, 1.3, 1.4, 1.6(a), (c), (d), (f), 1.13, 1.15, 1.16, 1.17, 1.19, 1.20, 1.21 and 1.22.

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Podiatry Services Manual

Proposed Readoption: N.J.A.C. 10:57

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-66(8), 7, 7a, b and c; 30:4D-12.

Agency Control Number: 90-P-22.

Proposal Number: PRN 1990-569.

Submit comments by December 19, 1990, to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 10:57, Podiatry Services Manual, expires on March 3, 1991. This proposed readoption is designed to readopt all sections of the Podiatry Services Manual.

An administrative review has been conducted, and a determination made that all subchapters should be continued because the rules are necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were promulgated. The Podiatry Services Manual was promulgated to set forth the basic policies and procedures (of the Medicaid Program) relating to treatment of diseases or aberrations of the foot and lower leg. Podiatric services include, but are not limited to, examinations, treatment, surgery, X-rays, and prescriptions.

Subchapter 1 covers such topics as scope of service, non-covered services, laboratory services, prior authorization for certain services, basis of payment, record keeping, and prescription policies.

Subchapter 2 concerns billing procedures for podiatrists who participate in the New Jersey Medicaid Program. Topics included are verification of patient eligibility, submission of claim forms (HCFA-1500), and direct (computer) data exchange billing.

Subchapter 3 references the Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS Codes). The HCPCS codes, which are referenced but not reproduced in this subchapter, are the basis for Medicaid reimbursement.

The rule has been amended twice. N.J.A.C. 10:57-1.5 and 1.20 were amended to indicate the HCFA-1500 claim form replaced the MC-8 for billing purposes (see R.1981 d.249 at 13 N.J.R. 417(a)). N.J.A.C. 10:57-1.4 and 1.9 were amended to indicate that prior authorization must be obtained if debridement of hypertrophic toenail treatment was more frequent than once every two months (see R.1981 d.300 at 13 N.J.R. 579(a)).

There are no textual changes associated with this readoption.

Social Impact

The chapter has enabled and will continue to enable Medicaid patients who require treatment for foot and lower leg ailments to receive treatment. Medicaid patients require treatment for a variety of foot conditions which are medically necessary to relieve pain and/or prevent disability. Effective treatment can assist recipients with activities of daily living.

The proposed readoption impacts upon podiatrists by indicating professional qualifications in order to become a Medicaid provider, the scope of Medicaid services, and those procedures which are required in order to submit claims for services rendered to Medicaid eligibles.

Economic Impact

The economic impact is as follows. There is no cost to recipients for services rendered through the Medicaid program. The rules set forth a fee schedule for podiatric services rendered under the Medicaid program. The HCPCS Codes, which are referenced, but not reproduced, in subchapter 3, are the basis for reimbursement. The proposed readoption makes no change in the fee schedule; thus, there is no change affecting Medicaid providers.

The Division spent approximately \$1,448,646 on Title XIX (Medicaid) Podiatric Services in State Fiscal Year 1990 (Federal-State share combined).

Regulatory Flexibility Analysis

The proposed readoption could impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply to podiatrists that participate in the New Jersey Medicaid Program.

The regulatory requirements are the same for all podiatrists because the standard of care is the same for all practitioners.

Podiatrists are required to keep medical records in the normal course of their practice. The information required by the Division on the claim form is taken from the medical records maintained by the provider. It is not anticipated that providers will need to hire additional staff to complete the claim form, although they may choose to do so.

In addition to the practice requirements, all Medicaid providers, including podiatrists, are required by law to maintain individual patient records which fully disclose the name of recipient, date of service, nature of service, etc., and to make this information available to the Department of Human Services, and/or the Division of Medical Assistance and Health Services upon request. (Reference is made to N.J.S.A. 30:4D-12.)

There are no capital costs associated with the rules proposed for readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at 10:57.

CORRECTIONS

(a)

THE COMMISSIONER

Reports

Reporting Violations of the Criminal Statutes

Proposed New Rule: N.J.A.C. 10A:21-8

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1990-568.

Submit comments by December 19, 1990 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Corrections is proposing the rules at N.J.A.C. 10A:21-8 to ensure that suspected violations of criminal statutes by inmates, staff or visitors which occur within State correctional facilities on State correctional facility grounds, or by employees or inmates at any location, are reported by the Superintendent to the county prosecutor's office of the county in which the alleged criminal violation occurred.

The proposed new rules specify the violations of criminal statutes which should be reported by the Superintendent to the county prosecutor, and list the types of information which should be reviewed and included in the report that is prepared by the Internal Affairs Unit for the Superintendent's signature. The proposed new rules also require that a copy of the report that is submitted to the county prosecutor should be submitted to the Deputy Commissioner of the Department of Corrections.

Social Impact

The proposed new rules will facilitate the prompt reporting of suspected violations of the criminal statutes to the county prosecutor. It will not result in a substantial increase in the Superintendent's duties since the procedures are already in place. It is not anticipated that there will be any adverse effect on the county prosecutor's office since it has been routine practice to report to the county prosecutor's office over a number of years. The impact on inmates is that prosecution may result in additional sentences which may extend the inmate's period of incarceration.

Economic Impact

The proposed new rules have no measurable economic impact because these procedures have been in place for a number of years and it is not anticipated that promulgation of these rules will significantly increase the inmate population or the administrative work of staff. The cost for reporting violations of criminal statutes is included as a part of the administrative budget of the Department of Corrections.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impact on inmates, county prosecutors and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the proposed new rules follows:

SUBCHAPTER 8. REPORTING VIOLATIONS OF THE CRIMINAL STATUTES

10A:21-8.1 Role of the prosecutor's office

(a) The county prosecutor's office is responsible for prosecuting violations of the criminal statutes. Decisions concerning prosecution are within the purview of that office.

(b) Prosecutors who have questions with respect to this subchapter should contact the Prosecutor's Advisory Unit in the Division of Criminal Justice.

10A:21-8.2 Reportable suspected violations of criminal statutes

(a) The Superintendent of each correctional facility shall be responsible for ensuring that the following suspected violations of criminal statutes are reported in writing to the county prosecutor of the county in which the correctional facility is located, if the act occurred in the correctional facility, or to the county prosecutor where the suspected violation of the criminal statutes occurred:

1. All acts committed by inmates, staff or visitors, which could constitute offenses of the first, second, third or fourth degree under the New Jersey Criminal Statutes or the Controlled Dangerous Substance Act, N.J.S.A. 24:21-1 et seq.;

2. Simple assaults committed by inmates, staff or visitors, which become aggravated assaults if committed upon any law enforcement officer acting in the performance of his or her duties while in uniform or while exhibiting evidence of his or her authority, pursuant to N.J.S.A. 2C:12-1a and b;

3. Any act which would constitute an indictable offense under the Controlled Dangerous Substance Act; or

4. The introduction of, or providing an inmate with, any weapon, tool or other item which could be used in an escape.

10A:21-8.3 Non-reportable violations of criminal statutes

(a) The following violations of criminal statutes need not be reported by the Superintendent to the county prosecutor:

1. Possession or introduction of contraband unless said contraband constitutes an implement of escape or unless said contraband would constitute an indictable offense under the Controlled Dangerous Substance Act; or

2. Any act which would constitute only a disorderly or petty disorderly persons offense under either the New Jersey Criminal Statutes or Controlled Dangerous Substance laws, in which case said reports of such acts should be reported to the police department in the jurisdiction where the act occurred.

10A:21-8.4 Referral of questionable violations

In instances where uncertainty exists with respect to the correct classification or gradation of an offense, the matter immediately shall be referred to the Office of the Commissioner for advice as to appropriate disposition.

10A:21-8.5 Reporting procedures

(a) The Internal Affairs Unit of the correctional facility shall review the facts of a violation of criminal statutes to determine whether the actions constitute a crime of the first, second, third or fourth degree.

(b) If the violation of the criminal statutes is determined to be one of the degrees in (a) above, the Internal Affairs Unit shall prepare a report which shall include:

1. The name of the accused person;

2. All available pertinent facts concerning the nature and circumstances of the violation;

3. In the case of inmate violators, a statement as to the status of disciplinary action taken thus far; for example, what charges have been written and how much of the adjudication process has been completed at the time of the report; and

4. In the case of staff or visitor violations, a statement as to what actions have been taken or are being considered by the correctional facility; for example, suspension, termination, removal from visit list and banning from the correctional facility.

(c) The report shall be signed by the Superintendent and forwarded to the appropriate county prosecutor within five days of the occurrence of the violation.

(d) Any additional pertinent information compiled subsequent to the primary report also shall be forwarded to the Prosecutor as expeditiously as possible. The prosecutor shall be informed of the final outcome of the disciplinary process and what sanctions were imposed.

(e) The Deputy Commissioner shall be notified, in writing, of all cases referred to the prosecutor. Said notice shall consist of a copy of the report to the prosecutor in (b) above.

(f) Decisions concerning prosecution shall be at the discretion of the prosecutor's office.

INSURANCE

(a)

DIVISION OF ADMINISTRATIONS

Policy Constants

Proposed Amendment: N.J.A.C. 11:3-24.4

Proposed Repeal: N.J.A.C. 11:3-24

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6 and 17:29A-37.1.

Proposal Number: PRN 1990-584.

Submit comments by December 19, 1990 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 17:29A-37.1 provides for flat charges, imposed by orders of the Commissioner of Insurance ("Commissioner") for use in the residual markets, which are collected by all insurers writing private passenger automobile insurance and paid to the New Jersey Automobile Full Insurance Underwriting Association ("NJAFIUA") for its operational purposes.

N.J.A.C. 11:3-24 applies such flat dollar charges, or "policy constants," to various types of private passenger automobile insurance policies on a per car per coverage basis. N.J.A.C. 11:3-24.4(b) defines "private passenger automobile," which includes "... 8. A motor vehicle in which an insurance policy covering the lender's or borrower's interest in the motor vehicle has lapsed and another policy is issued to the lender." Such insurance policies are generally called lenders collateral protection programs ("LCPs").

The Department of Insurance ("Department") has determined, however, that such programs do not represent the type of insurance coverage to which N.J.A.C. 11:3-24 should apply, because the insurable interest for a lender is a loan amount, whereas the borrower/insured's interest is the automobile itself.

For consistency, the Department proposes to amend N.J.A.C. 11:3-24.4 to exclude private passenger automobiles that are insured by LCPs.

The FAIR Automobile Insurance Reform Act of 1990 ("FAIR Act") was enacted on March 12, 1990 (See P.L. 1990, c.8) to resolve, among other things, the various problems particular to the private passenger automobile insurance market in the State of New Jersey. Section 16 of the FAIR Act provides for the operational expiration of the NJAFIUA on October 1, 1990. To that end, pursuant to section 19 of the FAIR Act, the policy constant will no longer be imposed on policies issued or renewed beginning April 1, 1991.

The Department proposes, therefore, that N.J.A.C. 11:3-24 be repealed as of April 1, 1991. The proposed amendment, once adopted, will be effective until that date, when the subchapter's repeal will be operative.

Social Impact

The proposed amendment clarifies to which types of private passenger automobiles the policy constant should apply, until April 1, 1991, as is consistent with the legislative intent. The proposed repeal of this subchapter also implements the legislative intent to eliminate the NJAFIUA and the charges associated with its operations.

Economic Impact

The proposed amendment and repeal will not result in any adverse economic impact upon insurers aside from those costs associated with possible modifications in their surcharge systems.

Lenders who are currently subject to the requirements of N.J.A.C. 11:3-24 will benefit upon adoption of the proposed amendment by not having to collect the policy constant imposed by the current rules.

The Department does not expect to incur any additional expenses as a result of the proposed amendment and repeal.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed repeal and amendment do not impose reporting, recordkeeping or other compliance requirements on small business. The subchapter requirements eliminated by the proposed repeal are pursuant to a statutory abolition of the Association, and as part of a comprehensive reform of automobile insurance.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-24.

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

11:3-24.4 Definition of private passenger automobile

(a) (No change.)

(b) The following motor vehicles which otherwise meet the definition of private passenger automobile for the purposes of this subchapter shall also be subject to assessment of the policy constant: 1.-7. (No change.)

[8. A motor vehicle in which an insurance policy covering the lender's or borrower's interest in the motor vehicle has lapsed and another policy is issued to the lender;]

Recodify existing 9. and 10. as **8. and 9.** (No change in text.)

(a)

DIVISION OF ADMINISTRATIONS

Residual Market Equalization Charges (RMECs)

Proposed Amendment: N.J.A.C. 11:3-25.4

Proposed Repeal: N.J.A.C. 11:3-25

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6 and 17:30E-1 et seq.
Proposal Number: PRN 1990-585.

Submit comments by December 19, 1990 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Automobile Full Insurance Underwriting Association (hereafter "Association") has provided automobile insurance coverage to persons who are unable to obtain it through ordinary market channels.

Pursuant to N.J.S.A. 17:30E-8 (P.L. 1983, c.65), the Association is permitted to submit to the Department of Insurance (hereafter "Department") a filing for a residual market equalization charge (hereafter "RMEC") in an amount necessary to offset the anticipated cash shortfall of the Association when other sources of income are found to be insufficient.

A RMEC is a variable dollar charge applied to various types of private passenger automobile insurance policies on a per car coverage basis, the amount of which when added to all other sources of Association income, will cause the Association to operate on a no profit, no loss basis.

N.J.A.C. 11:3-25.4(b) defines "private passenger automobile," which includes "... 8. A motor vehicle in which an insurance policy covering the lender's or borrower's interest in the motor vehicle has lapsed and another policy is issued to the lender." Such insurance policies are generally called lenders collateral protection programs ("LCPs").

The Department of Insurance ("Department") has determined, however, that such programs do not represent the type of insurance coverage to which N.J.A.C. 11:3-25 should apply, because the insurable interest for a lender is a loan amount, whereas the borrower/insured's interest is the automobile itself.

For consistency, the Department proposes to amend N.J.A.C. 11:3-25.4 to exclude private passenger automobiles that are insured through LCPs.

The FAIR Automobile Insurance Reform Act of 1990 ("FAIR Act") was enacted on March 12, 1990 (See P.L. 1990, c.8) to resolve, among other things, the various problems particular to the private passenger automobile insurance market in the State of New Jersey. Section 16 of the FAIR Act provides for the operational termination of the Association on October 1, 1990. To that end, pursuant to section 19 of the FAIR Act, the RMEC will no longer be imposed on policies issued or renewed beginning April 1, 1991.

The Department proposes that N.J.A.C. 11:3-25 be repealed as of April 1, 1991. The proposed amendment, once adopted, will be effective until that date, when the subchapter's repeal will be operative.

Social Impact

The proposed amendment clarifies to which types of private passenger automobiles the RMEC should apply, until April 1, 1991, as is consistent with the legislative intent.

The proposed repeal of this subchapter also implements the legislative intent to eliminate the Association and the charges associated with its operations.

Economic Impact

The proposed amendment and repeal will not result in any adverse economic impact upon insurers aside from those costs associated with possible modifications in their surcharge systems.

Lenders who are currently subject to the requirements of N.J.A.C. 11:3-25 will benefit upon adoption of the proposed amendment by not having to collect the RMEC imposed by the current rules.

The Department does not expect to incur any additional expenses as a result of the proposed amendment and repeal.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed repeal and amendment does not impose reporting, recordkeeping or other compliance requirements on small business. The subchapter requirements eliminated by the proposed repeal are pursuant to the statutory abolition of the Association, and as part of a comprehensive reform of automobile insurance.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-25.

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

11:3-25.4 Definition of private passenger automobile

(a) (No change.)

(b) The following motor vehicles which otherwise meet the definition of private passenger automobile for the purposes of this subchapter shall also be subject to assessment of the RMEC:

1.-7. (No change.)

[8. A motor vehicle in which an insurance policy covering the lender's or borrower's interest in the motor vehicle has lapsed and another policy is issued to the lender;]

Recodify existing 9. and 10. as **8. and 9.** (No change in text.)

(b)

DIVISION OF FRAUD

Automobile Physical Damage Insurance Repair

Confirmation and Reporting Procedures

Proposed New Rules: N.J.A.C. 11:16-3

Proposed Amendment: N.J.A.C. 11:3-10.5

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

Authority: N.J.S.A. 17:33B-36 and 17:33B-38.
Proposal Number: PRN 1990-586.

Submit comments by December 19, 1990 to:
 Verice M. Mason
 Assistant Commissioner
 Department of Insurance
 Legislative and Regulatory Affairs
 20 West State Street
 CN 325
 Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The Department of Insurance ("the Department") proposes new rules and amendments in accordance with the Fair Automobile Insurance Reform Act ("The Act"), sections 44 and 46 of 1990 P.L. 1990, c.8 (N.J.S.A. 17:33B-36 and 17:33B-38). The Act requires an insurer to request a repair invoice when an automobile insured for physical damage coverage is repaired. The insurer shall further require the insured and the auto body repair facility or automobile repairer to certify whether the applicable deductible has been paid and repairs made.

The Act requires every insurer to report to the Director of the Division of Motor Vehicles, any evidence of overcharges, improper repairs or adjustments or other improprieties by auto body repair facilities or automobile repairers. The proposed new rules reiterate these statutory requirements, provide an insurance company complaint form, and apply to all insurers which write private passenger automobile insurance in this State. A \$500.00 fine may be assessed against an insurer for failure to comply with these rules.

The proposed amendment permits an insurer to delay paying a claim until the repair invoice, and the certified statement signed by the insured and representative of the auto body repair facility, are received in accordance with the proposed new rules N.J.A.C. 11:16-3.

Social Impact

The proposed new rules are designed to assist the efforts of the Department in curtailing fraudulent automobile physical damage repairs. The proposed new rules require insurers to report evidence of impropriety on the part of an auto body repair facility. The report will provide the Division of Motor Vehicles with notice that certain auto body repair facilities or automobile repairers may warrant investigation in regards to their repairing and billing practices. The proposed new rules may delay the payment of claims by an insurer if repairs are not made; the applicable deductible has not been paid; or the proper documents are not received by the insurer.

Economic Impact

The Department expects insurers to incur administrative expenses regarding the reporting of improprieties committed by auto body facilities and automobile repairers. The Department anticipates this cost to the insurer being offset by the expected reduction in overcharges, improper repairs, adjustments, and other improprieties by auto body repair facilities or automobile repairers as a result of the proposed new rules and amendments. Failure to comply with the proposed new rules may result in a \$500.00 fine being levied against an insurer.

Regulatory Flexibility Analysis

The proposed new rules impose reporting and compliance requirements on insurance companies authorized to transact private passenger automobile insurance, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The reporting requirement is to provide complaint forms to the Division of Motor Vehicles whenever there is any evidence of impropriety on the part of an auto body repair facility or automobile repairer.

The Department does not anticipate any additional costs to insurers outside of the copying and administrative completion cost for the complaint form. In order to effectuate the goals of these rules and meet the requirements of the Act, no differentiation in requirements based upon business size can be provided.

Full text of the proposed new rules and amendment follows: (additions indicated in boldface **thus**):

11:16-10.5 Unreasonable delay

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

(e) **When an automobile is repaired, nothing in this rule shall compel an insurer which provides physical damage coverage to a private passenger automobile to pay the claim prior to the time that the insurer receives the documents required by N.J.A.C. 11:16-3.3.**

SUBCHAPTER 3. AUTOMOBILE PHYSICAL DAMAGE INSURANCE REPAIR CONFIRMATION AND REPORTING PROCEDURES

11:16-3.1 Scope

The provisions of this subchapter apply to all insurers which write private passenger automobile physical damage insurance in this State.

11:16-3.2 Definitions

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

"Auto body repair facility" means any person who for compensation engages in the business of repairing, removing or installing integral component parts of an engine, power train, chassis or body of an automobile damaged as a result of a collision. For the purpose of this subchapter, the following are not deemed to be an auto body repair facility:

1. Any employee of an auto body repair facility who engages in the business of repairing automobiles solely by reason of his or her employment;

2. Any person who is solely engaged in the business of repairing automobiles owned or leased by a single commercial or industrial establishment;

3. Any person whose activities consist solely of fueling, changing oil, water, batteries or tires, replacing fan belts, air filters or oil filters, installing windshield wiper blades, light bulbs, communication equipment, or such other minor repairs and servicing functions; or

4. Any person who solely examines automobiles to determine the cause or location of malfunctions. No such person shall prepare an estimate and/or repair any automobile damages as a result of a collision.

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, or delivery sedan, or van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definition contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Insurer" means any person authorized to write automobile insurance in New Jersey, including any residual market mechanism, and includes all affiliated companies within a group.

"Physical damage insurance" means a policy providing one or more of the following automobile insurance coverages:

1. Collision;
2. Comprehensive; and
3. Fire and Theft.

11:16-3.3 Physical damage repair confirmation

(a) If an automobile for which a physical damage insurance claim has been made is repaired, an insurer which provides physical damage insurance coverage for the automobile shall request, and shall condition payment of the claim upon receipt of, the following documents:

1. A copy of the repair invoice; and
2. A statement signed by both the insured and an authorized representative of the auto body repair facility or automobile repairer and certified to be correct under the penalties of perjury, whether the applicable deductible has been paid to the auto body repair facility or automobile repairer, whether any repairs have been made and if any items allowed by the insurer were not included in the repairs.

11:16-3.4 Reporting requirements

(a) Every insurer shall report to the Director of the Division of Motor Vehicles any evidence of overcharges, improper repairs or adjustments or other wrongdoings by auto body repair facilities or other automobile repairers. The insurer shall send a copy of the complaint (as set forth

in Appendix A and incorporated herein by reference) to the Division of Motor Vehicles at the following address:

Business License Compliance Unit
Auto Body Repair Facility Section
CN 172

Trenton, New Jersey 08666

(b) Nothing in this subchapter shall be construed as waiving the responsibility of an insurance company to report any alleged violation in accordance with N.J.S.A. 17:33A-9 to the Department of Insurance's Fraud Division.

11:16-3.5 Penalties

Failure of an insurer to abide by the requirements of this subchapter may be punishable by a \$500.00 fine pursuant to N.J.S.A. 17:33B-39.

APPENDIX A

INSURANCE COMPANY COMPLAINTS

Name of Insurance Company _____ Phone _____

Address _____
STREET CITY ZIP

License Number _____ Contact Person _____

Reason for Complaint (Check One or More) ☐ Paint Work ☐ Body Work ☐ Electrical
☐ Suspension ☐ Engine ☐ Glass
☐ Alignment ☐ Drive Train ☐ Overcharge
☐ Other (Describe) _____

Type of Facility: ☐ Private Inspection Center ☐ Auto Body Repair Shop
☐ Dealer

Facility Name _____ License No. _____

Address _____
STREET CITY ZIP

Vehicle Owner's Name _____ Driver License No. _____

Address _____
STREET CITY ZIP

Vehicle Make _____ Model _____ Year _____

Vehicle Identification Number _____ Plate No. _____

Steps Taken to Resolve Problem _____

Have You Filed Other Complaints About This Facility? _____

If Yes, When? _____

(Mail completed form to Business License Compliance Unit,
Auto Body Repair Facility Section, CN 172, Trenton, New Jersey 08666)

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Producer and Limited Insurance

Representative Standards of Conduct: Marketing; Activities for Which a Person Must be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative.

Proposed Amendment: N.J.A.C. 11:17A-1.3

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

Authority: N.J.S.A. 17:22A-1 et seq., 17:22A-3, 17:22A-17c,
17:22A-23(e), 17:22A-24, 17:1C-6(e).

Proposal Number: PRN 1990-587.

Submit comments by December 19, 1990 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, N.J. 08625-0325

The agency proposal follows:

Summary

On December 6, 1989, the Commissioner of Insurance adopted new rules (N.J.A.C. 11:17A) relating to standards of conduct for insurance producers and limited insurance representatives including activities for which a person must be licensed as an insurance producer or registered as a limited insurance representative. The new rules were effective on January 2, 1990, and published at 22 N.J.R. 30(b).

One of the new rules, N.J.A.C. 11:17A-1.3, under the heading "Who must be licensed; exceptions," provided as follows:

(e) Salaried officers or employees of insurers authorized to do business in this State and who solicit, negotiate or effectuate insurance in the name of and on behalf of the insurer, for compensation of any type, shall have secured licensure as an insurance producer, or registration as a limited insurance representative, as appropriate, on or before January 1, 1991.

Adoption of this provision has generated a significant amount of controversy within the insurance industry since it represents a marked departure from previous regulatory licensing requirements relative to officers and employees of insurers. The Department has already received numerous written comments from interested persons.

Upon further consideration, the Department has decided to extend the time allowed for compliance with N.J.A.C. 11:17A-1.3(e) one year from January 1, 1991 to January 1, 1992. That is the sole purpose of this proposal. The amendment will allow time for further deliberation and possible proposal by the Department of other amendments to the rule. Any proposed amendments must be consistent with the intent of the underlying statutory requirements at N.J.S.A. 17:22A-3.

Since adoption of this proposed amendment cannot be published in the New Jersey Register prior to January 22, 1991, the Department is suspending the effectiveness of the current January 1, 1991 deadline for those persons previously exempted from licensure to secure licensure as an insurance producer or registration as a limited insurance representative.

Social Impact

The proposed amendment will extend for another year the compliance time for certain officers and employees of insurers, previously exempted from licensure, to secure licensure as an insurance producer or registration as a limited insurance representative, whichever is appropriate. This will allow the Department additional time to reconsider the merits of the new requirements set forth in N.J.A.C. 11:17A-1.3(e). It will also allow insurers additional time to implement the new requirements should they remain unchanged.

Economic Impact

By extending the deadline for compliance with the licensure requirements of N.J.A.C. 11:17A-1.3(e), the Department is delaying for another year the obvious cost increase to be borne by insurers attendant to the licensing of officers and employees who were previously exempt.

Concurrently, the increase in license processing responsibilities and the collection of additional licensing fees by the Department is also delayed as a result of the proposed amendment.

Regulatory Flexibility Statement

The Department believes that few, if any, insurers subject to the proposed amended rule are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, the amended rule imposes no undue burden or adverse economic impact upon insurers which may qualify as "small businesses." Because the proposed amendment extends a licensure/registration deadline, no additional reporting, recordkeeping or other compliance requirements are imposed on small businesses. Therefore, a regulatory flexibility analysis is not required.

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

11:17A-1.3 Who must be licensed; exceptions

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

(e) Salaried officers or employees of insurers authorized to do business in this State and who solicit, negotiate or effectuate insurance in the name of and on behalf of the insurer, for compensation of any type, shall have secured licensure as an insurance producer, or registration as a limited insurance representative, as appropriate, on or before January 1, [1991] **1992**.

LABOR

(a)

DIVISION OF INCOME SECURITY

Unemployment Benefit Payments

Proposed Readoption: N.J.A.C. 12:17

Authorized By: Raymond L. Bramucci, Commissioner,
Department of Labor.

Authority: N.J.A.C. 34:1-20, 34:1A-3(e), and 43:21-1 et seq.,
specifically 43:21-11.

Proposal Number: PRN 1990-570.

Submit comments by December 19, 1990 to:

Linda Flores
Special Assistant for External & Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:17, Unemployment Benefit Payments, expires on January 6, 1991. The Division of Income Security, Department of Labor, has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

N.J.A.C. 12:17-1 addresses separation and disqualification notices. This subchapter sets forth the requirements applicable to employers concerning separation statement to workers, wage information, and notices of mass separation, unemployment due to labor disputes, and temporary separation from work. Additionally, the subchapter discusses the consequences of a claimant's failure to apply for or to accept suitable work.

N.J.A.C. 12:17-2 discusses registration for work and claim for benefits. The subchapter outlines the procedure to be followed by individuals who are applying for unemployment benefits and states the results of failure to report as required. The subchapter also sets forth claimant identification procedures, discusses the forms used for recording claims for unemployment benefits and advises claimants about the importance of quality control review.

N.J.A.C. 12:17-3 is a definitions subchapter, which defines the terms "week of partial unemployment", "week of total unemployment" and "week of disqualification."

N.J.A.C. 12:17-4 addresses employer records and evidence concerning partial unemployment. The subchapter lists the records which must be kept by the employer to show the time worked by all employees.

N.J.A.C. 12:17-5 addresses claims for partial unemployment benefits. The subchapter discusses the registration and filing procedures for individuals who need to establish a benefit week, and sets forth circumstances under which an extended registration period may be provided.

N.J.A.C. 12:17-6 discusses the procedure established for the payment of benefits to interstate claimants. The subchapter has its own definitions section, which defines, among other terms, "interstate benefit payments plan" and "interstate claimant." The subchapter also sets forth registration for work requirements, benefit rights, determination of claims and appellate procedure for interstate claimants. The provisions of the subchapter are applicable to claims taken in and for Canada.

N.J.A.C. 12:17-7 sets forth disclosure of information guidelines for the release of information gathered in connection with the administration of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law. The subchapter discusses the circumstances under which information may be disclosed as well as the unauthorized disclosure of information.

N.J.A.C. 12:17-8 concerns claims for disability benefits during unemployment. The subchapter provides for the waiver of certain registration and reporting requirements, and states the time periods for filing proof and claim for disability benefits. The subchapter also discusses the payment of disability for a nonstatutory employer and the situation in which there is simultaneous unemployment and disability.

N.J.A.C. 12:17-9 concerns the procedures for wage benefit conflicts. The subchapter sets forth the steps involved in scheduling a hearing to determine the existence of a wage-benefit conflict. The subchapter provides that no benefits will be suspended, terminated or reduced unless the claimant has been afforded an opportunity to appear for a hearing.

N.J.A.C. 12:17-10 addresses the determination of overpayment and demand for the refund of unemployment benefits. The subchapter sets forth the procedure to be followed for the repayment of unemployment benefits.

N.J.A.C. 12:17-11 concerns the offset of unemployment insurance benefits by retirement and pension income. The subchapter discusses the method by which reductions in unemployment benefits are made as a result of income derived from retirement and pension programs.

N.J.A.C. 12:17-12 addresses dependency benefits. The subchapter defines the term "dependent," sets forth the procedure to be followed in declaring dependents, and lists the steps taken to establish the verification and proof of dependency status. Finally, the subchapter describes how dependency benefits shall be paid.

The chapter is not being amended on readoption, as the Department believes the current text of the chapter is sufficient for the purposes of administering the unemployment benefits program.

Social Impact

The chapter establishes the unemployment benefit payment program, which program provides assistance to individuals who are not working. The program has a tremendous positive social impact on employees as it provides peace of mind to employees who do not have to worry about the availability of benefits during poor economic times.

Economic Impact

The proposed readoption will have a positive effect on employees, as they will be assured of the existence of a program that provides financial assistance in times of economic hardship. Employers are not affected economically by the rules directly; however, they are required to pay unemployment taxes for their employees to provide these unemployment benefits, and to keep employee records and provide certain employee information to the Department and claimants concerning unemployment benefit claims.

The Department does not expect to be economically affected by the proposed readoption.

Regulatory Flexibility Analysis

The proposed readoption does impose some recordkeeping, reporting and compliance requirements on businesses, some of which are defined as small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, employers are required to keep employee records and to provide certain employee information to the Department and claimants concerning unemployment benefit claims, with costs attendant to these requirements. It is necessary to apply these requirements to all employers, regardless of size, to ensure the overall effectiveness and success of the unemployment benefit payment program.

The Department does not believe that employers will have to enlist the services of outside professionals in order to comply with the rules.

The proposed readoption does not impose any requirements on employers which are not already in effect under the current rules.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 12:17.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Driver Control Service

Administrative Hearings

Proposed Amendments: N.J.A.C. 13:19-1.1, 1.2, 1.3, 1.5, 1.8, 1.13, 12.2, 12.8 and 12.9

Proposed Repeals: N.J.A.C. 13:19-12.3, 12.4, 12.5, 12.6 and 12.7

Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:5-30, 17:29A-35 and 52:14B-10.

Proposal Number: PRN 1990-590.

Submit comments by December 19, 1990 to:

Col. Clinton L. Pagano, Director
Division of Motor Vehicles
25 South Montgomery Street
7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The primary thrust of the proposed amendments and repeals is to provide that the Division of Motor Vehicles will no longer automatically schedule a prehearing conference in proposed license suspension cases or insurance surcharge collection cases in which such a hearing is requested, nor will the Division continue to automatically transmit (sans prehearing conference) proposed license suspension cases based on out-of-State drunk driving or chemical test refusal convictions or administrative determinations or bail forfeitures to the Office of Administrative Law when a hearing in such cases is requested. Under the revised procedures set forth in this proposal, the hearing request must specify all disputed material facts which the licensee or his or her attorney intends to raise at such hearing. The hearing request must also set forth all legal issues which the licensee or his or her attorney intends to raise and must present all arguments on those issues which the licensee wishes the Division to consider. Where a licensee fails to set forth any disputed material fact and fails to set forth any legal issue or any argument on those issues, his or her hearing request will be denied by the Division, and such denial of a hearing request shall be deemed to constitute the final decision of the Division of Motor Vehicles in such matter. Where a hearing request sets forth disputed material facts which the licensee or his or her attorney intends to raise at such hearing, the Director shall require the licensee to attend a prehearing conference at the Division to be conducted by Division employees. Where there are no disputed material facts and where a request for a hearing sets forth legal issues and presents arguments on those issues, the Director may either consider those legal issues and arguments on the basis of the written record and render a written determination which shall constitute the final agency decision in the matter; or may require the licensee to attend a prehearing conference to be conducted by Division employees; or may transmit the matter directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1. The proposed amendments provide that where the Division and a licensee cannot reach a resolution of the proposed administrative action at the prehearing conference, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1, unless there are no disputed material facts and no legal issues or any argument on those issues raised at the conference. The proposed amendments further provide that in the event there is no resolution of the proposed administrative action at the prehearing conference and there are no disputed material facts and no legal issues or any argument on those issues raised at the conference, the Division shall notify the licensee that the matter shall not be transmitted to the Office of Administrative Law and the grounds thereof and shall notify the licensee that the proposed action

shall become effective on such date as the Division shall specify. Such notice shall be deemed to constitute the final decision of the Division of Motor Vehicles in such matter.

It is anticipated that the proposed amendments and repeals will result in a reduction in the number of prehearing conferences conducted by the Division of Motor Vehicles, as well as a reduction in the number of cases which are transmitted by the Division to the Office of Administrative Law to be scheduled for a hearing before an administrative law judge. To accomplish the aforementioned objectives, various provisions of the Division's administrative hearing rules (N.J.A.C. 13:19-1) are proposed for amendment, and various provisions of the Division's motor vehicle insurance surcharge rules (N.J.A.C. 13:19-12) are proposed for amendment or repeal.

N.J.A.C. 13:19-1.1, Applicability, is amended to provide that the provisions of N.J.A.C. 13:19-1 shall apply to administrative hearings in cases involving revocation, suspension or refusal to renew licenses, including cases involving imposition of insurance surcharges by the Division pursuant to N.J.S.A. 17:29A-35. Various provisions of N.J.A.C. 13:19-12 which previously pertained to hearings in such surcharge cases are proposed for repeal as part of this proposal.

N.J.A.C. 13:19-1.2, Requests for hearings; disposition of hearing requests, is amended to afford a licensee or his or her attorney a period of 25 days from the date of notice of proposed Division action against such licensee in which to make a written hearing request to the Division. The rule prior to amendment provided that such requests must be made within 10 days from the date of the notice. N.J.A.C. 13:19-1.2 is also amended to delete a reference to proposed action against a race track license; such subject matter is now within the purview of the Division of State Police, which has promulgated rules concerning same (see N.J.A.C. 13:62), and N.J.A.C. 13:19-1.2 is also amended through the insertion of the correct mailing address to which hearing requests should be sent; an incorrect address in the rule is deleted. N.J.A.C. 13:19-1.2 is also amended through the insertion of new language which provides that requests for a hearing must specify all disputed material facts which the licensee or his or her attorney intends to raise at such hearing. Requests for a hearing must also set forth all legal issues which the licensee or his or her attorney intends to raise, and must present all arguments on those issues which the licensee wishes the Division to consider. N.J.A.C. 13:19-1.2 is further amended to provide that where a hearing request fails to set forth any disputed material fact and fails to set forth any legal issue or any argument on those issues, the request for a hearing shall be denied. The Division shall notify the licensee of this denial and the grounds thereof, and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. The rule is further amended to provide that such notice of denial of a hearing request shall be deemed to constitute the final decision of the Division in such matter. N.J.A.C. 13:19-1.2 is also amended to provide that where a hearing request sets forth disputed material facts which the licensee or his or her attorney intends to raise at such hearing, the Director shall require the licensee to attend a prehearing conference conducted by designated Division employees. N.J.A.C. 13:19-1.2 is further amended to provide that where there are no disputed material facts and where a request for a hearing sets forth legal issues and presents arguments on those issues, the Director may either consider those legal issues and arguments on the basis of the written record and render a written determination which shall constitute the final agency decision in the matter; or may require the licensee to attend a prehearing conference conducted by designated employees of the Division; or may transmit the matter directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1.

N.J.A.C. 13:19-1.3, Notification of prehearing conference date, is amended to provide that the Division shall notify the licensee of the date, time and place of each prehearing conference scheduled pursuant to N.J.A.C. 13:19-1. N.J.A.C. 13:19-1.3 is also amended to delete language which provided for notification of prehearing conference date upon receipt of a hearing request in certain cases.

N.J.A.C. 13:19-1.5, Adjournments; Failure to appear, is amended to provide the correct address at the Division to which requests for adjournment of a scheduled prehearing conference must be sent; an inaccurate address is deleted from the rule. Subsection (d) of the rule as amended provides that in the event a licensee fails to attend a prehearing conference wherein an adjournment has not been granted, the proposed action against the licensee shall be taken and the licensee shall be deemed to have abandoned his or her hearing request.

N.J.A.C. 13:19-1.8, Prehearing conference; purpose; conduct; report; transmittal to the Office of Administrative Law, is amended to delete a

provision pertaining to the purpose of the prehearing conference, replacing it with a provision that provides that the purpose of the prehearing conference is to clarify disputed material facts and legal issues raised in the hearing request; to review the evidence upon which the licensee bases his or her claim; to ascertain the discovery needs of the licensee; to supply the licensee with any discovery to which the licensee may be entitled under the Uniform Administrative Procedure Rules; and to attempt to resolve the administrative action to be taken. N.J.A.C. 13:19-1.8 is further amended by insertion of the term "resolution of the proposed administrative action" in place of "settlement" throughout the rule; and by insertion of the term "proposed administrative action" in place of "proposed suspension" throughout the rule. N.J.A.C. 13:19-1.8 is also amended to clarify that a Division driver improvement specialist shall conduct a prehearing conference with each licensee who has been scheduled for such a conference pursuant to N.J.A.C. 13:19-1. N.J.A.C. 13:19-1.8 is further amended to provide that where the Division and a licensee cannot reach a resolution of the proposed administrative action at the prehearing conference, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1, unless there are no disputed material facts and no legal issues or any argument on those issues raised at the conference. The rule is further amended to provide that in the event there is no resolution of the proposed administrative action at the prehearing conference and there are no disputed material facts and no legal issues or any argument on those issues raised at the conference, the Division shall notify the licensee that the matter shall not be transmitted to the Office of Administrative Law and the grounds thereof and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. Such notice shall constitute the final agency decision in the matter.

N.J.A.C. 13:19-1.13, Procedures as to when opportunities to be heard are granted, is amended through insertion of the term "opportunity to be heard" in place of "opportunity for a hearing" in subsections (a) and (b) of the rule. Subsection (a) of the rule as amended provides that the Division shall not take administrative action against a person unless it has first afforded the person an opportunity to be heard in conformity with N.J.A.C. 13:19-1 except as set forth in subsections (b), (c) and (d) of the rule. Subsection (b) of the rule as amended provides that when the administrative action proposed by the Division against any person is one wherein the Division has authority to act without first providing an opportunity to be heard, such action shall be valid, but the Division shall promptly afford the person an opportunity to be heard in conformity with N.J.A.C. 13:19-1. Subsection (d) of the rule is also amended by deletion of the term "requested" with regard to a certain type of hearing and its replacement by the term "provided". Subsection (d) of the rule as amended provides that when a license is not suspended or is restored with the understanding that any subsequent moving violation will be cause for a summary suspension, the issue of any hearing provided with respect to a proposed suspension for such subsequent moving violation will be limited to whether or not the licensee has been convicted of a subsequent moving violation and ascertaining whether the licensee received notice that the license had been restored with that understanding.

N.J.A.C. 13:19-12.2, Requests for hearings, is amended to provide that a licensee or his or her attorney may request a surcharge hearing in accordance with the provisions of N.J.A.C. 13:19-1. Requests for a surcharge hearing must be sent to the Division at the address specified in N.J.A.C. 13:19-12.2(b), as amended.

N.J.A.C. 13:19-12.3, Prehearing conference; transmittal to the Office of Administrative Law, is proposed for repeal. The rule provided for the automatic scheduling of a prehearing conference in surcharge cases upon request of the licensee; notification of the licensee as to the date, time and place of the conference; and transmittal of the case to the Office of Administrative Law following an unsuccessful prehearing conference. The rule is proposed for repeal because, pursuant to the proposal, N.J.A.C. 13:19-1 as amended shall now apply to administrative hearings in cases involving revocation, suspension or refusal to renew licenses, including cases involving imposition of insurance surcharges by the Division pursuant to N.J.S.A. 17:29A-35. In general, the rules as proposed provide revised uniform procedures pursuant to which the Division will process hearing requests. Since N.J.A.C. 13:19-12.3 is totally at variance with N.J.A.C. 13:19-1 as amended, it is accordingly proposed for repeal.

N.J.A.C. 13:19-12.4, Prehearing conference; adjournment for good cause; failure to attend; abandonment of hearing, is proposed for repeal. The subjects dealt with by the rule (requests for adjournment of prehearing conferences and failure to attend such conferences) are now covered by N.J.A.C. 13:19-1 as amended by this proposal. In view of the fore-

going, N.J.A.C. 13:19-12.4 is unnecessary and is therefore proposed for repeal.

N.J.A.C. 13:19-12.5, Prehearing conference; representation by attorney; pro se appearance, is proposed for repeal. The subject of the rule (legal representation at a prehearing conference) is now dealt with by N.J.A.C. 13:19-1 as amended by this proposal. Accordingly, N.J.A.C. 13:19-12.5 is unnecessary and is therefore proposed for repeal.

N.J.A.C. 13:19-12.6, Prehearing conference; conduct thereof; preparation of issues and documents for hearing; conference report, is proposed for repeal. The rule pertained to the issues to be discussed and the documentation to be supplied at a prehearing conference in surcharge cases; preparation of a conference report; and information to be listed on the report in those cases where the licensee desires a hearing at the Office of Administrative Law. The rule is proposed for repeal because, pursuant to the proposal, N.J.A.C. 13:19-1 as amended shall now govern prehearing conferences in cases involving revocation, suspension or refusal to renew licenses, including cases involving imposition of insurance surcharges by the Division pursuant to N.J.S.A. 17:29A-35. Since the subject of N.J.A.C. 13:19-12.6 (the conduct of prehearing conferences) is now dealt with by N.J.A.C. 13:19-1 as amended by this proposal, N.J.A.C. 13:19-12.6 is accordingly proposed for repeal.

N.J.A.C. 13:19-12.7, Prehearing Conference Officer; authority, is proposed for repeal. The subject of the rule (the authority of a prehearing conference officer to conduct such conferences) is now covered by N.J.A.C. 13:19-1 as amended by the proposal. In view of the foregoing, N.J.A.C. 13:19-12.7 is unnecessary and is therefore proposed for repeal.

N.J.A.C. 13:19-12.8, Abandonment of hearing, is amended to provide that if the licensee does not request a hearing in accordance with the provisions of N.J.A.C. 13:19-1 regarding the initial surcharge bill, or thereafter abandons the hearing request, the licensee shall not be granted a hearing on future billings for the convictions contained within the initial surcharge bill.

N.J.A.C. 13:19-12.9, Conference resolutions or final decisions, is amended to provide that any resolution at a prehearing conference conducted in accordance with N.J.A.C. 13:19-1 regarding a surcharge bill or any final administrative decision shall be conclusive as to the issues contained in that resolution or decision, and shall preclude any hearing on those issues on future billings.

Social Impact

The proposed amendments and repeals to apprise those persons confronted by proposed Division of Motor Vehicles' license suspension action (including proposed suspensions based on out-of-State drunk driving or chemical test refusal convictions or administrative determinations or bail forfeitures) or surcharge collection action of the requirement that, as part of the hearing request which is submitted to the Division, they must specify all disputed material facts which they or their attorney intend to raise at such hearing; and that they must also set forth as part of the hearing request all legal issues which they or their attorney intend to raise and must present all arguments on those issues which they wish the Division to consider. Hearing requests which fail to set forth any disputed material fact and fail to set forth any legal issue or any argument on those issues will be denied. The proposed amendments and repeals shall have a positive social impact by notifying the public in general, and licensees confronted by Division proposed suspension or surcharge collection action in particular, of the procedure by which such hearings must be requested; the time by which such requests must be submitted; the information which must be set forth in such requests; and the basis upon which such requests will be acted upon by the Division. The proposed amendments and repeals shall have no social impact upon the Division of Motor Vehicles.

Economic Impact

The proposed amendments and repeals will have an economic impact on the State of New Jersey, which funds the operations of the Division of Motor Vehicles as well as the Office of Administrative Law. Pursuant to the proposed amendments and repeals, the Division will no longer automatically schedule a prehearing conference in proposed license suspension cases or insurance surcharge collection cases in which such a hearing is requested. Those hearing requests which fail to set forth any disputed material fact and fail to set forth any legal issue or any argument on those issues will be denied, thus resulting in a cost savings for the Division due to the scheduling of fewer prehearing conferences at Division facilities to be conducted by Division employees. Such denial of a hearing request shall be considered the final decision of the Division in such matter. Where a hearing request sets forth disputed material facts

which the licensee or his or her attorney intends to raise at such hearing, the Director shall require the licensee to attend a prehearing conference at the Division to be conducted by Division employees. Where there are no disputed material facts and where a request for a hearing sets forth legal issues and presents arguments on those issues, the Director may either consider those legal issues and arguments on the basis of the written record and render a written determination which shall constitute the final agency decision in the matter; or may require the licensee to attend a prehearing conference to be conducted by Division employees; or may transmit the matter directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1. The proposed amendments provide that where the Division and a licensee cannot reach a resolution of the proposed administrative action at the prehearing conference, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1 unless there are no disputed material facts and no legal issues or any argument on those issues raised at the conference. The amendments further provide that in the event there is no resolution of the proposed administrative action at the prehearing conference and there are no disputed material facts and no legal issues or any argument on those issues raised at the conference, the Division shall notify the licensee that the matter shall not be transmitted to the Office of Administrative Law and the grounds thereof and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. Such notice shall be deemed to constitute the final decision of the Division of Motor Vehicles in such matter.

The Division anticipates that the proposed amendments and repeals should result in a reduction in the number of cases which it transmits to the Office of Administrative Law, which would have a beneficial economic impact on that agency. Although the amendments provide that certain cases may (at the option of the Director) be transmitted by the Division directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1 (that is, where there are no disputed material facts and where a request for a hearing sets forth legal issues and presents arguments on those issues), the number of cases which the Division transmits to the Office of Administrative Law should nevertheless decrease as a result of these amendments and repeals because the Division will no longer automatically transmit (sans prehearing conference) proposed license suspension cases based on out-of-State drunk driving or chemical test refusal convictions or administrative determinations or bail forfeitures to the Office of Administrative Law when a hearing in such cases is requested. Those hearing requests in such cases which fail to set forth any disputed material fact and fail to set forth any legal issue or any argument on those issues will be denied by the Division, and such denial of a hearing request shall be considered the final decision of the Division in such matter. Where a hearing request sets forth disputed material facts which the licensee or his or her attorney intends to raise at such hearing, the Director shall require the licensee to attend a prehearing conference at the Division to be conducted by Division employees. Where there are no disputed material facts and where a request for a hearing sets forth legal issues and presents arguments on those issues, the Director may either consider those legal issues and arguments on the basis of the written record and render a written determination which shall constitute the final agency decision in the matter; or may require the licensee to attend a prehearing conference to be conducted by Division employees; or may transmit the matter directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1. The proposed amendments provide that where the Division and a licensee cannot reach a resolution of the proposed administrative action at the prehearing conference, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1 unless there are no disputed material facts and no legal issues or any argument on those issues raised at the conference. The amendments further provide that in the event there is no resolution of the proposed administrative action at the prehearing conference and there are no disputed material facts and no legal issues or any argument on those issues raised at the conference, the Division shall notify the licensee that the matter shall not be transmitted to the Office of Administrative Law and the grounds thereof and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. Such notice shall be deemed to constitute the final decision of the Division of Motor Vehicles in such matter.

Since the proposed amendments and repeals should result in a cost benefit to the State (in view of fewer prehearing conferences being conducted at DMV and fewer cases being transmitted by DMV for hearings at OAL), the proposed amendments and repeals should (in the context of State government cost savings) also have a positive economic impact on the general public.

Regulatory Flexibility Analysis

The Division anticipates that many of the business entities which it licenses and which will be affected by the proposal are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Those small businesses which are licensed by the Division of Motor Vehicles and which are confronted by proposed license suspension or revocation action must comply with the requirements of the rules as amended (unless otherwise directed by statute or other Division rules). Such small businesses which are licensed by the Division include motor vehicle dealers (approximately 4,277 licensed at present), private inspection centers (approximately 3,700 licensed at present), auto body repair facilities (approximately 2,319 licensed at present), junk yards (approximately 89 licensed at present) and commercial driving schools (approximately 142 licensed at present). The Division is uncertain whether such small businesses will require professional services to comply with the requirements of the rules as amended, and is likewise uncertain as to the cost which such compliance will impose on such small businesses. The proposed amendments and repeals should not result in additional recordkeeping requirements for such small businesses, nor do they impose initial capital costs or annual compliance costs upon such entities; the only costs occur if a licensee is confronted by proposed license suspension action. The proposed amendments and repeals provide uniform procedures pursuant to which the Division will process hearing requests, and an exception for small businesses based upon size is not warranted given the Division's need for uniformity in processing such requests.

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

13:19-1.1 Applicability

The provisions of this [chapter] **subchapter** shall apply to [all adjudicatory] **administrative** hearings in cases involving revocation, suspension or refusal to renew licenses, [consistent with N.J.S.A. 52:14B-9 through 12] **including cases involving imposition of insurance surcharges pursuant to N.J.S.A. 17:29A-35.**

13:19-1.2 Requests for hearings; **disposition of hearing requests**

(a) The proposed action to be taken against any licensee by the Division shall become effective [ten days from] **on the date [of] set forth in the notice except [where] when otherwise [provided] specified,** unless the licensee or his or her attorney shall make a request, in writing, for a hearing within [ten] **25** days from the date of notice.

[(b)] Proposed action to be taken against a race track license may become effective three days from the date of notice.]

[(c)] (b) [All requests] **Requests** for a hearing shall , **except as specified by N.J.A.C. 13:19-12.2(b),** be sent to the following address:

[Division of Motor Vehicles
Driver Improvement Bureau
25 South Montgomery Street
Trenton, New Jersey 08625
Attention: Hearing Scheduling Unit]
**Division of Motor Vehicles
Driver Control Services
CN 134
Trenton, New Jersey 08666-0134**

(c) **Requests for a hearing shall specify all disputed material facts which the licensee or his or her attorney intends to raise at such hearing. Requests for a hearing shall also set forth all legal issues which the licensee or his or her attorney intends to raise, and shall present all arguments of those issues which the licensee wishes the Division to consider.**

(d) **Where a hearing request fails to set forth any disputed material fact and fails to set forth any legal issue or any argument on those issues, the request for a hearing shall be denied. The Division shall notify the licensee of this denial and the grounds thereof, and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. Such notice shall constitute the final agency decision in the matter.**

[(d)] (e) [Upon request for a hearing pursuant to this section,] **Where a hearing request sets forth disputed material facts which the licensee or his or her attorney intends to raise at such hearing, the Director [may] shall require the licensee to attend a prehearing conference conducted by designated employees of the Division.**

[(e)] (f) [Where the Director does not require a prehearing conference, the matter shall be transmitted] **Where there are no disputed material facts and where a request for a hearing sets forth legal issues and presents arguments on those issues, the Director may either consider those legal issues and arguments on the basis of the written record and render a written determination which shall constitute the final agency decision in the matter; or may require the licensee to attend a prehearing conference conducted by designated employees of the Division; or may transmit the matter directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1.**

13:19-1.3 Notification of prehearing conference date

[In cases where a prehearing conference is required, upon receipt of a request for a hearing, the] **The Division shall notify the licensee of the date, time and place of [the] each prehearing conference scheduled pursuant to this subchapter.**

13:19-1.5 Adjournments; Failure to appear

(a) No prehearing conferences shall be adjourned from the scheduled prehearing conference date except for good cause and upon order of the Director or an employee designated by the Director. All requests for adjournment must be made in writing, with the reasons specified therein, not later than seven days before the date scheduled for the prehearing conference. All requests shall be sent to the following address:

[Division of Motor Vehicles
Bureau of Suspensions and Restorations
25 South Montgomery Street
Trenton, New Jersey 08625
Attention: Prehearing Conference Scheduling Unit]
**Division of Motor Vehicles
Driver Control Services
CN 134
Trenton, New Jersey 08666-0134**

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

(d) In the event a licensee fails to attend a prehearing conference wherein an adjournment has not been granted, the proposed action against the licensee shall be taken [without further opportunity for a prehearing conference] and the licensee shall be deemed to have abandoned his request for a hearing.

13:19-1.8 Prehearing conference; purpose; conduct; report; transmittal to the Office of Administrative Law

(a) [The purpose of the prehearing conference is to attempt to reach a settlement in order to dispose of the proposed suspension action in a manner that is satisfactory to both sides. If a settlement is not reached, the parties shall use the prehearing conference to prepare the issues and evidence for the hearing.] **The purpose of the prehearing conference is to clarify disputed material facts and legal issues raised in the hearing request; to review the evidence upon which the licensee bases his or her claim; to ascertain the discovery needs of the licensee; to supply the licensee with any discovery to which the licensee may be entitled under the uniform Administrative Procedure Rules; and to attempt to resolve the administrative action to be taken**

(b) [The] **A driver improvement specialist [responsible for conducting the prehearing conference] shall conduct [an informal] a prehearing conference with [the] each licensee who has been scheduled for such a conference pursuant to this subchapter and with the licensee's attorney, if [he] the licensee is represented by an attorney, for the purpose of [reaching a settlement] resolving the proposed administrative action. The driver improvement specialist shall produce any relevant materials the Division may have which relate to the proposed [suspension] administrative action and the licensee shall be permitted to produce any document or other evidence which relates to the proposed [suspension] administrative action.**

(c) The driver improvement specialist shall prepare a conference report for each prehearing conference. The conference report shall contain information relevant to the proposed [suspension] **administrative action. If a [settlement] resolution of the proposed administrative action is reached between the Division and the licensee, the licensee shall sign the conference report indicating that both parties [agreed]**

agree to be bound by the terms of the [settlement] resolution of the proposed administrative action contained therein. If a licensee accepts the [settlement] resolution of the proposed administrative action, the licensee is deemed to have abandoned any further [right to a hearing] opportunity to be heard with regard to the proposed administrative action.

(d) If the parties cannot agree as to a [settlement] **resolution of the proposed administrative action**, then the conference report shall so indicate. Where the [parties] **Division and a licensee cannot reach [an agreement] a resolution of the proposed administrative action at the prehearing conference**, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1 **unless there are no disputed material facts and no legal issues or any argument on those issues raised at the conference. In the event there is no resolution of the proposed administrative action at the prehearing conference and there are no disputed material facts and no legal issues or any argument on those issues raised at the conference, the Division shall notify the licensee that the matter shall not be transmitted to the Office of Administrative Law and the grounds thereof and shall notify the licensee that the proposed action shall become effective on such date as the Division shall specify. Such notice shall constitute the final agency decision in the matter.**

13:19-1.13 Procedures as to when opportunities to be heard are granted

(a) The Division shall not take administrative action against a person unless it has first afforded the person an opportunity [for a hearing] **to be heard in conformity with [these provisions] this subchapter except as set forth in (b), (c), and (d) below.**

(b) When the administrative action proposed by the Division against any person is one wherein the Division has authority to act without first providing an opportunity [for a hearing] **to be heard**, such action shall be valid, but the Division shall promptly afford the person an opportunity to be heard in conformity with [the provision of this regulation] **this subchapter.**

(c) No hearing shall be provided when the action taken by the Division is required by any law which prescribes a suspension or revocation of a license or a privilege and which requires no exercise of discretion on the part of the Division of Motor Vehicles. No hearing shall be provided when a [suspension or revocation of a] license or privilege is suspended or revoked by order of a court of competent jurisdiction.

(d) When a license is not suspended or is restored with the distinct understanding that any subsequent moving violation will be cause for a summary suspension, the issue of any hearing [requested] **provided with respect to a proposed suspension for such subsequent moving violation will be limited to:**

1. Whether or not the licensee has been convicted of a subsequent moving violation; and
2. Determining whether or not the licensee received adequate notice that this license had been restored with that distinct understanding.

13:19-12.2 Requests for hearings

(a) A licensee, or his **or her** attorney, [shall have 15 days from the date of the surcharge notification to] **may request a surcharge hearing in writing in accordance with the provisions of N.J.A.C. 13:19-1.**

(b) All requests for a **surcharge** hearing shall be sent to the following address:

State of New Jersey
Automobile Insurance Surcharge and Collections
CN 136
Trenton, New Jersey [08625] **08666-0136**
[Attention: Hearing Scheduling Unit]

13:19-12.3 [Prehearing conference; transmittal to the Office of Administrative Law] (Reserved)

[(a) Upon request for a hearing pursuant to N.J.A.C. 13:19-12.2, the licensee shall be required to attend a prehearing conference conducted by employees designated by the Automobile Insurance Surcharge and Collections Unit, to be referred to as Prehearing Conference Officers.

(b) Upon receipt of a request for a hearing, the Automobile Insurance Surcharge and Collections Unit shall notify the licensee of the date, time and place of the prehearing conference at least 15 days prior to the date of the prehearing conference.

(c) If the surcharge collection cannot be resolved in the prehearing conference, the matter shall be transmitted to the Office of Administrative Law pursuant to N.J.A.C. 1:1.]

13:19-12.4 [Prehearing conference; adjournment for good cause; failure to attend; abandonment of hearing] **(Reserved)**

[(a) No prehearing conference shall be adjourned from the scheduled prehearing conference date except for good cause and upon order of the Director of the Division of Motor Vehicles or an assignment officer designated by the director. All requests for adjournment must be made in writing, with the reasons specified therein, not later than seven days before the date scheduled for the prehearing conference, except for good cause. All adjournment requests shall be sent to the following address:

State of New Jersey
Automobile Insurance Surcharge
and Collections
CN 136
Trenton, New Jersey 08625
Attention: Hearing Scheduling Unit

(b) In the event that a licensee fails to attend a prehearing conference without good cause, the proposed action against the licensee shall be taken without further opportunity for a prehearing conference, and the licensee shall be deemed to have abandoned his request for a hearing.]

13:19-12.5 [Prehearing conference; representation by attorney; pro se appearance] **(Reserved)**

[(a) At a prehearing conference before the Automobile Insurance Surcharge and Collections Unit, a licensee may be represented by an attorney at law, licensed in the State of New Jersey, or may appear on his own behalf.

(b) No licensee, after having elected to represent himself at a prehearing conference, shall be granted another prehearing conference on the grounds that he lacked representation by counsel.]

13:19-12.6 [Prehearing conference; conduct thereof; preparation of issues and documents for hearing; conference report] **(Reserved)**

[(a) The Prehearing Conference Officer responsible for conducting the prehearing conference shall conduct an informal conference with the licensee and the licensee's attorney, if the licensee is represented by an attorney, for the purpose of establishing the accuracy of the surcharge bill and the accuracy of the driver abstract upon which the bill is based. If these matters cannot be resolved, the conferees shall prepare the issues and evidence for the contested case hearing. The Prehearing Conference Officer shall produce any relevant materials in possession of the Division of Motor Vehicles relating to the accuracy of the surcharge bill, the driver abstract, or the proposed suspension, and the licensee shall be permitted to produce any document or other evidence relating to the accuracy of the surcharge bill, the driver abstract or the proposed suspension.

(b) If the licensee wishes to contest the validity of any conviction entered on the surcharge bill, he shall initially raise the objection at the prehearing conference. The Prehearing Conference Officer shall provide the licensee with copies of any documentary evidence in the possession of the Division of Motor Vehicles supporting the contested entry. In the event the matter is transmitted to the Office of Administrative Law for a hearing, copies of the documentary evidence shall be provided to the Administrative Law Judge.

(c) The Prehearing Conference Officer shall prepare a conference report for each prehearing conference. The conference report shall contain information relevant to the proposed suspension. If the licensee still desires a hearing at the end of the conference, the Prehearing Conference Officer shall identify and list with the licensee all issues which the licensee intends to raise at the hearing. In particular, all contested conviction entries on the driver abstract or surcharge bill shall be listed. The licensee shall be requested to sign

the conference report verifying the completeness of the list of identified issues.]

13:19-12.7 [Prehearing Conference Officer; authority] **(Reserved)**

[The Prehearing Conference Officer pursuant to N.J.A.C. 13:19-1.7 and 13:19-1.8 shall be authorized to conduct Division of Motor Vehicles' preconference hearings.]

13:19-12.8 Abandonment of hearing

If the licensee does not request a hearing [to contest] **in accordance with the provisions of N.J.A.C. 13:19-1 regarding** the initial surcharge bill [pursuant to this subchapter], or thereafter abandons the hearing request, the licensee shall [have abandoned the right to] **not be granted** a hearing on future billings for the convictions contained within the initial surcharge bill.

13:19-12.9 Conference resolutions or final decisions

Any resolution at a prehearing conference [of a contested] **conducted in accordance with N.J.A.C. 13:19-1 regarding** a surcharge bill or any final **administrative** decision [after a contested case hearing] shall be conclusive as to the issues contained in that resolution or decision, and shall preclude [the right to a] **any** hearing on those issues on future billings.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Election of Horsemen's Organization

Proposed New Rule: N.J.A.C. 13:70-1.31

Authorized By: The New Jersey Racing Commission,

Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1990-580.

Submit comments by December 19, 1990 to:

Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule sets forth provisions to conduct an election every three years for the horsemen to elect an organization to represent them for the purpose of negotiating contracts, approvals of requests affecting the horsemen and expenditures of funds to benefit the thoroughbred industry. The proposed new rule also sets forth the qualifications that a horseman must meet in order to cast a ballot in the election. The proposed new rule requires that an organization must have at least 100 eligible voters submit a petition authorizing the organization to represent them and the organization must submit a description of their organization and by-laws to the Commission.

The proposed new rule also requires that an outside independent firm conduct the election, determine voters' eligibility and tabulate the ballots of the election. The independent firm would be paid from the statutorily allocated money to the horsemen.

The proposed new rule requires that the horsemen's organization comply with all of the rules and directives of the Racing Commission and, in the event it was found that there were violations of the rules or directives, the organizations and/or its officers may be subject to the penalties provided in N.J.A.C. 13:70-31.

Social Impact

The proposed new rule would allow the individual horsemen the opportunity to elect a horsemen's organization to represent their interests in negotiation with contracts to track associations, approval of simulcasting requests and for administration of programs to benefit the racing industry. Although everyone who participates in racing in the State of New Jersey is considered a member of the organization, the proposed new rule provides that an individual must have participated a minimum of five times in the current year of the election or in the preceding calendar

year to vote. This provision allows the individuals that are racing in New Jersey on a regular basis, an opportunity to vote for an organization. The proposed new rule also requires that the winning organization conduct an internal election to elect officers to represent members.

Economic Impact

There will be some economic cost from the horsemen's statutorily allocated funds for the payment to the horsemen of an independent firm to conduct the election, and election printing and mailing costs. The organizations seeking election will bear the cost to obtain the requisite petition and organization description. The winning organization will bear the cost of the required internal direction.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, record keeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The horsemen's organizations affected by these proposed rules are benevolent program associations, not small businesses.

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

13:70-1.31 Election of horsemen's organization

(a) An election to determine the horsemen's organization that will represent the interest of the New Jersey horseman shall be conducted first upon such date as agreed to by the interested parties, then every three years. In the event only one organization files or qualifies, no election will be required.

(b) In order to be eligible to vote in this election, all owners and trainers shall first possess a valid Commission license in the year of the election and shall have started horses a minimum of five times in the current year of the election or the preceding calendar year.

(c) Any thoroughbred horsemen's organization that is interested in being considered the representative of the horsemen shall submit a petition containing the signatures of 100 eligible voters as defined under (b) above and shall be in good standing with the New Jersey Racing Commission.

(d) The voting period shall take place at a time as determined by the New Jersey Racing Commission.

(e) Petitions containing the valid signatures of 100 eligible horsemen shall be submitted to the Commission 90 days in advance of the voting period.

(f) Each organization shall submit a description of their organization limited to one typewritten page 90 days in advance of the voting period. Each organization shall circulate its description to all eligible voters as defined under (b) above. Each organization shall also file a copy of their by-laws with the Commission at this time.

(g) The Commission shall review all material submitted by each organization and hire an outside independent firm to prepare the ballot and all related material, determine voting eligibility and tabulate all votes to determine the winning organization.

(h) All costs associated with the election process including, but not limited to, the independent firms fee and the printing and mailing costs will be provided from the horsemen's statutorily allocated funds.

(i) The organization that receives a plurality of the votes cast shall be considered for representation of the New Jersey horsemen for the next three years beginning January 1, provided they are in good standing with the New Jersey Racing Commission.

(j) The winning organization shall conduct an internal election to elect officers within 90 days after they have been designated as the official horsemen's representative by the Commission.

(k) The winning organization shall comply with all Commission rules and directives including, but not limited to, those that apply specifically to horsemen's organizations.

(l) Violation of Commission rules and directives may subject the organization and its officers to penalties contained in N.J.A.C. 13:70-31.

(m) Nothing contained in this rule or any other New Jersey Racing Commission rule is intended to prohibit other organizations from designing programs to aid the horsemen and request funds for those programs.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Urine Test

Proposed Amendment: N.J.A.C. 13:70-14A.11

Authorized By: The New Jersey Racing Commission,

Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1990-581.

Submit comments by December 19, 1990 to:

Charles K. Bradley, Deputy Director

New Jersey Racing Commission

200 Woolverton Street, CN 088

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would change the method of dealing with first, second and third time offenders under the rule regarding positive tests for controlled dangerous substances or prescription medication without a valid prescription.

For a licensee's first violation, he or she would not be allowed to participate in racing until they have undergone a professional evaluation to determine the extent of their condition, and have produced a negative urine test result. The present rule provides that the individual be given a warning and be placed on notice that they will be subject to mandatory testing rather than a random test.

In the event a licensee tests positive for a second violation, the proposed amendment would require the individual to enroll in a rehabilitation program and be suspended for six months or until the Commission requirements are fulfilled, whichever is greater. The present rule allows an individual to continue to race while they are enrolled in a rehabilitation program as long as they provide the Commission with written notification of enrollment in a rehabilitation program and status reports as to the progress in the rehabilitation program.

The proposed amendment would revoke a license should a person have a third violation of this rule, with reinstatement possible after five years. The present rule provides that for an individual's third violation he or she shall be liable for the sanctions provided in the penalties section of the rules and would only be allowed to enroll in a supervisory treatment program in lieu of said penalty, with the approval of the Racing Commission.

The proposed amendment would also provide that the licensee may be required to pay for the cost of drug tests after the licensee's first violation.

Social Impact

The proposed amendment would have more restrictions for individuals who have tested positive for a controlled dangerous substance or prescription medication without a valid prescription. The Racing Commission instituted a human drug testing program five years ago and the statistics revealed a steady and alarming increase in the number of positives (for example, there were 13 positives in the year 1985 compared to 81 positives in the year 1989). The Commission, therefore, feels the need to amend this subchapter to place further restrictions and stronger penalties against individuals who violate this rule.

Economic Impact

There would be a minimal economic impact on individuals who violate the proposed amendment by placing the burden on them to pay for the test of the sample after the first time they have violated the rule. The present cost of testing a urine sample by the New Jersey Racing Commission appointed laboratory is approximately \$15.00. Licensees will also, depending upon their individual circumstances, bear the costs of the required rehabilitation/treatment programs, and the possible loss of income during the suspension period or when one's license is revoked.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, record keeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq. The rule proposed for amendment applies to thoroughbred racing officials, jockeys, trainers and grooms as individuals. Therefore, a regulatory flexibility analysis is not required.

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

13:70-14A.11 Urine test

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

(d) A "positive" Controlled Dangerous Substance or prescription drug result shall be reported, in writing, to the Executive Director or his or her designee. On receiving written notice from the official chemist that a specimen has been found "positive" for controlled dangerous substances or prescription legend drugs, the Executive Director or his or her designees shall proceed as follows:

[1. He shall, as quickly as possible, notify the official, jockey, trainer and groom involved in writing.

2. For an official, jockey, trainer or groom's first violation, he shall issue a written reprimand and warning and notify the official, jockey, trainer or groom that he will be subject to mandatory drug testing and that any further information shall result in the sanctions described in (d)3 and 4 below.

3. For an official, jockey, trainer or groom's second violation, he shall require the official, jockey, trainer or groom to enroll in a Supervisory Treatment Program approved by the New Jersey Racing Commission upon such reasonable terms and conditions as he may require. The official, jockey, trainer or groom shall be permitted to participate unless his continued participation shall be deemed, by the Executive Director or his designee, to be detrimental to the best interests of racing. It shall be the official, jockey, trainer, or groom's responsibility to provide the Commission with written notice of his enrollment, weekly status reports, and written notice that he has successfully completed the program and has been discharged. If an official, jockey, trainer or groom fails to comply with these requirements, he shall be liable to the penalties provided in N.J.A.C. 13:70-31.

4. For official, jockey, trainer or groom's third or subsequent violation, he shall be liable to the penalties provided in Subchapter 31 and may only enroll into a Supervisory Treatment Program in lieu of said penalties, with the approval of the New Jersey Racing Commission.]

1. For a licensee's first violation, he or she shall not be allowed to participate in racing until such time as his or her condition has been professionally evaluated.

i. After such professional evaluation, if said licensee's condition proves non-addictive and not detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing, until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and agrees to further testing at the direction of the Executive Director or his or her designee.

ii. After such professional evaluation in which said licensee's condition proves addictive or detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and show documented proof that he or she has successfully completed a certified rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee.

iii. In addition to other requirements specified in this subsection, the Racing Commission may require a licensee to submit additional proof of rehabilitation as may be required in view of the licensee's patient assessment; his or her medical, drug and/or alcoholism history including current physiological dependency on drugs and/or alcohol and the duration of the addiction or abuse; and the facts and circumstances surrounding the violation.

2. For a licensee's second violation, he or she shall be required to enroll in a certified drug rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to

further mandatory testing at the direction of the Executive Director or his or her designee. Said licensee's license shall be suspended for six months or until the requirements are fulfilled, whichever is greater.

3. For a licensee's third violation, he or she shall be liable to the penalties provided in N.J.A.C. 13:70-31, including revocation of the individual's license. A licensee may apply for reinstatement after five years but such reinstatement shall be at the discretion of the Commission based upon a review of the licensee's entire record.

4. After a licensee's first violation, such additional drug tests, as are required by the Commission, may be at the licensee's expense. It shall be the licensee's responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

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

(a)

NEW JERSEY RACING COMMISSION

Harness Thoroughbred Rules

Urine Test

Proposed Amendment: N.J.A.C. 13:71-18.2

Authorized By: New Jersey Racing Commission,

Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1990-582.

Submit comments by December 19, 1990 to:

Charles K. Bradley, Deputy Director

New Jersey Racing Commission

200 Woolverton Street, CN 088

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would change the method of dealing with first, second and third time offenders under the rule regarding positive tests for controlled dangerous substances or prescription medication without a valid prescription. Provisions concerning the latter medication are added to correspond with the thoroughbred rules at N.J.A.C. 13:70-14A.11.

For a licensee's first violation, he or she would not be allowed to participate in racing until they have undergone a professional evaluation to determine the extent of their condition, and have produced a negative urine test result. The present rule provides that the individual be given a reprimand and a warning.

In the event a licensee tests positive for a second violation, the proposed amendment would require the individual to enroll in a rehabilitation program and be suspended for six months or until the Commission requirements are fulfilled, whichever is greater. The present rule allows an individual to continue to race while they are enrolled in a rehabilitation program as long as they provide the Commission with written notification of enrollment in a rehabilitation program and status reports as to the progress in the rehabilitation program.

The proposed amendment would revoke a license should a person have a third violation of this rule, with reinstatement possible after five years. The present rule provides that for an individual's third violation he or she shall be liable for the sanctions provided in the penalties section of the rules and would only be allowed to enroll in a supervisory treatment program in lieu of said penalty, with the approval of the Racing Commission.

The proposed amendment would also provide that the licensee may be required to pay for the cost of drug tests after the licensee's first violation.

Social Impact

The proposed amendment would have more restrictions for individuals who have tested positive for a controlled dangerous substance or prescription medication without a valid prescription. The Racing Commission instituted a human drug testing program five years ago and the statistics revealed a steady and alarming increase in the number of positives (for example, there were 13 positives in the year 1985 compared to 81 positives in the year 1989). The Commission, therefore, feels the need to amend

this subchapter to place further restrictions and stronger penalties against individuals who violate this rule.

Economic Impact

There would be a minimal economic impact on individuals who violate the proposed amendment by placing the burden on them to pay for the test of the sample after the first time they have violated the rule. The present cost of testing a urine sample by the New Jersey Racing Commission appointed laboratory is approximately \$15.00. Licensees will also, depending upon their individual circumstances, bear the costs of the required rehabilitation/treatment programs, and the possible loss of income during the suspension period or where one's license is revoked.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, record keeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq. The rule proposed for amendment applies to harness racing officials, drivers, trainers and grooms as individuals. Therefore, a regulatory flexibility analysis is not required.

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

13:71-18.2 Urine test

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

(d) A "positive" controlled dangerous substance or **prescription drug** result shall be reported, in writing, to the Executive Director or his or her designee. On receiving written notice from the official chemist that a specimen has been found "positive" for controlled dangerous substances or **prescription legend drugs**, the Executive Director or his or her designees shall proceed as follows:

[1. He shall, as quickly as possible, notify the official, jockey, trainer and groom involved in writing.

2. For an official, driver, trainer or groom's first violation, he shall issue a written reprimand and warning.

3. For an official, driver, trainer or groom's second violation, he shall require the official, driver, trainer or groom to enroll in a supervisory treatment program approved by the New Jersey Racing Commission upon such reasonable terms and conditions as he may require. It shall be the official, driver, trainer, or groom's responsibility to provide the Commission with written notice of his enrollment, weekly status reports, and written notice that he has successfully completed the program and has been discharged. If an official, driver, trainer or groom fails to comply with these requirements, he shall be liable to the penalties provided in N.J.A.C. 13:71-2.

4. For official, driver, trainer or groom's third or subsequent violation, he shall be liable to the penalties provided in N.J.A.C. 13:71-2 and may only enroll into a supervisory treatment program in lieu of said penalties, with the approval of the New Jersey Racing Commission.]

1. For a licensee's first violation, he or she shall not be allowed to participate in racing until such time as his or her condition has been professionally evaluated.

i. After such professional evaluation, if said licensee's condition proves non-addictive and not detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing, until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and agrees to further testing at the direction of the Executive Director or his or her designee.

ii. After such professional evaluation in which said licensee's condition proves addictive or detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and show documented proof that he or she has successfully completed a certified rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee.

iii. In addition to other requirements specified in this subsection, the Racing Commission may require a licensee to submit additional proof

of rehabilitation as may be required in view of the licensee's patient assessment; his or her medical, drug and/or alcoholism history including current physiological dependency on drugs and/or alcohol and the duration of the addiction or abuse; and the facts and circumstances surrounding the violation.

2. For a licensee's second violation, he or she shall be required to enroll in a certified drug rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee. Said licensee's license shall be suspended for six months or until the requirements are fulfilled, whichever is greater.

3. For a licensee's third violation, he or she shall be liable to the penalties provided in N.J.A.C. 13:71-2.3, including revocation of the individual's license. A licensee may apply for reinstatement after five years but such reinstatement shall be at the discretion of the Commission based upon a review of the licensee's entire record.

4. After a licensee's first violation, such additional drug tests, as are required by the Commission, may be at the licensee's expense. It shall be the licensee's responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

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

(a)

OFFICE OF EMERGENCY TELECOMMUNICATIONS SERVICES

9-1-1 Emergency Telecommunication System

Proposed Amendments: N.J.A.C. 13:81-2.1, 2.2, 2.4 and 3.2

Authorized By: Robert J. Del Tufo, Attorney General,
Department of Law and Public Safety.

Authority: N.J.S.A. 52:17C-3(b), 52:17C-15(b) (P.L. 1989, c.3, secs. 3 and 15).

Proposal Number: PRN 1990-588.

Submit comments by December 19, 1990 to:

Captain Joseph C. Saia
Director
Office of Emergency Telecommunications Services
New Jersey State Police Headquarters
P.O. Box 7068
West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

P.L. 1989, c.3 (N.J.S.A. 52:17C-1 et seq.) was enacted on January 18, 1989. The law provides for implementation of a Statewide, 9-1-1 enhanced emergency telecommunications system, which will allow persons facing an emergency to dial 9-1-1 anywhere in the State and be connected to a Public Safety Answering Point (PSAP). The PSAP will automatically receive the name and address registered to the telephone placing the call and the identity of the police, fire and emergency medical services agencies which are responsible for providing service to that location. The call-taker at the PSAP will then transfer the call to the appropriate emergency service agency at the press of a button or dispatch the emergency service directly, depending on the option chosen by the localities it serves.

The Office of Emergency Telecommunications Services (OETS) in the Department of Law and Public Safety, Division of State Police and the New Jersey 9-1-1 Commission are charged with the implementation of the 9-1-1 legislation. The State of New Jersey 9-1-1 Emergency Number Plan was adopted in January of 1990. Rules promulgated by the Attorney General, after consultation with OETS and with the approval of the Commission, became effective on August 6, 1990. The following is a summary of the four amendments to the 9-1-1 rules proposed here.

N.J.S.A. 52:17C-8 provides that each "public safety answering point shall be equipped with a system approved by the office for the processing of requests for emergency services for the physically disabled." The first

amendment would enhance service for the hearing and speech impaired by revising N.J.A.C. 13:81-2.1(e)1, which currently permits a PSAP to provide for these disabled persons through use of a telecommunications device for the deaf or speech impaired (TDD), to require that the TDD utilized be one that is capable of producing a hard copy of a conversation between the PSAP operator and a deaf or hearing impaired person.

N.J.S.A. 52:17C-3 requires OETS to include standards for the training and certification of call-takers and public safety dispatchers in the State 9-1-1 enhanced emergency telephone system plan. The second proposed amendment revises N.J.A.C. 13:81-2.2(c) to specify the training required for certification as a call-taker or dispatcher employed in the PSAP, and it allows for the use of qualified substitutes who do not possess full certification on a limited basis. The third proposed amendment revises N.J.A.C. 13:81-2.4(a) to require PSAP's to maintain records indicating periods in which substitute call-takers and dispatchers are utilized, and the fourth proposed amendment revises N.J.A.C. 13:81-3.2(b) to specify the training required for certification as a public safety dispatcher.

A 40-hour, public safety telecommunicator course is required for both PSAP call takers and PSAP public safety dispatchers. In the interest of efficiency and economy, persons who have acquired at least 320 hours of prior experience as a call-taker or public safety dispatcher in a New Jersey emergency telecommunications center prior to implementation of the 9-1-1 system, and persons who have completed alternate certified training programs recognized by OETS, may satisfy this basic training requirement by completing a 24-hour, basic public safety telecommunicator course. In addition to completion of the appropriate 40-hour or 24-hour basic course, PSAP call takers and PSAP emergency medical dispatchers must possess a current AHA Provider B or ARC Community Level CPR certification, and, unless the person has at least 320 hours of experience as a call-taker or public safety dispatcher, an approved 24-hour emergency medical dispatch training program. Finally, each certified PSAP call-taker and PSAP public safety dispatcher must participate annually in one day of annual in-service training. To further reduce unnecessary training expense, the rules permit limited use of substitute PSAP call-takers and dispatchers who are not certified by OETS and require each PSAP to maintain records of its use of substitutes.

Dispatchers employed in a Public Service Dispatch Point (PSDP) must either be trained by the local governing agency in the specific services they will dispatch or certified by OETS.

Social Impact

The proposed amendment to N.J.A.C. 13:81-2.1(e)1 will have a positive social impact by providing a means of ensuring that each PSAP serving the deaf and speech impaired through a TDD is capable of, and is, fulfilling its responsibility to process emergency service calls placed by these disabled persons.

The proposed amendments to N.J.A.C. 13:81-2.2(b) and 3.2(b) will have a positive social impact by providing for the uniform, adequate training of call-takers and public safety dispatchers that is essential to successful operation of the statewide 9-1-1 enhanced emergency telecommunications system. The training programs approved by OETS are offered by the Associated Public-Safety Communications Officers' Institute, which is the leading national organization in the field. The programs have been adapted for New Jersey to not only provide for the most efficient and economical training possible (other APCO programs provide 80-hour courses) but also to provide special training on unique features of the New Jersey 9-1-1 enhanced emergency telecommunications network and system. The proposed amendment to N.J.A.C. 13:81-2.4(a) will have a positive impact through the avoidance of misuse of substitutes.

Economic Impact

Additional costs for municipalities imposed by the requirement of utilizing a TDD that will provide a hard copy are minimal. Addition of this capacity raises the cost of a TDD from approximately \$300.00 to approximately \$500.00. Further, a TDD is only one of several alternate means by which a PSAP may provide services for the deaf or speech impaired. In addition, if municipalities determine to participate in joint PSAPs, the additional cost may be shared on a regional or county wide basis.

The costs of training have been kept to a minimum that is consistent with providing qualified call-takers and public safety dispatchers. OETS will train, at State expense, an anticipated 160 Basic Telecommunicator Instructors and 140 Public Safety Dispatcher, Emergency Medical Dispatch Instructors, and will purchase lesson guides. Local costs will be limited to \$20.00 for the purchase of each Student Manual, \$10.00 for each certification and the cost of any wages the local PSAP or PSDP

determines to pay to students for attending training programs. The costs of the record keeping imposed under N.J.A.C. 13:81-2.4(a)3 should be minimal.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., except to the extent such small businesses may seek to develop training programs that may be approved by OETS as adequate for certification of call-takers or public safety dispatchers. OETS is not presently aware of any existing provider of such training that would meet the applicable definition of a small business under the Act.

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

13:81-2.1 PSAP: required and recommended equipment

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

(e) Each PSAP shall provide for the hearing or speech impaired through either:

1. A TDD: A telecommunications device for the deaf or speech impaired which is available for immediate connection to the 9-1-1 network at all PSAPs **and which provides a hard copy of the conversation between the deaf or speech impaired person and the call-taker;** or

2. (No change.)

(f)-(h) (No change.)

13:81-2.2 PSAP: required staffing

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

(c) Each call-taker **and dispatcher** position in a PSAP, **except as provided in (d) below**, shall be staffed by a person certified by OETS as qualified on the basis of [successful completion of a training program approved or adopted by the 9-1-1 Commission.] **the following:**

1. **Successful completion of Basic Training consisting of either:**

i. **The APCO Institute 40-Hour Public Safety Telecommunicator Basic Training Course for New Jersey, which is a course developed by the Associated Public-Safety Communications Officers' Institute that has been adapted to provide training in the unique features of the New Jersey 9-1-1 emergency enhanced telecommunications network and system and has been approved by OETS;**

ii. **Any basic training approved by OETS, upon application of the provider and a finding by OETS that the training offered is substantially equivalent to that provided in the APCO Institute 40-Hour Public Safety Telecommunicator Basic Training Course for New Jersey;**

iii. **The APCO Institute 24-Hour Public Safety Telecommunicator Basic Training Course for New Jersey, which is a course developed by the Associated Public-Safety Communications Officers' Institute that has been adapted to provide training in unique features of the New Jersey 9-1-1 emergency enhanced telecommunications network and system and has been approved by OETS, if the call-taker either:**

(1) **Demonstrates to OETS that he or she has had 320 hours of work experience as a call-taker or public safety dispatcher in a local emergency telecommunications center in New Jersey prior to the local center's implementation of the 9-1-1 system; or**

(2) **Obtains a determination from OETS that a public safety telecommunicators basic training course, which the person has successfully completed, provided training that, when supplemented with the APCO Institute 24-Hour Public Safety Telecommunicator Basic Training Course for New Jersey, will be substantially equivalent to the APCO Institute 40-Hour Public Safety Telecommunicator Basic Training Course for New Jersey; or**

iv. **Any basic training approved by OETS, upon application of the provider and a finding by OETS that the training offered is substantially equivalent to that provided in the APCO Institute 24-Hour Public Safety Telecommunicator Basic Training Course for New Jersey, if the call-taker meets the requirements of (c)iii(1) or (2) above;**

2. **Successful completion of annual in-service training during each year of service following initial certification, consisting of an 8-hour program developed by the local PSAP and approved by OETS to address technical developments and improve the provision of 9-1-1 services;**

3. Except for a call-taker or dispatcher in a PSAP that directly transfers emergency medical service calls to emergency medical PSDP personnel who meet the requirements of this paragraph and (c)4 below, a current AHA Provider B or ARC Community Level CPR certification; and

4. Except for a call-taker or dispatcher in a PSAP that directly transfers emergency medical service calls to emergency medical PSDP personnel who meet the requirements of this paragraph and (c)3 above, and unless the person meets the requirements of (c)1iii(1) above, Emergency Medical Dispatch Training consisting of either:

i. The APCO Institute 24-Hour Emergency Medical Dispatching Training Program for New Jersey, which is a course developed by the Associated Public-Safety Communications Officers' Institute that has been adapted to provide training in unique features of the New Jersey 9-1-1 emergency enhanced telecommunications network and system and has been approved by OETS; or

ii. Any emergency dispatch training approved by OETS, upon application of the provider and a finding by OETS that the training offered is substantially equivalent to that provided in the APCO Institute 24-Hour Emergency Medical Dispatching Training Program for New Jersey.

(d) Persons who are not certified as provided in (c) above may be utilized to substitute for a certified call-taker or dispatcher under the following circumstances:

1. The person is performing as a substitute for a certified call-taker or dispatcher who is scheduled for duty but unavailable due to illness or emergency or the person is providing relief for a certified call-taker or dispatcher during personnel breaks; and

2. The person is one who meets the following requirements:

i. Has successfully completed the U.S. Department of Transportation's "First Responders: Emergency Medical Care Training Course," or "Crash Injury Management for Traffic Law Enforcement Officers" or "EMT-A Course";

ii. Has a current ARC of AHA CPR certification;

iii. Has successfully completed an eight-hour introductory course on the New Jersey 9-1-1 emergency enhanced telecommunications system which has been prepared by the local PSAP and approved by OETS; and

iv. Has successfully completed annual in-service training during each year of service following completion of the introductory course on the New Jersey 9-1-1 emergency enhanced telecommunications system, consisting of an eight-hour program developed by the local PSAP and approved by OETS to address technical developments and improve the provision of 9-1-1 services.

[(d)](e) (No change in text.)

13:81-2.4 PSAP: record keeping

(a) Each PSAP shall maintain the following:

1. Tape recordings produced by the Logging Recorder and all documents or records related to 9-1-1 calls in a secured area for no less than 31 days; [and]

2. A current listing of PSAP call-takers, which indicates the call-takers' certification date, at all times[.]; and

3. A record of each occasion on which a substitute call-taker or dispatcher was utilized, which includes the name of the substitute, the date and time of the substitution, and the reason for the substitution, which shall be retained for one year.

13:81-3.2 PSDP: required staffing

(a) (No change.)

(b) Each dispatcher shall be a person trained in the specific services they will dispatch (that is, police, fire, emergency medical services) by the local governing agency or certified by OETS [on the basis of successful completion of a training program approved or adopted by the 9-1-1 Commission] on the basis provided in N.J.A.C. 13:81-2.2(c).

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Jackpot Payouts in the Form of an Annuity

Proposed Amendments: N.J.A.C. 19:45-1.40A and 1.40B

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

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(f), (l) and (m).

Proposal Number: PRN 1990-583.

Submit comments by December 19, 1990 to:

Mark Neary, Assistant Counsel

Casino Control Commission

3131 Princeton Pike Office Park

Building No. 5

CN-208

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Some of these proposed amendments originated with comments which were received by the Casino Control Commission ("Commission") when the rules on annuity jackpots were proposed (see 22 N.J.R. 624(a) and 22 N.J.R. 1381(a)). Others are the result of a Petition for Rulemaking filed by the Atlantic City Megabucks Trust ("Megabucks Trust") (see 22 N.J.R. 2190(a)). Still others were initiated by the Commission staff.

When the Commission originally adopted the rules concerning annuity jackpots and multi-casino progressive slot systems, it acknowledged the merits of several of the recommendations in the comments which were received (see 22 N.J.R. 1381(a)). However, because the rules were viable as proposed, and the recommended changes required republication, the rules were adopted without change and the Commission stated that it would consider the recommendations at a later time.

Among the valid recommendations was one by the Megabucks Trust that N.J.A.C. 19:45-1.40B(a) should include an exception to the prohibition against a winner encumbering, assigning or transferring the right to receive the deferred payments. The Megabucks Trust suggested that such a transfer should be permitted where the casino licensee or group of casino licensees lend money to an annuity jackpot winner so that the winner can satisfy any income tax liability which is attributable to the deferred portion of the annuity jackpot and incurred in the year of the win. The proposed amendments include modifications to N.J.A.C. 19:45-1.40B(a) and 1.40B(h)2 (proposed j2) to permit this type of transfer.

The comment submitted by the Division of Gaming Enforcement ("Division") also is the basis of two proposed amendments. The first of these requires that the trustees purchase an annuity contract (or, if adopted, treasury bonds) within 180 days after the annuity jackpot is won (see N.J.A.C. 19:45-1.40B(c) and (d)). Actually, the Division had suggested that the purchase should be required to be made only 30 days prior to the date the first deferred payment is due. This would have permitted an 11-month period to pass during which the winner of an annuity jackpot is without the protection of an annuity contract or treasury bonds. It would also have allowed only 30 days for the regulatory agencies to determine whether the contract or bonds comply with the regulatory requirements and for the casino licensees to purchase replacement contracts or bonds in the event that any non-compliance is discovered.

The Commission believes that the purchase of the annuity contract or bonds should not be delayed any longer than is reasonably necessary to permit the casino licensees to secure the most cost-effective source. The 180-day period required in the proposed amendment should be more than sufficient for this purpose. In addition, it would also allow sufficient time for the regulatory agencies to review the annuity contract or bonds, and for the casino licensees to remedy any deficiencies prior to the date the first deferred payment is due.

The Division also recommended that the rules should require the trustees to file with the regulatory agencies a copy of the outside audit which must be secured under N.J.A.C. 19:45-1.40B(b)5. The proposed amendment to this paragraph would require that the audit be filed with the Commission and Division within 30 days of its receipt.

The Commission staff has proposed two amendments to remedy deficiencies in the annuity jackpot rules that were identified after their adop-

tion. The first of these would require the trust to file with the regulatory agencies a copy of the annuity contract or treasury bonds within 30 days of their purchase (see N.J.A.C. 19:45-1.40B(c) and (d)). Such a requirement will enable the agencies to ensure that the purchase is made within the required time period and that the annuity contract, insurance company from which it is purchased, or treasury bonds, comply with the regulatory requirements.

The other amendment which the staff is proposing would correct a technical error that occurred when the annuity jackpot rules were proposed and adopted. In the Notice of Proposal for these rules, the word "value" was inadvertently omitted from the phrase "cash equivalent value" in the first sentence of N.J.A.C. 19:45-1.40A(b). The proposed amendment merely adds the word "value" where it appeared before.

Several of the proposed amendments resulted from a rulemaking petition which was filed by the Megabucks Trust. The first of these is an amendment to N.J.A.C. 19:45-1.40B to permit the trust to purchase United States Treasury Bonds instead of annuity contracts to ensure that the deferred payments required under an annuity jackpot are made as promised. The Commission staff requested the Megabucks Trust to consider certain changes to its amendment to provide more controls over the use of such bonds and to reorganize N.J.A.C. 19:45-1.40B. The Trust agreed to these changes and they are reflected in the proposed amendments.

Since a treasury bond will yield only one payment at its maturity date, not multiple payments like an annuity contract, the proposed amendment requires that a separate bond be purchased for each payment which is due. These bonds will have to have different maturity dates to coincide with the different due dates of the payments. The proposed amendment also requires that the bonds have a value at maturity which is at least equal to the amount of the payment due. Further, it prohibits the trust from cashing or surrendering any bond prior to its maturity date to ensure that the money from the bond is available at the time the payment is due.

The Megabucks Trust also requested that N.J.A.C. 19:45-1.40A be amended to permit deferred payments which are made pursuant to an annuity jackpot to be deducted in calculating the gross revenue which is subject to the gross revenue tax. The proposed amendment to N.J.A.C. 19:45-1.40A permits these deferred payments to be included in the total of all sums paid out as winnings to patrons, which "winnings," pursuant to N.J.S.A. 5:12-24, are deducted from the sums received by a casino from gaming operations in determining gross revenue which is subject to taxation (see Alternative A).

The proposal also includes an alternative amendment to N.J.A.C. 19:45-1.40A which would permit a casino to deduct only a portion of the deferred payments (see Alternative B). This alternative would permit casinos to include as winnings paid out to patrons only that portion of a deferred payment which is equal to the cost of the annuity contract or treasury bonds divided by the number of deferred payments which were originally promised under the annuity jackpot.

Another proposed amendment requested by the Megabucks Trust amends N.J.A.C. 19:45-1.40B(d) (proposed (f)) to permit the trust to deposit checks received under annuity contracts or upon surrender of treasury bonds into accounts with certain non-bank broker dealers. The proposed amendment requires that the broker dealer be registered with the Securities and Exchange Commission and a member of the Securities Investor Protection Corporation, and that the broker dealer and the account be approved by the Commission.

The proposal also includes an amendment requested by the Megabucks Trust to remove the word "fund" from N.J.A.C. 19:45-1.40B(b)4. The Megabucks Trust interprets the existing version of this rule to unnecessarily require that the trust continue to maintain a "trust fund" when it may not have any "funds" in its possession. The Megabucks Trust argues that the provision should only require that the trust be maintained until all payments have been made.

The final amendment which was requested by the Megabucks Trust is the proposed amendment to N.J.A.C. 19:45-1.40B(c) (proposed (e)). This proposed amendment would require that casino licensees which offer an annuity jackpot be strictly liable for deferred payments only to a "bona fide winner as ascertained by the Commission," instead of simply to a "winner." Although the Commission is not certain about the need for such an amendment, it is publishing it for the purpose of reviewing any comments which may be elicited.

Social Impact

The proposed amendments to N.J.A.C. 19:45-1.40B(a) and (h)2 (proposed (j)2) which permit winning patrons to encumber, assign or

transfer their right to receive the deferred payments should be beneficial to such patrons and casino licensees alike. The transfer is permitted only when a casino licensee lends money to a patron to pay any income tax liability on deferred payments incurred in the year of the win. Such a loan would obviously be beneficial to such a patron. The proposed amendment also affords the casino licensee the protection which any lender would reasonably expect in such circumstances.

The proposed amendments to N.J.A.C. 19:45-1.40B(c) and (d) which would require the trust to purchase the annuity contracts (or, if adopted, the treasury bonds) at least 180 days after an annuity jackpot is won, and to file copies of these contracts and bonds within 30 days of their purchase, as well as the proposed amendment to N.J.A.C. 19:45-1.40B(b)5 which would require the trust to file a copy of the outside audit within 30 days of its receipt, should improve the effectiveness of the State's regulation of annuity jackpots and help to ensure that annuity jackpot payments are made as promised.

The proposed amendment to N.J.A.C. 19:45-1.40B which would permit the trust to purchase United States Treasury Bonds instead of annuity contracts should be beneficial to casino licensees offering annuity jackpots, since it provides greater flexibility and might enable the casinos to reduce the costs of funding these jackpots in certain situations. Because of the controls over the purchase of such bonds which are included in the proposed amendment, this flexibility can be provided without jeopardizing the patron's receipt of the deferred payments.

The proposed amendments to N.J.A.C. 19:45-1.40A which were requested by the Megabucks Trust to permit deferred payments made pursuant to an annuity jackpot (see Alternative A), or a portion thereof (see Alternative B), to be included in the total of all sums paid out as winnings to patrons may result in the State receiving less money in gross revenue tax than would otherwise be received from casinos. This may affect the funding of programs for certain eligible senior and disabled citizens which are financed by the gross revenue tax.

The proposed amendments requested by the Megabucks Trust to permit the deposit of checks received under annuity contracts and upon the surrender of treasury bonds into certain non-bank broker dealers under N.J.A.C. 19:45-1.40B(d) (proposed (f)), to eliminate the word "fund" from N.J.A.C. 19:45-1.40B(b)4, and to make casino licensees strictly liable under N.J.A.C. 19:45-1.40B(c) (proposed (e)) for deferred payments only to a "bona fide winner as ascertained by the Commission," are not anticipated to have any significant social impact. The same is true of the proposed amendment to N.J.A.C. 19:45-1.40A(b) to add a word which was inadvertently removed during the adoption of the rules concerning annuity jackpots.

Economic Impact

The amendments to N.J.A.C. 19:45-1.40B(a) and (h)2 (proposed (j)2) which permit winners to encumber, assign, or transfer their right to receive the deferred payments should not result in economic harm for such winners. The transfer is permitted only in the very limited situation where the winner chooses to receive the benefit of a loan from the casino licensees.

The proposed amendments to N.J.A.C. 19:45-1.40B(c) and (d) requiring the trust to purchase annuity contracts or treasury bonds within 180 days of an annuity jackpot being won should not have significant economic consequences for casino licensees. The 180-day period should be more than sufficient time for the trust to secure the best priced source for annuity contracts or treasury bonds. Similarly, the proposed amendments to N.J.A.C. 19:45-1.40B(c) and (d), requiring the trust to file copies of the annuity contracts and treasury bonds, and to N.J.A.C. 19:45-1.40B(c)5, requiring the trust to file a copy of the outside audit, should have a minimal economic impact on casino licensees which offer annuity jackpots.

The proposed amendment to N.J.A.C. 19:45-1.40A which was requested by the Megabucks Trust to permit deferred payments to be included as winnings paid out to patrons, as well as its alternative, could have economic benefits for casino licensees, as these amendments may permit the casinos to reduce the amount of gross revenue tax which would otherwise be paid. Conversely, any such reduction in gross revenue tax will negatively affect the State and its funding of programs for eligible senior and disabled citizens.

The proposed amendments to N.J.A.C. 19:45-1.40B which permit the trust to purchase United States Treasury Bonds instead of annuity contracts could have a beneficial economic impact on casino licensees which offer annuity jackpots as it may permit them to reduce the cost of financing the deferred payments.

The proposed amendments to N.J.A.C. 19:45-1.40B(d) (proposed (f)) to permit the deposit of annuity contract checks and treasury bond checks into certain non-bank broker dealer accounts, to N.J.A.C. 19:45-1.40B(b)4 to eliminate the word "fund," and to N.J.A.C. 19:45-1.40B(c) (proposed (e)) to impose liability upon casino licensees for the deferred payments only to "bona fide winners as ascertained by the Commission," should not have any significant economic impact on gaming patrons or the casino licensees.

Regulatory Flexibility Statement

The proposed amendments will only affect casino licensees, none of which qualify as small businesses under the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.); therefore, a regulatory flexibility analysis is not required.

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

19:45-1.40A Jackpot payouts of merchandise or other things of value

ALTERNATIVE A

(a) (No change.)

(b) Whenever a casino licensee offers any merchandise or thing of value as part of a slot machine payout, such merchandise or thing of value shall have a cash equivalent value of at least \$5,000 and shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue or be included in determining the payout percentage of any slot machine, **except that a deferred cash payment which is made pursuant to any annuity jackpot may be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue for the year in which such payment is made.** The cash equivalent value of such merchandise or thing of value shall be determined in accordance with the following requirements:

1.-4. (No change.)

(c)-(o) (No change.)

ALTERNATIVE B

(a) (No change.)

(b) Whenever a casino licensee offers any merchandise or thing of value as part of a slot machine payout, such merchandise or thing of value shall have a cash equivalent value of at least \$5,000 and shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue or be included in determining the payout percentage of any slot machine, **except that a portion of a deferred cash payment which is made pursuant to any annuity jackpot may be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue for the year in which such payment is made, which portion shall be calculated in accordance with (p) below.** The cash equivalent value of such merchandise or thing of value shall be determined in accordance with the following requirements:

1.-4. (No change.)

(c)-(o) (No change.)

(p) The portion of a deferred cash payment made pursuant to an annuity jackpot which may be included as winnings paid out to patrons for purposes of determining gross revenue for any given year shall be determined by multiplying the cost of the annuity contract purchased for the annuity jackpot pursuant to N.J.A.C. 19:45-1.40B(c) or the total cost of all of the treasury bonds purchased for the annuity jackpot pursuant to N.J.A.C. 19:45-1.40B(d) by a fraction, the numerator of which shall equal one and the denominator of which shall equal the total number of deferred payments which were originally required to be made under the terms of the annuity jackpot for which the annuity contract or treasury bonds were purchased.

19:45-1.40B Jackpot payouts in the form of an annuity

(a) For purposes of this section, the phrase "annuity jackpot" refers to any slot machine jackpot offered by a casino licensee or group of casino licensees pursuant to which a patron wins the right to receive cash payments at specified intervals in the future. No annuity jackpot shall be permitted unless it provides for the payment of fixed amounts at fixed intervals. In addition, no annuity jackpot shall be permitted unless it expressly prohibits the winner from en-

cumbering, assigning, or otherwise transferring in any way his or her right to receive the future cash payments, except as permitted by (j)21 below, and except for a transfer of [of the payments] to the estate of the winner upon his or her death. A casino licensee or group of casino licensees may, with the prior approval of the Commission, terminate all future payments to a winner who attempts to encumber, assign or otherwise transfer the right to receive future payments in violation of this prohibition.

(b) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall establish a trust fund which shall be used to make future cash payments. The trust fund shall be administered in accordance with a written trust agreement which shall be reviewed and approved by the Commission prior to the offering of the jackpot. The trust agreement shall, at a minimum, require that:

1. (No change.)

2. The monies in the trust fund be used to purchase annuity contracts[, naming the trust fund as beneficiary, to assure that there will be sufficient funds to make all payments required under the terms of the annuity jackpots won. An annuity contract shall be purchased for each annuity jackpot won prior to the time the first annuity payment is scheduled to be made to the winner of the jackpot. All annuity contracts shall be issued by an insurance company which:

i. Has fidelity and fiduciary insurance or bonding coverage for 100 percent of the value of the annuity contract;

ii. Has a combined capital and surplus of at least 100 million dollars, assets of at least one billion dollars, and an A.M. Best Company rating of A plus (superior); and

iii. Is authorized to issue annuities in New Jersey by the State's Commissioner of Insurance and is either licensed to sell annuities in this State, or represented by an entity so licensed;] **or United States Treasury Bonds in accordance with (c) or (d) below to assure that the trust will have sufficient monies available in each year to make all annuity jackpot payments which are required under the terms of the annuity jackpots which are won;**

3. A reserve be established and maintained within the trust fund which is sufficient to purchase the annuity contracts **or treasury bonds** required under (b)2 above as annuity jackpots are won;

4. The trust [fund] continue to be maintained until all payments owed to winners of the annuity jackpots have been made; and

5. The trustees obtain **and file with the Commission and the Division within 30 days of receipt** an annual audit by an independent certified public accountant licensed to practice in the State of New Jersey attesting to:

i.-ii. (No change.)

(c) If the trustee or trustees purchase annuity contracts in satisfaction of (b)2 above, a separate annuity contract shall be purchased for each annuity jackpot won. The annuity contract shall name the trust fund as beneficiary, shall provide for annuity payments which are equal to or greater than the payments required under the annuity jackpot, and shall provide for each annuity contract payment to be made to the trust fund prior to the date the payment is required to be made under the annuity jackpot. The annuity contract shall be purchased within 180 days after the annuity jackpot is won, and a copy of the contract shall be provided to the Commission and Division within 30 days of its purchase. The annuity contract shall be issued by an insurance company which:

1. Has fidelity and fiduciary insurance or bonding coverage for 100 percent of the value of the annuity contract;

2. Has a combined capital and surplus of at least 100 million dollars, assets of at least one billion dollars, and an A.M. Best Company rating of A plus (superior); and

3. Is authorized to issue annuities in New Jersey by the State's Commissioner of Insurance and is either licensed to sell annuities in this State, or represented by an entity so licensed.

(d) If the trustee or trustees purchase United States Treasury Bonds in satisfaction of (b)2 above, a separate treasury bond shall be purchased for each payment which is required to be made under the terms of the annuity jackpot. Each treasury bond shall have a surrender value at maturity, excluding any interest which is paid before the maturity date, which is equal to or greater than the value of the corresponding annuity jackpot payment, and shall have a maturity date which is prior to the

date the annuity jackpot payment is required to be made. All treasury bonds shall be purchased within 180 days after the annuity jackpot is won, and a copy of the bonds will be provided to the Commission and Division within 30 days of the final purchase of the bonds. No treasury bond purchased pursuant to this section shall be cashed or surrendered prior to its maturity date.

[(c)] (e) Any casino licensee or group of casino licensees which offers an annuity jackpot shall be strictly and immediately liable for any payment which is owed to [the] a **bona fide** winner of such a jackpot, as ascertained by the rules of the Commission, in the event that the payment is not made by the trustees when due. Where the annuity jackpot is offered as part of a multi-casino progressive slot system, each casino licensee participating in the system when the jackpot is won shall be jointly and severally liable for each jackpot payment required to be made under this subsection.

[(d)] (f) All [annuity payments] checks received by the trustees under the annuity contracts and all checks received upon surrender of the treasury bonds shall be restrictively endorsed "for deposit only" to the bank account of the trust or, with the approval of the Commission, to an account with a non-bank broker dealer which is registered with the Securities and Exchange Commission and is a member of the Securities Investor Protection Corporation, deposited into such an account, and immediately recorded on an Annuity Deposit Log. The Annuity Deposit Log shall contain, at a minimum, the following:

1.-2. (No change.)

3. The source of the payment, including, if applicable, the name of the insurance company issuing the payment; and

4. (No change.)

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

[(h)] (j) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall first be required to establish to the satisfaction of the Commission either that:

1. A winning patron will not be liable for income tax on the deferred portion of the annuity jackpot in the tax year in which the jackpot is won; or

2. Reasonable accommodations have been made to enable a winning patron to satisfy any income tax liability attributable to the deferred portion of the annuity jackpot which is incurred in the tax year in which the jackpot is won.

i. If the casino licensee or group of casino licensees comply with this section by lending funds to a winning patron to pay the income tax liability, the casino licensee or group of casino licensees may require a winning patron to encumber, assign or transfer to it or them the right to receive a portion of the future payments sufficient to repay such a loan.

HEALTH

(a)

PUBLIC HEALTH COUNCIL

State Sanitary Code

Vital Statistics Registration; Preparation, Handling, Transportation, Burial and Disinterment of Dead Human Bodies

Proposed Readoption: N.J.A.C. 8:9

Authorized By: New Jersey Public Health Council, Louise Chut, Ph.D., M.P.H., Chairperson.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1990-565.

A public hearing concerning this proposed readoption will be held on December 10, 1990, at 1:30 P.M. at the following address:

New Jersey Department of Health
First Floor Auditorium
Health-Agriculture Building
Trenton, New Jersey 08625-0360

Submit written comments by December 19, 1990 to:

Thomas T. Culkin, PharmD, MPH
Acting Director, Vital Records and Health Statistics
Department of Health
Health-Agriculture Building
Room 405, CN 360
Trenton, New Jersey 08625-0360
(609) 292-4029

The agency proposal follows:

Summary

Chapter 5 of the State Sanitary Code (N.J.A.C. 8:9) provides for the proper preparation, handling, transportation, burial, and disinterment of human bodies. Medical personnel, health officials, transportation officials, and funeral directors are directed how to handle the remains of humans, including those which may harbor communicable diseases. It is the intent of these rules to prevent the spread of communicable diseases and to provide for proper handling of dead bodies.

The Public Health Council (hereafter, the Council) proposes to readopt the chapter with changes reflecting modern concepts of communicable disease, including the necessity to properly handle diseases, such as AIDS, that may be fatal to persons exposed to fluids from bodies. The new diseases stipulated are those listed by the Centers for Disease Control as being subject to control measures to halt the spread of disease.

The Council has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purposes for which they were initially promulgated.

Public comment is invited so that the Council can make a fully informed decision as to whether these rules should be readopted before their expiration date, pursuant to Executive Order No. 66(1978), on February 18, 1991.

The proposed readoption chapter is summarized as follows:

N.J.A.C. 8:9-1.1 provides for the disposition of bodies generally and in emergencies.

N.J.A.C. 8:9-1.2 provides for the disposition of bodies dead of certain communicable diseases. The proposed amendment adds several diseases (for example, viral hemorrhagic fevers) to the list of diseases which occasion burial within 24 hours unless embalmed and disinfected.

N.J.A.C. 8:9-1.3 provides for the preparation (handling, embalming) of dead bodies. The proposed amendment removes the emphasis on preparation of a body dead of a communicable disease and replaces it with an emphasis on "universal precautions" for all dead bodies.

N.J.A.C. 8:9-1.4 provides for notification of local health authorities by a funeral director if a body has had certain communicable diseases. The proposed amendment specifies which diseases occasion immediate telephone notice to local health authorities and further specifies which diseases need only be communicated in writing within 24 hours. The amendment also expands current requirements, making the rule consistent with the reporting of communicable diseases required of physicians, institutional superintendents, school principals, laboratory supervisors and health officers, in accordance with N.J.A.C. 8:57-1.3.

N.J.A.C. 8:9-1.5 provides that certain public funerals require a permit. The proposed amendment updates this section to make reference to a specific list of communicable diseases elsewhere in the Administrative Code.

N.J.A.C. 8:9-1.6 provides that certain bodies, possibly carrying a communicable disease, be transported in sealed caskets.

N.J.A.C. 8:9-1.7 provides that bodies without communicable diseases be prepared and transported properly.

N.J.A.C. 8:9-1.8 provides that a transit permit be obtained to transport bodies out of New Jersey.

N.J.A.C. 8:9-1.9 provides that bodies not be disinterred without court order or permit.

N.J.A.C. 8:9-1.10 provides that certain types of containers be used to transport disinterred bodies.

N.J.A.C. 8:9-1.11 provides for the proper disposal of unclaimed cremains (cremated remains).

In addition to the amendments noted above, the Department has corrected citations and typographical errors as part of the proposal, and has retitled the chapter to more accurately reflect its contents.

Social Impact

The Council believes that this readoption will continue the positive social impact which these rules have had in the past: communicable diseases which could be spread by the remains of humans will be properly handled by all concerned. Social conditions which have changed and thus

have mandated changes in these rules include the emergence of new diseases (for example, AIDS) and a diminished incidence of certain historical diseases (for example, typhus).

The effect of the rules as proposed will impact primarily all New Jersey funeral directors and their personnel who handle dead bodies. In effect, such persons will have to be aware of the various communicable diseases which might be injurious to their own and the public's health and take effective precautions to minimize the possibility that the personnel themselves and the public at large might be infected by specific diseases enumerated in the rules. It is expected that funeral directors and their personnel, despite the requirements for extra vigilance, will welcome these changes, in that they make the workplace safer. Negative consequences of these changes should be minimal, but include the need to familiarize oneself with certain Federal recommendations ("universal precautions"), and to become aware of certain additional (though infrequent) diseases which can be transmitted via bodily fluids.

Economic Impact

The economic impact of this proposed readoption with amendments, if any, falls largely on funeral directors and their personnel who handle dead bodies. However, the exact amount of money these rules, and the amendments proposed, will cost such personnel cannot be tabulated. Funding sources for funeral directors will remain unaffected. There will not be any economic impact on the public at large nor on any administrative agency. Any monetary savings resulting from the rules as proposed would lie in the avoidance of disease and its economic consequences, and cannot be determined. This proposed readoption with amendments will not have any additional economic impact on those affected by the rules. Neither the expanded reporting standards nor the addition of "universal precautions" are expected to require additional expenditures on the part of those regulated.

Regulatory Flexibility Analysis

The readopted rules and amendments primarily impact upon 1,000 funeral directors, most of whom can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose a requirement on funeral directors to report to their local health departments those communicable diseases specified in N.J.A.C. 8:57-1.2 which are found in any dead bodies they handle. The rules also require the funeral directors to follow the "universal precautions" outlined by the Centers for Disease Control, Atlanta, Georgia. This would include obtaining a copy of the document from the Centers for Disease Control and conducting their work as funeral directors in accordance with the precautions, neither of which require additional professional services or significant additional expense. No additional paperwork is required. Other requirements contained in the rules, such as the handling of a dead body in a dignified manner, do not require additional expense beyond the funeral director's normal execution of his or her duties. The Department has not established differential compliance requirements for small businesses, since most of those regulated are small businesses and since public health may be compromised should the standards not be followed.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:9.

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

CHAPTER 9

[VITAL STATISTICS REGISTRATION]

PREPARATION, HANDLING, TRANSPORTATION, BURIAL AND DISINTERMENT OF DEAD HUMAN BODIES

8:9-1.2 Disposition of a body dead of certain communicable diseases

(a) The person or persons responsible for the burial or cremation of a human body dead of cholera, **suspect cholera**, plague, **suspect smallpox**, [typhus fever], [or] yellow fever, **diphtheria**, **infectious tuberculosis**, or **viral hemorrhagic fevers (including, but not limited to, Lassa fever, Ebola and Marburg viral disease, and Congo-Crimean hemorrhagic fever)** shall not allow the same to remain without burial or other lawful disposition for a period longer than 24 hours after death unless said body is thoroughly embalmed and disinfected. If said body is to be buried or lawfully disposed of within 24 hours after death without embalming, said body, before removal from the

place of death, shall be placed in a tight covered casket which shall not thereafter be opened.

(b) (No change.)

8:9-1.3 Preparation of a dead body [dead of a communicable disease]

In the preparation for burial or transportation of a **dead body** [dead of any communicable disease], the funeral director, the embalmer and assistants shall **use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, Volume 38, S-6, June 23, 1989, available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference, which shall include taking** [take] due care to prevent any spread of infection in the handling of such body during transportation, in preparation and during embalming, and after contact with such body, **and** shall disinfect their hands and remove any soiled clothing. All instruments, gloves, coverings and utensils used in embalming or in handling the body shall be disinfected immediately after being used. All fluids or other matters removed from such body in the process of embalming shall be disinfected before final disposition.

8:9-1.4 Notification to be given to health officer by funeral director

(a) It shall be the duty of the funeral director in charge of a human body dead from [diphtheria, meningococcal meningitis, poliomyelitis, streptococcal sore throat including scarlet fever] any of the diseases listed in [Regulation 2 of this Chapter] **N.J.A.C. 8:57-1.3(b) to immediately notify by telephone** the local health officer or local board of health of the municipality or district in which the funeral is to be held. Such notice shall include the name of the deceased person, the cause of death and the time and place at which it is proposed to hold the funeral.

(b) **Diseases listed at N.J.A.C. 8:57-1.3(a) should be reported by the funeral director to his or her local health department in writing within 24 hours after the funeral director has been notified of a human dying from any of those diseases.**

8:9-1.5 Permit requirements for certain public funerals

No public funeral shall be held of any person who has died of any disease referred to in [Regulation 4] **N.J.A.C. 8:57-1.3(b)** unless a permit therefor shall first have been secured from the health officer or the local board of health of the municipality or district in which such funeral is to be held.

8:9-1.6 Transportation of certain bodies in sealed caskets

A person shall not convey or aid in conveying to a common carrier to be transported across or within this State, and a common carrier shall not accept for transportation or transport into or within this State, the body of a person who has died of any of the diseases referred to in [Regulation 2 of this Chapter.] **N.J.A.C. 8:9-1.2** unless the body is enclosed in a hermetically sealed casket and a license for such transportation has been first obtained in writing from the State Department of Health. ([Section] **N.J.S.A. 26:6-23**[, Revised Statutes].)

8:9-1.7 Transportation of bodies generally

(a) A human body dead from causes other than those included in [Regulation 2 of this Chapter] **N.J.A.C. 8:9-1.2** shall not be transported by a common carrier unless embalmed by arterial and cavity injection and enclosed in a leak-proof casket, or a leak-proof box, provided, however, that embalming shall not be required if destination can be reached within 24 hours after death and provided, further, that regulation shall not apply to disinterred bodies.

(b) This regulation shall not be construed to prevent the moving of the body of any person who has died on the property of or as a result of the activities of a common carrier, to a funeral director's establishment or the home of the deceased without embalming or encasing.

8:9-1.8 Necessity of transit permit

A dead human body shall not be transported out of the State by common carrier unless accompanied by a transit permit of the form adopted by the State Department of Health. ([Section] **N.J.S.A. 26:6-26**[, Revised Statutes].)

8:9-1.9 Disinterments; when allowed; permits

A dead human body shall not be disinterred or removed from any grave, tomb or burial place except by direction of a competent court of this State, or upon permit being given therefor by the local board of health having jurisdiction in the locality where the body is interred or entombed. ([Section] N.J.S.A. 26:6-37[, Revised Statutes].)

(a)

HEALTH FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE) Manual

Proposed Amendments: N.J.A.C. 8:31A

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1990-572.

Submit comments by December 19, 1990 to:
Charles O'Donnell, Director
Health Facilities Rate Setting, Room 601
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 8:31A affect subchapters 1, Accounting, 2, Definitions, 5, Reporting, 7, Rate Review Guidelines, 9, Inflation and 10, Miscellaneous.

Throughout the chapter, references to Health Economics Services have been changed to Health Facilities Rate Setting.

The subchapter 1 amendment repealing N.J.A.C. 8:31A-1.4, eliminates the reference to a cost allocation difference which has become obsolete. The subchapter 2 amendments eliminate the Acute Care Unit (ACU), Intensive Care (ICU) and Newborn Nursery (NBN) from reimbursement and change the Sub-acute Care cost center to a Patient Care Unit (PUC). (The Skilled Nursing Facility cost center had not been eligible for SHARE reimbursement and continues to be ineligible.) Prior to the establishment of the DRG system, all hospitals were regulated by SHARE. At this time, only rehabilitation and psychiatric hospitals are regulated by SHARE. The cost centers made ineligible for reimbursement do not apply to such facilities.

The Other Physical Medicine (OPM) Cost Center is renamed Other Physical Medicine and Psychology (OPMP). The amendments to subchapter 5 replace obsolete reporting terminology and forms. The subchapter 7 definitions which are outdated are revised. The filing dates for SHARE Actuals and audited financial statement are changed from April 30th and June 30th to May 31st for both submissions. Hospitals must separate expenditures and revenues of SHARE units from other units when the financial statements contain expenditures and revenues for more than one reimbursement system. The separate expenditures and revenues shall include an audit opinion on the SHARE Unit. Prior year Alternate Rate appeal adjustments will be included in Global Rates. The incentive for acceptance of the Global or Proposed Alternate Rates will be increased by automatic management adjustments. Utility and malpractice increases in the interim Global and Alternate Rates will be limited to 150 percent of the median. N.J.A.C. 8:31A-7.4(b) has been deleted as this text is no longer current since it includes references to the 1979 overspending adjustment. Reasonable limits of 130 percent of the median for Other Physical Medicine and Psychology (OPMP) and Education (EDR) will be established.

Social Impact

These proposed amendments will insure that the SHARE rate setting system will continue to provide a protective measure for the consumer against escalating hospital costs. This will be accomplished by insuring that all costs are evaluated for reasonableness while enabling the specialized and rehabilitation hospitals and the Department of Health to eliminate unnecessary appeals.

Economic Impact

These changes will insure that an effective regulatory system for cost containment in specialized and rehabilitation hospitals will be successful in controlling costs for the hospital, payor and consumer. The increase in incentives for acceptance of the Global and Proposed Alternate Rates will eliminate some appeals and provide a positive cash flow for many hospitals. The inclusion of prior year Alternate Rate appeal adjustments in Global Rates will eliminate the need for appeals for adjustments which were justified by the hospital in the prior year, thus eliminating unnecessary expenditures of time and cost for the hospital and the Department of Health. The proposed ineligibility of certain cost centers at N.J.A.C. 8:31A-2.2(a) will not affect the regulated public, as these cost centers do not apply to rehabilitation or psychiatric hospitals.

Regulatory Flexibility Statement

The hospitals regulated by N.J.A.C. 8:31A are not small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as the hospitals all employ more than 100 people. Therefore, no regulatory flexibility analysis is required.

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

8:31A-1.4 [Flexibility] (Reserved)

[Recasting is not intended to eliminate the flexibility currently available to hospitals in developing the cost reimbursement by Blue Cross. Accordingly, hospitals utilizing this flexibility should do so by reporting costs consistent with the definitions and methodology prescribed in this manual, and then allow for these costing differences through an adjustment to their per diem. This per diem adjustment should be entered to Form A, Line M, "Costing Differences". Entries to both "Medicare Carve-Out" and "Costing Differences" should be fully explained by hospitals.]

8:31A-2.2 Inpatient cost center definitions

(a) Inpatient cost centers are those that provide daily nursing care to inpatients[, and are as follows] **The following cost centers, except PCU, are non-eligible for SHARE reimbursement:**

1.-3. (No change.)

4. [Sub-acute care (SAC)] **Patient Care Unit (PCU);**

5. (No change.)

(b) Uniform reporting of inpatient cost center costs should involve a review of the following special cost considerations:

1. Special cost considerations:

i.-iv. (No change.)

v. Dietary: Include in ACU, [SAC] PCU and SNF the cost of setup and removal of trays after delivery by dietary. The cost of transportation of food trays to and from the cost centers is included in dietary.

vi.-xiv. (No change.)

2.-5. (No change.)

6. [Subacute care (SAC)] **Patient Care Unit (PCU); function:**

i. [Subacute care] **Patient Care Unit** provides nursing care to patients on the basis of physicians' orders and approved nursing care plans, and consists of care in which the patients require convalescent and/or restorative services at a level less intense than acute care requirements.

ii. [In addition to the bedside care and nursing station functions listed in the cost center definition for acute care units and subacute care units, also educate] **Educate** the patient and patient's family on continuing care.

iii. (No change.)

7. (No change.)

8. Inpatient (CIP) cost details:

i. Expenses reported in the CIP inpatient cost centers, namely ACU, ICU, NBN, and [SAC] PCU, including allocated NAD costs, are to be further classified as to registered nursing service, licensed practical nursing services, nursing attendants and unit clerical services.

ii. (No change.)

9.-12. (No change.)

8:31A-2.4 Ancillary and physicians cost centers [definitions]

(a) (No change.)

(b) The following special cost considerations should be reviewed with respect to the uniform functional reporting of costs[.];

1. (No change.)

(c) **Ancillary and physician cost center definitions are as follows:**

[2.]1. Anesthesiology (ANS) [functions] **definitions and functions:**

i.-iii. (No change.)

Recodify 3.-11. as **2.-10.** (No change in text.)

[12.]11. Other physical medicine [(OPM); function:] **and psychology (OPMP); function:**

i.-ii. (No change.)

iii. **Psychology: Includes non-physician psychological counseling and testing.**

Recodify 13.-21. as **12.-20.** (No change in text.)

8:31A-5.1 Reporting; generally

(a) (No change.)

[(b) Significant modifications to format and content of data reported by hospitals in their 1975 budget submissions include the following.]

1. (No change.)

[2. The beginning point for budgets is projected costs for the current year. These projected costs are related to the total approved budget adjusted for projected volumes, legal items and pass throughs.

3. Hospitals are to account separately for budget charges due to volumes, legal and management actions, and cost rates.]

Recodify 4.-5. as **2.-3.** (No change in text.)

[(c)]4. The filing of annual **calendar year** financial statements will continue to be required of hospitals.

8:31A-5.2 Overview of forms

(a) Rules concerning overview of forms include the following[.];

1. Form A summary: Form A summarizes cost and per diems for [CY approved budget, CY projected and BY budget] **base year actual costs.** [Form A also summarizes the change in total net covered inpatient operating costs from CY approved budget to CY projected.]

2. B forms, Volumes and statistics; reporting of all budgeted statistics:

i. (No change.)

ii. B-2: Quarterly inpatient utilization summary; **B-2A Annual inpatient utilization summary;**

iii.-v. (No change.)

3. Form C, Cost Center budgets: These forms [(12 pages)] **(2 pages)** [develop budgets for each cost center by adjusting CY projected costs for annualization and for changes due to volume, legal and management and cost rates] **indicate hours, salaries and other actual costs less expense recoveries by cost center.** Supplementary forms are required as follows:

i. (No change.)

ii. C-2A: [Salary and fringe benefit summary] **Contracted services detailed report;**

iii. **C-2B: Other expenses detailed report;**

Recodify iii.-iv. as **iv.-v.** (No change in text.)

[v.]vi. C-5: [Explanation of annualization items] **Other operating and non-operating income;**

[vi.]vii. C-6: Details on [inpatient (CIP) and] nursing [administration (NAD)] costs.

[4. Form D, Legal and management: Form D accounts for the cost effects of all legal and management changes. A separate form D should be submitted for each change.]

[5.]4. E and F forms, Cost allocations:

i.-ii. (No change.)

iii. Categories of patient care services on these forms and their use are as follows:

(1) Covered inpatient (CIP): Inpatient care services [reimbursable] **reimbursable** by Blue Cross [Includes all inpatients in inpatient cost centers except skilled nursing facility];

(2) (No change.)

(3) Education and research (EDU and RES): [Direct and indirect costs] **Education and research cost as defined by N.J.A.C. 8:31A-2.6(b);**

(4) Non-eligible (NON-EL): The cost of all non-eligible patient care services, including clinics and private outpatient per Blue Cross instructions. **N.J.A.C. 8:31A-2.2(a) is an exception to the Blue Cross instructions.** Costs of non-eligible services should be included in cost center [budget]s, with the exception of purchased cost of blood and pacemakers.

iv. These forms are as follows:

(1) **E-gross patient care revenue;**

Recodify (1)-(3) as **(2)-(4)** (No change in text.)

[6.]5. (No change in text.)

[7.]6. Form H-1, Employee data: Data regarding certain categories of employees included in [budgets] **cost centers.**

[8.]7. Form H-2, Summary of medical professional [budget] **cost component: Summary of all physicians and residents and their costs included in [CY projected and BY budget] the actual cost report.**

[9.]8. (No change in text.)

[10.]9. Form K, [CY budget adjustment] **actual adjustments:** Form K calculates [projected] adjustments to [BY approved budgets] **base year approved CIP costs.**

[11.]10. L forms, Pro forma financial statements: Analysis of revenue, results of operations, financial position and cash flow for operations of the current prior year.

i. (No change.)

ii. L-2: [Estimated revenues] **Revenues** and expenses and cash flow;

iii.-iv. (No change.)

8:31A-5.3 Listing of forms

(a) The following is a listing of forms involved in reporting:

1. A—[Budget submission summary] **Actuals summary;**

2. (No change.)

3. [B-2—Quarterly inpatient utilization summary] **B-2A—Annual inpatient utilization summary;**

4. (No change.)

5. B-4—Ancillary volumes [(two pages)];

6. (No change.)

7. C—[Cost center budgets (12 pages)] **Cost center actual costs;**

8. (No change.)

9. C-2—Salary and fringe benefit summary; **other expense detailed;**

10.-11. (No change.)

12. C-5—[Explanation of annualization items] **Other operating and non-operating income;**

13. C-6—[Details of inpatient (CIP) and nursing administration (NAD) costs] **Details of nursing costs;**

14. [D—Legal and management changes] **E—Patient care gross revenue;**

15.-21. (No change.)

22. K—[Budget] **cost adjustments;**

23. (No change.)

24. L-2—[Estimated revenues] **Revenues** and expenses and cash flow;

25.-26. (No change.)

8:31A-5.4 Special instructions for completion of forms

(a) With the exception of E, F and K forms, these instructions merely supplement descriptions and footnotes on the forms in clarifying areas that may present difficulties. Instructions for E, F and form K are more complete [since these forms deal with concepts new to the submission of New Jersey hospital budgets].

(b) Rules concerning all forms include:

1.-2. (No change.)

3. Special instructions concerning form A summary are:

i. (No change.)

ii. CY approved budget data should be entered from rate summary schedule A-1.]

4. Form B-1, Inpatient volumes:

i. (No change.)

iii. Actual year to date: Include the same number of months for both years.

iii. BY changes due to regional usage: Enter adjustments based upon expected increases or decreases in the number of inpatients due to population trends, changes in age, mix or other characteristics of the area population, the introduction of programs new to your region, and other factors affecting total regional usage.

iv. BY changes due to share of usage: Enter adjustments based upon an expected increase or decrease in your share of the total number of inpatients expected in your service area. Adjustments could be based upon anticipated changes in the size or composition of the medical staff, changes in patients admitted per medical staff member, new programs, changes in admissions review policies, and so forth.]

Recodify v.-vi. as ii.-iii. (No change in text.)

5. Form B-2 reports the inpatient volumes and salaries and contracted services by patient care services grouped by SHARE inpatient cost centers. [This form replaces the Department of Health's facility compliance and patient data quarterly report.] Unlike other SHARE reporting forms, form B-2 should be submitted quarterly.

i. **Form B-2A**—Definitions of types of beds are as follows:

(1)-(21) (No change.)

6.-7. (No change.)

8. Form B-4, Ancillary Volumes (2 pages):

i. For volumes reported [(except for RVU data)], units should be reported consistently [for LY, CY and BY and] for covered inpatients, emergency room and non-eligible services.

ii. Refer to Subchapter 4 of this Chapter for guidance in the reporting of relative value units and related revenue data for diagnostic radiology and laboratory.

iii. The sample sizes specified in Subchapter 4 of this Chapter are the minimum required. A larger sample may be taken if you believe that such is required to accurately estimate your RVU's. A larger sample should be required only if your charge rates for various procedures do not vary approximately with their RVU's.

iv. If, because of mix changes, you believe that the RVU's calculated on lines M and P are not appropriate for your institutions, then you may replace them with your own estimates and attach an explanation of how you developed your estimate.]

9. (No change.)

10. Form C, Cost center [budgets (12 pages)] **actual costs**:

i. All cost centers [(excluding page 12)]:

[(1) Total CY projected: Projections for CY, 12 months, are based on your cost projections for each cost center.

(2) Annualization: Adjust CY projected, where necessary, to reflect changes that have less than a full-year effect, for example, carry over positions, and for nonrecurring items. Entries to the line should be explained on form C-5.

(3) Budget base: Total lines A and B.

(4) Changes, volume: Cost changes attributable to volume changes budgeted for BY per B forms.

(5) Changes, legal and management: Complete form D for these changes to BY budget as follows:

(A) Legal: Changes required to implement legislation or other mandates such as: Joint Committee on Accreditation of Hospitals (JCAH), Medical Practice Board, licensing and inspection, certificate of need and Federal and State legislation.

(B) Management: Changes due to management decisions such as personnel and physician changes and trade-offs among personnel, disposables, contracted services, and so forth. "Management" also includes all changes other than changes due to volumes, cost rates and legal.

(6) Changes, cost rates: Changes due to salary rates, supply prices, contracted services and other expense rates budgeted for BY.

(7) Total BY budget Sum of lines C through F.

(A) For the cost centers affected it is sufficient to account for the total change in "Dep and Fac Int" (depreciation and facilities interest) and "Lease cost" as "Legal and management".

(B) Form D need not be completed for changes in depreciation and facilities interest.

ii. Page 12: Form C, page 12 deals with total cost center budgets.]

(1) Blue Cross totals (BCT): Enter here the totals of all cost center costs entered on form C[, pages 1 through 11].

(2) Reconciling items (RIT): Reconciling items are costs which account for all differences between SHARE cost center totals and the total costs of the institution. Enter the totals from C-4[for CY projected and BY budget].

(3) Total institution costs (TOT): These totals should represent the total cost of the institution[. For current year projection and budget

enter BCT totals adjusted for RIT (lines A, G).] **adjusted for RIT.** [Base current year, six months actual data on hospital records.]

11. Form C-1, Depreciation and lease costs[.]:

[i. Methods: Report the estimated depreciation lives and rates (straight line, double declining balance, and so forth) for each asset class.

ii. Allowable costs: Costs calculated in accordance with the elected Blue Cross option.

iii. Minor equipment: Consistent with your present accounting for items of small size and unit cost.

iv. Major moveable equipment: Depreciation and lease costs of major moveable equipment are to be reported separately for cost centers shown. The remainder of these costs are to be reported in "plant".

v. Plant: In addition to the remainder of major moveable equipment, plant also includes the costs for building, improvements to land and buildings, fixed and minor equipment. Enter the change for these costs to the plant form C budget as "Legal and management". (Form D is not necessary for this entry.)]

12. Form C-2, [Salary and fringe benefit summary:] **Other expenses detailed report.**

[i. Payroll: The total of employees' and physicians' salaries should equal total payroll. All increases to employees' salaries should be accounted for on lines C, D and E.

ii. Pension costs: Past service includes the carry forward of deferrals made per Blue Cross instructions.]

13. Form C-3, Other cost details [:Patient care coordination (PCC), administrative and general (A and G) and other general services (OGS)].

[i. PCC: Enter the costs of each of the following items: utilization review, PSRO, preadmission testing, and all other.

ii. OGS: Report the four largest services.

iii. A and G other expense and contracted services: Report a breakdown of A and G other expense and contracted services. Specifically include:

(1) Legal fees;

(2) Audit Fees;

(3) Management consulting fees, including transfers to parent firms for management services;

(4) Hospital association dues;

(5) Telephone costs charged by telephone companies, including discounts;

(6) Total for all items including those above should agree with A and G other expense and contracted services totals on form C.

iv. EDG electrodiagnosis: Current average physician cost per procedure. For each service, lines V, W and X, report:

(1) Average cost per procedure: Include physicians' fees and salaries;

(2) Estimated CY volume: Should be a breakout of the EDG procedures reported on schedule B-4, line B, total;

(3) Basis for compensation: Per contracts and/or agreements;

(4) Hospital cost? (yes or no): Indicate "yes" if the costs are borne by the hospital, otherwise "no".]

14. (No change.)

15. Form C-5, Explanation of [annualization items: indicate the cost centers affected and the effect on hours paid and total costs of each annualization item needed to adjust form C's total CY projected to budget base. Briefly explain each item] **other operating and non-operating income.**

16. **Form C-6—Details on nursing costs** on inpatient (CIP) and nursing administration (NAD) costs:

[i. Beginning with projected costs for 1977, hospitals are requested to report inpatient (CIP) costs by categories of services provided in these cost centers.

ii. In the absence of specific records, hospitals should employ methods, such as sample periods, in reporting these costs to services.

iii. Inpatient (CEP) reporting relationships for 1978 SHARE follow.

SHARE 1978 Reporting

Form C, page 1 (units)	Form C-6 (Services)
ACU Acute care units	RNS Registered nursing services
ICU Intensive care units	LPN licensed practical nursing services
NBN Newborn nursery	ATT Nursing attendants
SAC Subacute care	CLR Clerical services

iv. Costs formerly defined as belonging in SHARE's nursing administration (NAD) cost center should now be allocated to and reported in the appropriate cost centers. Report a breakdown of those costs which formerly were classified in NAD by the cost center clusters where these costs are now reported (inpatient care, ancillary services, and others).]

17. Form [D, Legal and management changes:] **E—Patient care gross revenue.**

[i. Use a form D to account for the effect on cost centers' cost of each legal and management change. Enter the total cost effect by cost classification, indicating the cost center(s) affected. Section B should fully explain the change. For legal changes, attach documentation of the reason for same.

ii. Complete form D for legal and management changes as follows:

(1) Legal: Changes required to implement legislation or other mandates such as: Joint Committee on Accreditation of Hospitals (JCAH), Medical Practice Board, licensing and inspection, certificate of need and Federal and State legislation.

(2) Management: Due to management decisions such as personnel and physician changes and trade-offs among personnel, disposables, contracted services, and so forth. "Management" also includes all changes other than changes due to volumes, cost rates and legal. If a certificate of need has been issued for any management change, record the certificate of need number. If a change in cost/scope has been filed and approved on the original certificate of need, record the number assigned to this filing.]

18. Form E-1, Bases for distributing ancillary costs and statistical units:

i. This form serves two purposes:

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

[(3) It will not be necessary to complete forms E-1 and E-2 for both CY and BY unless substantial changes in mix of services are budgeted for BY.]

ii-iv. (No change.)

v. Total direct costs, and so forth: Enter in these columns the respective amounts applicable to each ancillary service. The data for total direct costs and total salaries should be taken from the form C entries. Total salaries include physicians' salaries.

(1) Housekeeping units should be those units which you plan to use on your [CY] Blue Cross reports (Square feet, hours, and so forth).

(2)-(4) (No change.)

19.-23. (No change.)

24. Form J—Hospital based physician data.

[24.] 25. Form K, [Budget] cost adjustments:

i.-xiii. (No change.)

Recodify 25.-26. as 26.-27. (No change in text.)

[27.] 28. Form L-2, Revenues, expenses and cash flow:

i. "Operating expenses" reported should agree [(for CY and BY)] with amounts reported on form C, page 12, total institution costs, not including expense recoveries.

ii. (No change.)

Recodify 28.-29. as 29.-30. (No change in text.)

8:31A-5.5 Statement of purpose; reporting procedures

(a) (No change.)

(b) By [April 30] **May 31** of each year, all New Jersey Hospitals are required to file the preceding year's actual costs on the SHARE Actual Reporting Forms. The requirements for the cost reporting are detailed in the SHARE Manual and the Financial Elements and Reporting Regulation, N.J.A.C. 8:31B-4 as amended.

(c) (No change.)

[(d) Should individual hospitals be unable to submit the above data in a timely and suitable manner, individual preliminary cost bases may be developed without those financial elements not documented by the required reporting. Furthermore, in order to develop standards and preliminary cost bases in a timely manner, the Commissioner shall use such appropriate data as is available and may eliminate hospitals from the sample which fail to submit suitable data in a timely manner.

(e) The Commissioner may waive the reporting requirements for certain SHARE Forms for any non-acute care hospitals.]

SUBCHAPTER 7. RATE REVIEW GUIDELINES

8:31A-7.2 Hospital Rate Review Guidelines

(a) The Commissioner of Health, pursuant to the authority of N.J.S.A. 26:2H-1[,] et seq. N.J.S.A. 17:2H-1 et seq. and with the approval of Health Care Administration Board, adopts the following rules concerning the rate review for specialized and rehabilitation hospitals.

1.-2. (No change.)

3. Definitions:

In addition to those definitions outlined in N.J.A.C. 8:31A-1.4, the following definitions shall apply:

"Director" means the Director of [Health Economic Service] **Health Facilities Rate Setting.**

"Analyst" means the Analyst, [Health Economic Services] **Health Facilities Rate Setting**, to whom an individual hospital's cost submission has been assigned.

... "Final Administrative Rate" means the payment rate developed as a result of acceptance by the hospital of the Global rate, acceptance by the hospital of the Proposed Alternate Rate, acceptance by the hospital of the Administrative Payment Rate, or the rate established following an appeal to the [Hearing Officer] **Administrative Law Judge (ALJ)** from the administrative rate determination for the methodology for new or non-SHARE base year hospitals, as described in N.J.A.C. 8:31A-7.5 and all subsequent sections.

"Final Rate" means the payment rate developed from the Final Administrative Rate following the certification of actual costs of providing health care services as reported by hospitals, by making the retroactive adjustments described in N.J.A.C. 8:31A-[7.15] 7.14.

... "Schedules" means the schedules used to [test the reasonableness of actual expenses and to determine reasonable increases] **calculate rate in accordance with SHARE rules.**

... "Level II Appeal" means the appeal held before a [hearing officer] **Administrative Law Judge (ALJ)** in which the hospital or the payors appeal the Administrative Payment Rate based on the Analyst Review (Level I Appeal). The purpose of the Level II appeal is to determine if the Guidelines were properly interpreted and executed by the analyst at the Level I Appeal based on only information and documentation made available at the time of the analyst review.

...

4. Times tables:

i. At the request of the Commissioner, hospitals shall furnish to the Department of Health such reports and information as the Department may require to establish reasonable rates for payment by payors for health care services provided by a hospital, excluding confidential communications from patients. The information shall be used to establish inpatient per diem rates according to the following schedule:

Activity	Date in the Rate Year
SHARE Base Year Actual Submission	[April 30] May 31
Projections for Rate Year	July 31
Volumes and other items as required	
Request for additional Depreciation, Malpractice and interest to be included in the Payment Rates	July 31
Global Rate Established	October 1
Request for Alternate Rate	November 1
Alternate Rate Established	December 15
Form B-2 submitted for Quarter Ending:	
December 31	February 15
March 31	May 15
June 30	August 15
September 30	November 15
Date to submit actual costs on SHARE Forms	[April 30] May 31
Date to submit Audited Financial Statement for preceding calendar year	[June 30] May 31

ii. Hospitals shall submit their Base Year Actual Data to the Department no later than [April 30.] **May 31** of the following year. **The audited financial statements shall separate the expenditures and revenues of the SHARE unit when the financial statements contain expenditures and revenues for more than one reimbursement system. The audit of the financial statements shall contain an opinion on the reasonableness of the separation of the SHARE expenditures and revenues.** Volume projections, documentation of depreciation and interest costs required for the rate year and other information needed to establish reasonable payment rates shall be submitted by July 31. Any errors in the actuals or supplemental information submitted must be corrected within 10 working days of notification of the error. Once the Department has determined that the actual cost submission is suitable for entry into the data base, it shall be so entered, no further substitutions or rearrangement of costs will be accepted unless it is deemed necessary by those performing the detailed, on-site review pursuant to N.J.A.C. 8:31A-7.3.

iii. Hospitals that fail to submit the actual costs in a condition that would render them suitable for entry into the data base by [June 30.] **July 31** and/or those that fail to submit volume projections and any other supplemental information in a condition that would render them suitable for entry into the data base by August 15, shall forfeit their right to proceed under the normal methodology for determining a reasonable reimbursement rate. These hospitals shall have their rates calculated according to the following method:

(1) Hospitals failing to comply with the above deadlines shall submit their actual costs and/or volume projections and other required information to the Department in a condition suitable for entry into the data base no later than 30 calendar days subsequent to the respective deadlines. No Global Rate shall be calculated for these hospitals. The hospital's Proposed Alternative Rate shall be devoid of any of the automatic management increases that normally will be calculated for other hospitals receiving an Alternate Rate in accordance with N.J.A.C. 8:31-7.11. In lieu of these normally allowed management increases, the hospital will be required to document the need for each management increase at the detailed review with the Analyst before such increases may be included in the Administrative Payment Rate. The hospital may appeal the rate so established [to the Hearing Officer] in accordance with N.J.A.C. 8:31A-7.14. The Proposed Alternate Rate will not be calculated for the hospitals having late submissions until after all other hospitals proceeding under normal review process have received their rate.]

(2)(1) Should the hospital fail to submit its actual costs and/or volume projections, and other required information to the Department in a condition suitable for entry into the data base as stipulated in (1) above, its latest approved rate (Global Rate, Proposed Alternate Rate, Administrative Payment Rate or Final Administrative Rate) increased by one half of the rate year economic factor shall become its Final Administrative Rate. The hospital will not be enti-

tled to an appeal of this rate. The Final Approved Rate will be adjusted for the item specified in N.J.A.C. 8:31A-[7.15]**7.14**.

iv. For any hospital proceeding under the normal methodology which has requested an Alternate Rate, a date for the detailed review with the Analyst shall be set within 60 working days of the issuance of the Proposed Alternate Rate. At least 10 working days prior to the date so established the hospital must submit written documentation of all items to be discussed. This documentation will specify each item **by cost center**, the costs associated with the item, **in total institution (unfringed, base year dollars)** and the hospital's rationale for the request. Should the hospital fail to submit the documentation in the allotted time or fail to appear on the established date, it shall have forfeited its right to an appeal, and the Proposed Alternate Rate will become the Final Administrative Rate.

(1) (No change.)

(2) Should the hospital pursue an appeal of the Administrative Payment Rate provided for in N.J.A.C. 8:31A-[7.14]**7.13** the hospital may not submit documentation other than that provided to the Analyst unless the hospital can demonstrate the existence of good cause for failure to provide the documentation to the Analyst within the deadlines set forth above.

(3)-(4) (No change.)

v. If a hospital fails to submit its Actual data by [April 30] **May 31** and is unable to justify the delay or non-submission, its per diem will be reduced by five percent effective the first day of each month, until the submission is received by the Department. This reduced rate shall remain in effect until the Actual data has been processed and found suitable for entry into the Actual data base. Once the data is approved for entry into the data base the reduced per diem rate will be retroactively increased to the latest rate approved by the Department. The hospital is allowed to submit corrections and changes to its actual data until the data base is closed on **July 31**.

8:31A-7.3 Auditing of costs

(a) At a mutually agreed upon time, the Department may perform a detailed on-site review of costs and statistics to verify consistent reporting of data and extraordinary variations in data. The hospital may ask the Department to reconsider its findings, and the Director of Health [Economics Services] **Facilities Rate Setting** will render a decision. This decision may be appealed according to the Administrative appeal process as defined in N.J.A.C. 8:31A-[7.14]**7.13**. Nothing in this section modifies in any way, the rights of any third party to conduct its own audit per contract agreement and, for legal requirements.

(b) (No change.)

8:31A-7.4 Methodology for calculating Global Rates

(a) Global Rate will be developed from the hospital's [prior year Global Rate] **most current prior year Alternate or Global rate as of October 1. Subsequent appeal adjustments granted to a prior year rate after October 1 in accordance with N.J.A.C. 8:31A-7.2, 7.13 or 7.15 will be included in the succeeding year Global Rate** or from the Methodology for new or non-SHARE base year hospitals described in N.J.A.C. 8:31A-7.5(c), established pursuant to the SHARE Guidelines. Acceptance of the Global Rate shall constitute a waiver of any Right of Appeal concerning the rate and no adjustments to any prior rate shall affect the Global Rate.

(1) (No change.)

(2) The adjusted approved Global Rate will be calculated by adjusting the prior year's [Global Rate] **Alternate or Global Rate** in existence on [December 1] **October 1** by the following factors:

i. (No change.)

ii. The reasonable costs for legally required changes made in the prior year that were or were not included in the [existing Global Rate] **prior year**.

iii. Difference between the approved Global Rate and the projected reasonable costs for:

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

(3) Malpractice, **not to exceed 150 percent of median;**

(4) Utilities, **not to exceed 150 percent of median;**

iv.-v. (No change.)

3.-4. (No change.)

5. The hospital's specific adjustments carried out in accordance with (a)lii above establishes the reasonable increase in costs for management changes in lieu of the management request and approval procedure that existed in previous Rate Review Guidelines.

i. For hospitals having actual costs equal to or less than 95 percent of the median in all three Level I clusters (statewide patient care cluster costs per patient day, statewide general services cluster cost per patient day, and category ancillary cluster costs per admission), the non-physician costs will be increased by [two] **three** percent.

ii. For hospitals having actual costs equal to or less than the median in all three Level I clusters, the non-physician costs will be increased by [one and one-half] **two and one quarter** percent.

iii. For hospitals having actual costs equal to or less than 105 percent of the median in all three Level I clusters, the non-physician costs will be increased by [one] **one and one-half** percent.

[iv. For hospitals having actual costs equal to or less than 110 percent of the median in all three Level I clusters, the non-physician costs will be increased by one-half percent.]

[v.]iv. For all other hospitals, the non-physician costs will not be increased.

[vi.]v. The physician portion of the hospital's costs will be increased by one-half of the factor applied to the non-physician's portion.

6.-7. (No change.)

[(b) The hospital's prior year Global Rate and/or Base year Alternate Rate covered inpatient cost base includes the 1979 overspending adjustment. The current rate year Global and/or Alternate Rate will be determined from the prior year Global and/or Alternate Rate.]

8:31A-7.5 Methodology for Alternate Rates

(a) A hospital may request an Alternate Rate based on the SHARE rate review methodology by notifying [the Hospital Rate Setting Unit, Health Economics Services] **Health Facilities Rate Setting**, New Jersey State Department of Health, CN[B] 360, Trenton, New Jersey 08625, by certified mail on or before November 1. The Department will notify each such hospital of its Proposed Alternate Rate established under the SHARE methodology on or before December 15. The Alternate Rate will be developed in accordance with the process described in [the] (b) below and can be appealed as provided in this [regulation] **subchapter**. There is no assurance that the Alternate Rate so developed will be equal to or greater than the Global Rate initially developed. Once the hospital has requested an Alternate Rate, this rate will be established and implemented.

(b) A proposed Alternate Rate will be developed from the following:

1.-2. (No change.)

3. An industry-wide economic factor as described in N.J.A.C. 8:31A-[7.10]**7.9** will be applied globally to actual expenses, adjusted in accordance with (a)1 and 2 above.

4. The hospital will be given an automatic adjustment to its actual costs, adjusted in accordance with (a)1 and 3 above, to provide for management increases in accordance with N.J.A.C. 8:31A-[7.11]**7.10**. Should the hospital determine that the allowed increase is insufficient, the hospital will be required to document the need for additional costs. No further adjustment will be allowed until the hospital can justify the need for all the management increases allowed in the total approved costs. Should the hospital attempt to document the need for additional monies for management increase, and/or seek an increase of its covered inpatient costs, except as described in N.J.A.C. 8:31A-7.11, it is at risk for the monies allowed through the automatic adjustment. (For example, a hospital may determine it requires an increase of \$100,000 in a particular cost center which has only been given an increase of \$30,000 through the normal methodology. That same hospital may have been given an automatic global management increase totaling \$250,000. No additional costs will be given in the center requiring the \$100,000 adjustment until the need for all of the allowed \$200,000 has been explained. Should the hospital substantiate the need for only \$200,000 of the automatic adjustment, the remaining \$50,000 will be deducted from the approved costs.)

i. Information relating to the documentation of the need for additional monies for **legal and/or** management changes must be sub-

mitted to the Analyst in accordance with the time frame established for the detailed review in accordance with N.J.A.C. 8:31A-7.2(a)4iv. **These changes should be specifically identified as a legal and/or management change, item by item in base year dollars and are defined as follows:**

(1) **Legal: Changes required to implement legislation or other mandates such as: Joint Committee on Accreditation of Hospitals (JCAH), Medical Practice Board, licensing and inspection, certificate of need and Federal and state legislation.**

(2) **Management: Changes due to management decisions such as personnel and physician, contracted services, and supplies in the rate year.**

ii. Any request for additional costs related to legal/management changes approved in the [Administrative Payment Rate] **base year alternate rate** and not included in the amounts for the automatic adjustments described above will be considered by the Analyst. A presumption of reasonableness of these costs will prevail in those instances where all conditions remain equal.

5.-11. (No change.)

12. The Department may perform a detailed on-site review of costs and statistics to verify consistent reporting of data and extraordinary variations in data. The hospital may ask the Department to reconsider its findings. The decision will be made by the Director of [Health Economics] **Health Facilities Rate Setting** Services and may be appealed according to N.J.A.C. 8:31A-[7.14]**7.13**.

13. A hospital's Administrative Payment Rate (APR) will be issued subsequent to the completion of the review with the Analyst. The review will be undertaken in accordance with procedures established by [Health Economics Services] **Health Facilities Rate Setting**. If the hospital accepts the Administrative Payment Rate, this becomes the Final Administrative Payment Rate.

14. A hospital may appeal its Administrative Payment Rate as outlined in N.J.A.C. 8:31A-[7.14]**7.13**.

15. (No change.)

(c) For hospitals which have entered the SHARE system since January 1, 1986 [and which have no historical statistics and costs in the base year and] which do not have an "Approved Rate" in accordance with N.J.A.C. 8:31A-72 of the Hospital Rate Review Guidelines, the Alternate rate will be developed from equalized median unit costs from base year actual costs in accordance with Appendix A cost centers, peer groups and units of service; and base year median cost per admission for the Other Physical Medicine and the Education and Research cost centers. Certificate of Need square feet projections will be utilized as the units of service for the Plant and Housekeeping cost centers. Depreciation and lease costs reportable in the Plant cost center will be reimbursed for the covered inpatient portion of Certificate of Need approved costs stated in the Certificate of Need approval letter and application. Interest expense on long-term debt reportable in the Plant cost center will be reimbursed for the covered inpatient portion of Certificate of Need approved costs stated in the Certificate of Need approval letter and application.

1. During the median methodology years an occupancy rate of 80 percent and projected admissions and plant square feet, adjusted for the period of operation in a calendar year, will be applied to the median unit costs to develop covered inpatient costs (CIP) and an approved per diem. [The approved CIP base year costs will be adjusted to actual occupancy for the period of operation for the calculation of subsequent year rates.] Median methodology years will be calculated as follows:

i.-ii. (No change.)

iii. The Year 3 Global Rate will be developed from the Year 2 Alternate Rate, in accordance with N.J.A.C. 8:31A-7.4, if a facility has an initial period of operation of 12 complete calendar months in Year 1. The Year 3 Alternate Rate will be developed in accordance with N.J.A.C. 8:31A-7.6 unless N.J.A.C. 8:31A-7.5(c) applies.

(1) If a facility in Year 1 did not have an initial period of operation of 12 complete calendar months in Year 1, a Year [2] 3 Global Rate will not be developed but a Year 3 Alternate Rate will be developed from Year 2 Approved Covered Inpatient Costs (CIP) adjusted for measured inflation and a management adjustment of two percent.

iv.-v. (No change.)

8:31A-7.10 Management increases

(a) (No change.)

(b) For each hospital, a comparison shall be made of the unit cost of each Level I and Level II cost center to the median cost and adjustments will be made to increase the base year costs as follows:

Hospital's Unit Cost Is:	Percent Allowance
equal to or greater than the median	0
equal to or greater than 95 percent of the median, but less than the median	[1]2
equal to or greater than 90 percent of the median, but less than 95 percent of the median	[2]4
equal to or greater than 80 percent of the median, but less than 90 percent of the median	[3]6
less than 80 percent of the median	[4]8

1.-2. (No change.)

8:31A-7.11 Reasonableness tests—Education/Physician Coverage

(a) (No change.)

(b) This test will involve calculating the average actual compensation per physician in each cost center, and ranking with categories as defined in N.J.A.C. 8:31A-[7.13]7.12. Costs will be deemed presumptively reasonable to the extent that they do not exceed 110 percent of category median value.

(c) (No change.)

8:31A-7.13 Appeals concerning the determination of costs

(a) Appeals may be taken by hospitals, their payors and the Division of Rate Counsel, Department of the Public Advocate ([Under] under N.J.S.A. 52:27E-18) subsequent to the determination of the Administrative Payment Rate. Such appeals may only be taken if the Administrative Payment Rate resulted from a review with the Analyst or resulted from proceedings in accordance with N.J.A.C. 8:31A-7.2(a)4iii(1). **The hearing on the appeal 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) The request for an appeal must be filed with [Health Economics Services] **Health Facilities Rate Setting**, Department of [the Public Advocate] **Health** ([Under] under N.J.S.A. 52:27E-18) within 30 days following receipt of notification of the Administrative Payment Rate (established in the manner indicated above). [Hospitals shall be notified of the date of their appeal within 30 days following receipt of the request for an appeal.]

(c) Within 30 days subsequent to the request of an appeal before the [hearing examiner] **Administrative Law Judge**, the hospital shall furnish to the Department of Health and the Public Advocate a list of all items to be appealed and the costs associated with those items.

1. As provided in N.J.A.C. 8:31A-7.2(a)4iv, no documentation other than that provided to the Analyst in connection with the detailed review can be presented to the [hearing officer] **Administrative Law Judge** unless the party can establish just cause for failure to provide the documentation earlier. Should any of the parties desire to present any such evidence, it must be sent to the other parties at least 30 days prior to the appeal.

2. (No change.)

(d) After the [hearing officer] **Administrative Law Judge** has filed his or her report, the Commissioner of Health will determine and approve the Final Administrative Rates and the hospital and its payors will be notified in the form of an administrative order over the signature of the Commissioner of Health.

8:31A-7.14 Retroactive adjustments

(a) Since the Global Rate of the alternate Rate will establish costs which are reasonable for establishing Reimbursement Rates, the Final [Payment] Rate will be adjusted for the following items only:

1.-5. (No change.)

(b) (No change.)

8:31A-7.16 Time-Phased Plans

(a) This provision establishes the procedure to develop a plan by which the hospital eliminates unreasonable costs. The plan will phase out those costs deemed unreasonable based on the SHARE comparisons with peer hospitals (base-period challenges). The hospital had the opportunity to appeal these challenges of unreasonable costs

at the detailed review with the Analyst. If the hospital did not justify the reasonableness of these base-period costs (which are based on the actual spending), there exist two alternatives. The first alternative is that the hospital recognizes the costs are unreasonable and submits a plan of action designed to eliminate them. The second alternative is that the hospital pursues an appeal to the [Hearing Officer] **Administrative Law Judge** and does not submit a plan to reduce unreasonable expenditures.

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

(d) Where the above defined actual expenditures are to be reduced, the following procedures shall apply:

1. All Rate Year expenditures that are considered eligible for a time-phase adjustment, per the aforementioned definitions, may be allowed as approved costs. All expenditures incurred prior to the receipt of the Proposed Administrative Payment Rate (APR) will be allowed as approved costs. The hospital will receive this adjustment either in the revised APR or the (FAR) Final Administrative Rate. (For example: A hospital incurs a base period challenge in a cost center in 1983 for which it did not receive a time-phase adjustment in a prior year. If the base period challenge is \$100,000 and the hospital receives the APR on June 30, 1983 the time-phase adjustment (per this section) will include 50 percent of the challenged dollars because six months of the year have elapsed. If the same hospital received its APR on August 1, 1983 the time-phase adjustment would include 58 percent of the challenge dollars because seven months of the year elapsed.)

i. (No change.)

ii. If the hospital does not submit a plan or does not appeal to the [Hearing Officer] **Administrative Law Judge**, then the time-phase adjustment, as described in the example, must include only the expenditures incurred up to the date of the APR. This will be considered its time-phase plan and the approved costs will be included in the hospital's FAR.

2. Following receipt of the Administrative Payment Rate, with respect to eligible base period challenges which the hospital does not intend to appeal to the [Hearing Officer] **Administrative Law Judge**, the hospital shall submit a detailed plan leading to the elimination of the challenged expenditures within a reasonable period of time. Such plans shall set forth in detail the costs necessarily incurred in eliminating the challenged expenditure within the time period set forth.

3. The Hospital Submits a Plan.

i. The hospital may submit a time-phase plan for any eligible base-period challenge which was discussed with the Analyst at the detailed review. Where a plan is submitted, the following procedures shall apply.

(1) (No change.)

(2) The submission of such a plan by a hospital shall indicate that the hospital does not wish to contest the challenge to a [Hearing Officer] **Administrative Law Judge** Appeal. The hospital shall submit the plan within 20 working days following receipt of the Administrative Payment Rate.

(3) [Health Economics Services (HES)] **Health Facilities Rate Setting (HFRS)** will make a written recommendation to this plan no later than 15 working days following the receipt of the plan. The hospital shall receive a copy of the recommendation.

(4) If the hospital accepts the recommendation of [Health Economics Services] **Health Facilities Rate Setting (HFRS)**, the Hospital shall notify the Department within 10 working days of the receipt of the recommendation. The recommended plan shall be made a part of the hospital's rate file, appropriate adjustments shall be made to the Administrative Payment Rate and all such expenditures shall be removed from the base for all succeeding years.

(5) (No change.)

(6) If the hospital does not accept the recommendation of [Health Economics Services] **Health Facilities Rate Setting (HFRS)**, the hospital may appeal this decision and shall proceed as under (d)3ii(1) below. The hospital must notify the Department within 10 working days of the receipt of the recommendation that the hospital intends to appeal the decision of the Department to the [Hearing Officer] **Administrative Law Judge**. No adjustment will be made to the Administrative Payment Rate under these circumstances. [Hospitals shall

be notified of the date of their appeal within 30 days following the receipt of the request for this appeal.] Where possible, this appeal will be heard in conjunction with any other appeals scheduled for that hospital under N.J.A.C. 8:31A-7.13.

ii. When an institution appeals the time-phased plan to the [Hearing Officer i.(6)] **Administrative Law Judge pursuant to (d)3i(6)** above, the following procedure shall apply:

(1) The [Hearing Officer] **Administrative Law Judge** shall make a recommendation as to which time-phased plan should be approved ([i.e.] **that is**, either the hospital's plan as proposed under (d)3i(2) above or the recommendation of [Health Economics Services] **Health Facilities Rate Setting** as proposed under [1(3)] (d)3i(3) above. The approved plan shall be made part of the hospital's rate file, appropriate adjustment shall be made to the payment rate (APR/FAR) and all such expenditures shall be removed from the base for all succeeding years.

4. The Hospital Does Not Submit a Plan:

i. Where a hospital does not submit a time-phased plan for an eligible base period challenge, the following procedures shall apply:

(1) When the [Hearing Officer] **Administrative Law Judge** recommends that a base period challenge be included in the hospital's

budget as reasonable cost, such cost shall be paid and allowed in the Final Administrative Rate (FAR) only upon the waiver by the hospital of all further appeals for that cost center.

(2) Where the [Hearing Officer] **Administrative Law Judge** sustains the base period challenge, an adjustment shall be made in accordance with (d)1 above, and this adjustment will constitute an approved time-phased plan. The approved costs shall include costs actually incurred up to the date of the hearing, where such appeals involve colorable issues and are taken in good faith. Whenever the [Hearing Officer] **Administrative Law Judge** shall determine that non-colorable issues have been pursued or the issues were not pursued in good faith, only those expenditures covered in (d)1 above shall be included in the approved costs. This adjustment shall be made to the Final Administrative Rate and all such expenditures shall be removed from the base for all succeeding years.

(3) (No change.)

5. (No change.)

AGENCY NOTE: Appendices A, B and C, which follow N.J.A.C. 8:31A-7 in the New Jersey Administrative Code, should be located at the end of the chapter. This relocation will be effected upon adoption of the amendments proposed herein.

APPENDIX A Cost Center Record

Function	Cost Center (Abbr.)	Level	Peer Group	Units of Services	Cost Increase Analysis		
					Reason- ableness Limit	Varia- bility Personnel	Factor Supplies
Inpatient Care	[ACU	I	Statewide	ACU Patient Days	1.1	50	100]
	[ICU	I	Statewide	ICU Patient Days	1.1	50	100]
	[NBN	II	Statewide	NBN-Days	1.2	50	100]
	[SAC] PCU	I	[Statewide] Category	[SAC] PCU Patient Days	[1.2]1.15	50	100]
Outpatient Care	EMR	II	Character	ER Admission	1.1	50	100
Ancillary Service	ANS	III	Statewide	OR Hours & Dels.	—	50	100
	CSS	I	Category	Admissions	1.1	50	100
	DEL	I	Statewide	Del & Gyn Procedures	1.1	50	100
	DIA	III	Statewide	DIA Treatments	—	50	100
	EDG	I	Category	Admissions	1.1	50	100
	LAB	I	Category	Admissions	1.1	50	100
	ORR	I	Category	ORR Hrs. + (.241 × oper- ations)	1.1	50	100
	PHM	I	Category	Patient Days & (3.74 × adm.)	1.1	50	100
	PHT	II	Category	Patient Days	1.3	50	100
	RAD	I	Category	Admissions	1.1	50	100
	RSP	I	Category	Patient Days	1.2	50	100
	CCA	III	Statewide	Procedures	—	50	100
	BBK	II	Statewide	Admissions	1.2	—	100
	[OPM]OPPM	III	Statewide	Patient Days	[—]1.3	50	—
Physician	PHY	II	Statewide	Fee & Sal. Hrs.	1.1	0	0
	RSD	II	Statewide	Fee & Sal. Hrs.	1.1	0	0
General Services	A&G	I	Category	Patient Days	1.1	0	0
	DTY	I	Statewide	Patient Days**	1.1	50	100
	FIS	I	Category	Admission	1.1	50	100
	HKP	I	Statewide	Sq. Ft.*	1.1	0	0
	MAL	III	Category	Patient Days	[—]1.5	0	0
	MRD	I	Category	Admissions	1.1	50	50
	PCC	II	Category	Admissions	1.1	0	0
	PLT	I	Character	Sq. Ft.*	1.1	0	0
	UTC	III	Statewide	Sq. Ft.*	[—]1.5	0	0
	OGS	II	Character	Patient Days	1.3	0	0
	L&L	I	Statewide	Patient Days	1.1	50	50
	EDR	III	Category		[—]1.3	0	0
Fringe Benefits	LFB	—	Statewide	Hours			
	PFB	—	Statewide	Hours			
	PEN	—	Statewide	Hours			
	INT	III	Statewide	Patient Days			
	DEP	III	Statewide	Patient Days			

*Inpatient % for this cost center

**Excluding "In & Out" same day

APPENDIX B

Abbreviation	Cost Center Description
ACU	Acute Care Unit
ICU	Intensive Care Unit
NBN	Newborn Nursery
[SAC] PCU	[Sub-Acute Case] Patient Care Unit
EMR	Emergency Room
ANS	Anesthesia
CSS	Central and Sterile Supply
DEL	Delivery
DIA	Dialysis
EDG	Electrodiagnosis
LAB	Laboratory
ORR	Operating and Recovery Rooms
PHM	Pharmacy
PHT	Physical Therapy
RAD	Radiology
RSP	Respiratory Therapy
CCA	Cardiac Catheterization
BBK	Blood Bank
[OPM]OPMP	Other Physical Medicine and Psychology
PHY	Physician

Abbreviation	Cost Center Description
RSD	Resident
A&G	Administrative and General
DTY	Dietary
FIS	Fiscal
HKP	Housekeeping
MAL	Malpractice
MRD	Medical Records
PCC	Patient Care Coordination
PLT	Plant
UTC	Utilities
OGS	Other General Services
L&L	Laundry & Linen
EDR	Education
LFB	Legal Fringe Benefits
PFB	Policy Fringe Benefits
PEN	Pension
INT	Interest
DEP	Depreciation

APPENDIX C
(No change.)

(a)

SUBCHAPTER 9. INFLATION

8:31A-9.1 Economic factor

(a) The industry-wide economic factor shall be comprised of the percentage changes in the following proxies for their relevant cost components weighted by their percentage of reported costs on SHARE Projected Actuals for all hospitals combined. The factor is determined exclusive of depreciation and facilities interest, lease, and utilities cost.

1. Labor 1:

i. (No change.)

ii. SHARE cost center: All Cost Centers for which employee salaries are reported; contracted services in ACU, ICU, NBN, [SAC] PCU, SNF, EMR, CLN, and OHS cost centers except RSD; and physicians fees for RSD cost center;

iii.-iv. (No change.)

2.-11. (No change.)

12. Supplies 9:

i. (No change.)

ii. SHARE cost center: Supply costs reported in ACU, ICU, NBN, [SAC] PCU, SNF, EMR, CLN, OHS, ANS, CSS, DEL, DIA, EDG, NMD, ORR, OPM, PHT, RSP, THR, and CCA cost center;

iii.-iv. (No change.)

13.-19. (No change.)

(b) (No change.)

SUBCHAPTER 10. MISCELLANEOUS

8:31A-10.1 [MICU regulations] (Reserved)

[MICU regulations found in N.J.A.C. 8:31B-6 apply for 1981 rates.]

8:31A-10.4 [Treatment of distribution of net worth and/or surplus] (Reserved)

[Distribution of the net worth and/or surplus (either on dissolution of the New Jersey Hospital Association Underwriters, Inc., or withdrawal by one hospital) shall be considered a capital return; but for the purposes of hospital rate reimbursement, it will be considered a recovery of expense and will be used to offset future hospital expenditures.]

FACILITIES RATE SETTING

Residential Alcoholism Treatment Facilities; Cost Accounting and Rate Evaluation

Proposed Repeal and New Rule: N.J.A.C.

8:31C-1.15

Proposed Amendment: N.J.A.C. 8:31C-1.18

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-18(c).

Proposal Number: PRN 1990-579.

Submit comments by December 19, 1990 to:

Charles O'Donnell, Director
Health Facilities Rate Setting
New Jersey State Department of Health
CN 360, Room 601
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed amendments to the Residential Alcoholism Treatment Facilities (RATFs) rules (N.J.A.C. 8:31C) reflect the Department of Health's continuing efforts to refine the reimbursement methodology for the purpose of establishing reasonable reimbursement rates.

The proposed repeal and new rule at N.J.A.C. 8:31C-1.15 replaces the proxies used to establish the statewide interim economic factor, which is applied to the alcoholism treatment facilities' approved costs for the development of the reimbursement rates. The current proxies include the average hourly earnings of manufacturing employees in New Jersey (weighted 60 percent) and the Consumer Price Index (weighted 40 percent). These proxies do not include the alcoholism treatment facilities' actual base year costs which are reflected in the current year reimbursement rate. Therefore, the ability of the current calculation of the economic factor to measure the changes to inflation specifically related to New Jersey alcoholism treatment facilities should be improved.

This new rule incorporates factors which make up the interim Statewide economic factor. These factors include the alcoholism treatment facilities' weighted actual costs and proxies, derived from the Federal Bureau of Labor's statistics which measure inflation and deflation. The proxies utilized are consistent with those proxies being used in accordance with the Standard Hospital Accounting and Rate Evaluation (SHARE) and the Chapter 83 reimbursement systems.

The proposed amendment to N.J.A.C. 8:31C-1.18 provides for changes to the economic factor methodology, beginning January 1, 1991, and will be applied to the Final Payment Rate calculation for the 1990 Rate Year.

Social Impact

The proposed new rule and amendment provide for measurement of inflation which is more reflective of the actual costs incurred by the Residential Alcoholism Treatment Facilities in New Jersey. The proposed changes to the economic factor methodology establish reasonable weights and proxies that will measure both inflation and deflation and ensure that the reimbursement rates, as developed by the Department of Health, are fair and equitable to the payers, providers and the consumers of such services.

Economic Impact

The proposed new rule to N.J.A.C. 8:31C-1.15 provides for equitable weighted costs and proxies used to develop a Statewide economic factor, which is applied to the reimbursement rates for the Residential Alcoholism Treatment Facilities. The calculation of the economic factor in accordance with the current rules includes a two year factor of 8.07 percent, which has been applied to the facilities' 1988 base year costs for rates effective July 1, 1989 through December 31, 1990.

The proposed methodology, which utilizes the facility-specific 1988 weighted costs and proxies which are similar to those used in the SHARE and Chapter 83 reimbursement systems, gives a projection of a two year factor of 12.35 percent. This represents a percent change of 4.28 percent, which is estimated to have an annual statewide increase in the approved costs of \$1,210,743, apportioned over 26 facilities. Application of this methodology, to services rendered after January 1, 1991, as shown in the amendment to N.J.A.C. 8:31C-1.18, will be beneficial to the RATFs.

Continuation of the current methodology for the establishment of the economic factor for the alcoholism facilities may not result in equitable reimbursement rates. This would have a direct impact on the availability of residential alcoholism treatment services in the future and may affect the quality of care being provided to patients treated for alcoholism.

Regulatory Flexibility Analysis

The Residential Alcoholism Treatment Facilities in New Jersey are all included in the small business category, as the term is defined in N.J.S.A. 52:14B-16 et seq. The proposed new rule and amendment impose standardized reporting and recordkeeping in a consistent manner for all of the Residential Alcoholism Treatment Facilities and are necessary to ensure the development of a reasonable reimbursement rate in accordance with the rules. There are no changes in the need for professional services or for any other requirements. Since all the facilities are small businesses, it would not be appropriate to establish differential requirements based upon business size.

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

8:31C-1.15 Economic factor

(a) A provision will be added to reasonable base period costs to provide for inflation between the base period and the prospective rate period. Changes in two factors will be used to develop this provision.

1. Average hourly earnings of manufacturing employees in New Jersey as published by the Bureau of Labor Statistics (weighted 60 percent).

2. The consumer price index as published by the Bureau of Labor Statistics (weighted 40 percent).

(b) If, for reasons beyond the control of a RATF, rates have not been redetermined within three months after receipt of its reports, an interim adjustment for inflation may be made to existing rates for cash flow purposes. The inflation increment would be based upon the number of months from the midpoint of the current rate period to the beginning point of the new rate period. The interim rate will be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in these guidelines.]

(a) The industry-wide economic factor for services rendered after January 1, 1991 shall be comprised of the percentage changes in the following proxies for their relevant cost components weighted by their percentage of reported costs on Residential Alcohol Treatment Facilities Report forms for all facilities combined. The factor is determined exclusive of depreciation, interest, rental and lease, property insurance (land), and property insurance (building) costs.

1. Labor:

- i. Cost Component: Total Inpatient Salaries plus fringe benefits;
- ii. RATF Cost Center: All cost centers for which employee salaries are reported;

iii. Proxy: DRI—McGraw Hill Health Care Costs average hourly earnings, Production workers, General Medical and Surgical hospitals—Northeast Region;

2. Other 1:

- i. Cost Component: Raw Food/Dietary (Total Inpatient Costs);
- ii. RATF Cost Centers: Raw Food, Dietary;

iii. Proxies:

- (1) Consumer Price Index (CPI):
Food at home (50 percent);
- (2) Producer Price Index (PPI):
Processed food (50 percent);

3. Other 2:

- i. Cost Component: Housekeeping (Total Inpatient Costs);
- ii. RATF Cost Center: Housekeeping;

iii. Proxies:

- (1) PPI: 0915-01 Sanitary Paper and Health Products (30 percent);
- (2) PPI: 0722 Unsupported Film and Sheeting (30 percent);
- (3) PPI: 0671 Soap and Synthetic Detergent (40 percent);

4. Other 3:

- i. Cost Component: Laundry and Linen (Total Inpatient Costs);
- ii. RATF Cost Center: Laundry and Linen;

iii. Proxies:

- (1) PPI: 0671 Soap and Synthetic Detergent (60 percent);
- (2) CPI: Textile House Furnishings (40 percent);

5. Other 4:

- i. Cost Component: Pharmacy (Total Inpatient Costs);
- ii. RATF Cost Center: Pharmacy;

iii. Proxies:

- (1) PPI: 0635 Ethical (Prescription) Drugs (70 percent);
- (2) PPI: 0636 Proprietary (over the counter) Drugs (30 percent);

6. Other 5:

- i. Cost Component: Laboratory (Total Inpatient Costs);
- ii. RATF Cost Center: Laboratory;

iii. Proxies:

- (1) PPI: 138 Glass Containers (40 percent);
- (2) PPI: 061 Industrial Chemicals (60 percent);

7. Other 6:

- i. Cost Component: Repairs and Maintenance/Other General Services (Total Inpatient Supplies);
- ii. Cost Center: Repairs and Maintenance/Other General Services;
- iii. Proxies:
- (1) CPI: Maintenance and Repairs, Commodities;
- iv. Source: BLS: Consumer Price Index.

8:31C-1.18 Final Payment Rate

(a) The Final Payment Rate will be based upon a certified audit performed by Blue Cross. The facility will be reimbursed at the lower of the approved rate or the Blue Cross certified rate. The Blue Cross certified rate will be subject to adjustments based upon major audit findings.

(b) The Final Payment Rate calculation for rates effective July 1, 1989 through December 31, 1990 will include an adjustment to the economic factor based upon the methodology applied to the reimbursement rates for services rendered January 1, 1991.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards Administrative and Hospital-Wide Services Reportable Events

Proposed New Rule: N.J.A.C. 8:43G-5.6

Authorized By: Frances J. Dunston, M.D., M.P.H.,

Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1990-578.

Submit comments by December 19, 1990 to:

Robert J. Fogg, Director
Standards and Quality Assurance Program
Division of Health Facilities Evaluation and Licensing
Department of Health
CN 367
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 8:43G contains rules for licensure of hospitals by the Department of Health and serves to protect the health and safety of patients and employees within these facilities. The current text of N.J.A.C. 8:43G-5, Administrative and Hospital-wide Services, specifies the requirements for the administration of a hospital. The proposed rules at N.J.A.C. 8:43G-5 contained advisory provisions at N.J.A.C. 8:43G-5.4, 5.6, 5.8, 5.10 and 5.17, which expired September 19, 1990. Since they were not adopted within one year of proposal, pursuant to N.J.A.C. 1:30-4.2(c), the Department is proposing a new rule at N.J.A.C. 8:43G-5.6 which will require the hospital to notify the Department immediately by telephone if any event occurs which jeopardizes the health and safety of patients or employees within the hospital. The rule also requires the hospital to submit a follow-up written report within 72 hours of the event, unless such a report is not determined to be necessary by the Department. These notification requirements are presently in effect within licensure standards for other health care facilities licensed by the Department of Health, including alcoholism treatment, ambulatory care and long-term care facilities.

In fulfilling its obligation to protect the health and safety of patients and employees, the Department must ensure that it is immediately notified of any event occurring within the hospital that places individuals at risk or results in actual physical harm. By means of immediate contact, the Department can confirm that appropriate action is being taken and that measures are in place to assure the continued protection and safety of employees and patients in the facility.

Within the rule, the Department has set forth examples of the type of event falling within this reporting requirement. While it is believed that such events occur infrequently within hospitals in New Jersey, they represent potentially serious occurrences for which the Department believes notification is necessary in order to provide immediate assistance or intervention in these instances when the life and safety of patients and employees are at risk.

Social Impact

The proposed new rule would have a beneficial social impact for the patients and employees within the hospital and to the general public. Addition of this amendment enables the Department to be assured that it is informed of any event which threatens the health and safety of hospital patients and employees, and in turn, the Department is able to assure the general public that while such events may not be preventable in hospitals, the public can be confident that immediate and appropriate action is taken to address the situation.

Economic Impact

The proposed new rule does not economically impact the operation of hospitals. The amendment, requiring only telephone and written notice to the Department, poses no requirement necessitating an unusual expenditure by or on behalf of the hospital. The Department anticipates that the majority of hospitals in New Jersey will be unaffected by the amendment.

Regulatory Flexibility Statement

The proposed amendments would not affect small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

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

8:43G-5.6 [Administrative and hospital-wide patient services; advisory (Reserved)] **Reportable events**

(a) **The hospital shall notify the Department immediately by telephone at (609) 588-7725, or (609) 392-2020 after business hours, of any event occurring within the hospital that jeopardizes the health and**

safety of patients or employees. Events which shall be reported to the Department include, but are not limited to, the following:

1. Interruption for three or more hours of essential physical plant and safety services;
2. All fires, disasters, accidents or incidents which result in serious injury or death of patients or employees, or in evacuation of patients out of the facility; and

3. All alleged or suspected crimes resulting in risk or harm to a patient(s) or employee(s) life or safety, which have also been reported at the time of occurrence to the police department.

(b) A follow-up written report shall be submitted to the Department within 72 hours of the event, unless determined not to be necessary by the Department. The written report shall contain information about injuries to patients and/or staff, disruption of services, and extent of damages.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Anesthesia

Proposed Amendments: N.J.A.C. 8:43G-6

Authorized By: Frances J. Dunston, M.D., M.P.H.,

Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1990-577.

Submit comments by December 19, 1990, to:

Robert J. Fogg, Director
Standards and Quality Assurance
Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing amendments to assure patient safety and quality of care related to the administration, supervision, and monitoring of anesthesia in hospitals. The proposed amendments to subchapter 6, Anesthesia, in Licensing Standards for Hospitals (N.J.A.C. 8:43G) have been developed in response to the need for further clarification and interpretation of the current anesthesia standards. These standards, which became effective on February 21, 1989, constituted the first subchapter of the licensing standards to be adopted. As in the development of all subsequent subchapters, the proposed amendments were developed with the cooperation and guidance of interested parties in the form of advisory groups which met and discussed the revisions extensively. Similar amendments to the Ambulatory Care Facilities Standards for Licensure (N.J.A.C. 8:43A) were adopted by the Department in September, 1990.

The proposed amendments are set forth with the goal of clarifying particularly the section of the subchapter at N.J.A.C. 8:43G-6.2, Anesthesia staff; qualifications for administering anesthesia. The revisions are based on the fact that the Department has received numerous requests for interpretation, indicating that the existing rules do not completely address all situations relating to the administration, supervision, and monitoring of anesthesia.

The subchapter has been reorganized as follows. A Definitions section has been added at N.J.A.C. 8:43G-6.1 to provide a reference point for the technical terms used in the subchapter. Text currently at N.J.A.C. 8:43G-6.1 has been recodified to N.J.A.C. 8:43G-6.2, but remains unchanged in content. Text currently at N.J.A.C. 8:43G-6.2, Anesthesia staff; Qualifications for administering anesthesia has been recodified to N.J.A.C. 8:43G-6.3, but of more significance is the restructuring of its content. This section has been organized by a formulation of the major levels of anesthesia care which may be provided. Consequently, there are separate standards for general and regional anesthesia, for anesthetic agents used to create conscious sedation, and for minor conduction blocks, each of which is defined at new N.J.A.C. 8:43G-6.1. Current rules make reference to types of procedures performed and to locations in the

facility where anesthesia is given. However, the Department believes that the level or type of anesthesia provided is the proper framework within which to assess quality of care and patient safety issues as well as appropriate staff qualifications.

A second principle used in organizing the section is that of function. Within each level of anesthesia care, the separate functions of the administration of anesthesia, supervision of personnel, and monitoring of the patient are addressed. The qualifications of staff who may perform each function at each level of anesthesia are delineated in the rule as proposed; these qualifications have been carefully considered by many practitioners and groups. The Department believes that the proposed amendment of N.J.A.C. 8:43G-6.2 achieves a careful balance among patient safety, quality of care, access to care, and cost.

Amendments of the sections relating to anesthesia patient services, safety systems, patient monitoring, staff education, and quality assurance are also proposed in the interest of further clarification.

The proposed recodifications and amendments contain the following major provisions.

N.J.A.C. 8:43G-6.1 sets forth definitions of specific words and terms used in the subchapter. This provision would assure the uniform application in the rules of terminology related to the highly technical area of anesthesia care.

N.J.A.C. 8:43G-6.3(c) requires that the hospital's medical staff committee develop policies and procedures to address the qualifications of personnel who administer all types of anesthesia in all anesthetizing locations in the hospital. This requirement will assure a consistent, planned level of anesthesia care throughout the hospital.

N.J.A.C. 8:43G-6.3(d) describes the qualifications required for anesthesia personnel who administer and monitor general and regional anesthesia. The rules require that these types of anesthesia be administered and monitored only by an anesthesiologist or specified staff supervised by an anesthesiologist, or a certified registered nurse anesthetist supervised by a credentialed physician, or a dentist qualified in anesthesiology. Based on the Department's review of the literature on patient safety during anesthesia and a review of the standard of care in New Jersey hospitals, it is believed that this provision will assure a high level of proficiency and training on the part of personnel who administer, supervise, and monitor the administration of general or regional anesthesia. It is this level of anesthesia which carries the most risk to the patient. The provision further assures that the same level of staff who administers or supervises the administration of anesthesia shall monitor the patient who is receiving the anesthesia.

N.J.A.C. 8:43G-6.3(e) requires that a separate individual who is continuously present administer the general or regional anesthesia and monitor the patient. It is essential for patient safety, given the high level of risk involved, that the individual responsible for anesthesia care and the person performing the operation or procedure each devote undivided attention to his or her area of responsibility.

N.J.A.C. 8:43G-6.3(f) requires the immediate availability and freedom from direct patient care responsibilities of any physician who is providing supervision of health care personnel who are administering general or regional anesthesia. This again is a critical safety measure in the provision of anesthesia care. There are numerous instances of the need for immediate, hands-on assistance by a supervising physician which would not be possible if the conditions of this standard were not met.

N.J.A.C. 8:43G-6.3(g) sets forth the requirements for staff who administer anesthetic agents used for conscious sedation. For this level of anesthesia, an anesthesiologist is not required for either administration or supervision; the standard calls for a physician who has been credentialed by the hospital and who is immediately available. The staff qualifications for the administration and supervision of agents used for conscious sedation have been modified, since the risk level associated with conscious sedation is considered to be lower than with general or regional anesthesia. Nevertheless, the credentialing process helps to assure that a high level of anesthesia care will be provided to this group of patients.

N.J.A.C. 8:43G-6.3(h) specifies those anesthesia personnel who may monitor patients under conscious sedation. The personnel are the same as those permitted to administer and supervise this level of anesthesia, with one important addition: monitoring may also be provided by a registered professional nurse who is certified in Advanced Cardiac Life Support (ACLS) and who has training and experience with monitoring devices. The individual who performs this monitoring function must be continuously present, with the primary purpose being that of anesthesia monitoring; this individual must also be separate from the individual who is performing the procedure. Flexibility has been added to permit a

registered professional nurse to monitor the patient to more nearly reflect current practice. The concept of patient safety is maintained, however, by the requisite high level of trained staff, by compulsory continuous monitoring, and by the need for a separate individual to provide the monitoring. These standards help to assure that the patient under anesthesia receives a high level of care from appropriately trained personnel, is not left unattended at any time, and benefits from the undivided attention to their respective tasks of both the person performing the procedure and the person monitoring the patient.

N.J.A.C. 8:43G-6.3(i) describes those personnel who may administer and supervise minor conduction blocks. Once again, the physician who administers or supervises other practitioners must be credentialed by the hospital for this purpose. The medical staff bylaws set the standards for competency to perform this anesthesia function.

N.J.A.C. 8:43G-6.3(j) states simply that minor conduction blocks shall be continuously monitored by medical or nursing personnel. Patients must thus be monitored at all times, but the facility may assign medical or nursing personnel without regard to specific additional qualifications.

N.J.A.C. 8:43G-6.3(k) has been recodified; its intent is unchanged.

N.J.A.C. 8:43G-6.6(a) adds the words "or equivalent" to permit the use of alternative safety systems with medical gases. The intent of the rule is to assure patient safety, not to mandate an exclusive or proprietary product.

N.J.A.C. 8:43G-6.8(d) clarifies the levels of anesthesia during which pulse oximetry must be performed. It also revises the language of the exception to read "unless such monitoring is not clinically feasible for the patient." This change is made to underscore the fact that pulse oximetry must be performed, unless there is a medical contraindication for its use with a specific patient, such as a serious burn victim or an agitated infant.

N.J.A.C. 8:43G-6.8(f) adds regional anesthesia and conscious sedation to the types of anesthesia requiring electro-cardiographic monitoring. These additions are considered important for patient safety.

N.J.A.C. 8:43G-6.10(c) adds the name of the Division of Health Facilities Evaluation and Licensing and corrects the telephone number for reporting anesthesia-related incidents. It clarifies language regarding the types of incidents to be reported, and specifies that the written report shall be submitted on a form supplied by the Department of Health entitled "Confidential Report of Anesthesia-Related Incident" (HFE-5). Finally, it deletes the now obsolete requirement that the Department submit a report to the Health Care Administration Board by March 21, 1990.

Social Impact

On February 21, 1989, new rules for anesthesia care in hospitals went into effect. These rules constituted the first subchapter of the Licensing Standards for Hospitals, an initiative of the Department carried out by the Licensure Reform Project. The adoption of these rules also marked the first time that New Jersey had rules relating specifically to anesthesia care, and these rules have received national as well as international recognition for providing safety and quality of care to patients requiring anesthesia.

A major goal of the licensing standards was to require the utilization of updated safety systems and monitoring devices in conjunction with the hospital's standard anesthesia equipment. Requirements that are notable include diameter and pin index safety systems for medical gases, alarm systems for anesthesia equipment, and pulse oximeters and end-tidal carbon dioxide monitors for direct patient observation. These advances have placed New Jersey in the vanguard of safety and quality care for anesthesia patients.

During the implementation period for these standards, however, it was found that clarification and interpretation were needed for certain sections, particularly for the section relating to qualifications for administering anesthesia. Omissions in the standards were noted; for example, they did not adequately address the issues of supervision or of patient monitoring. The amendments are proposed with the purpose of redressing these omissions and clarifying the requirements for the administration, supervision, and monitoring of anesthesia.

The primary social impact of these proposed amendments is to extend the protection offered to patients through more rigorous requirements for professional staff who provide anesthesia care. In particular, there are more clearly defined rules about the professional qualifications of staff who administer, supervise, and monitor anesthesia, and specific attention has been paid to the need for continuous monitoring by a person who is separate from the person performing the surgical or other procedure.

These standards will ensure a high level of quality of care and safety for all patients receiving anesthesia in the hospital setting.

Economic Impact

The proposed amendments, primarily representing technical clarifications to existing standards, are not viewed as having a significant economic impact on New Jersey hospitals. Anesthesia safety equipment such as pulse oximeters and carbon dioxide monitors have been required under the present rules since February 1989. Personnel who are required for purposes of administration, monitoring, and supervision of anesthesia care are utilized under the present standards of care in New Jersey hospitals, and the Department is unable to estimate the number of facilities which will be required to alter existing staffing requirements as a result of these amendments. For procedures utilizing anesthetic agents for conscious sedation of patients, registered nurses assigned to monitor the patient's condition under anesthesia would be mandated to become ACLS certified. Obtaining certification through the American Heart Association is estimated to cost between \$100.00 and \$150.00.

The Department provides a mechanism under the Chapter 83 reimbursement system for hospitals to appeal the identifiable costs related to legally-mandated changes. Thus, hospitals will receive adequate reimbursement to comply with these amended rules, should they receive approval by the Hospital Rate Setting Commission for a rate appeal.

Regulatory Flexibility Statement

The proposed amendments would not affect small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G-6 all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

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

SUBCHAPTER 6. ANESTHESIA

8:43G-6.1 Definitions

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

"Anesthesiologist" means a physician who has successfully completed an approved residency program in anesthesiology, or who is a diplomate of either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, or who was made a Fellow of the American College of Anesthesiology before 1972.

"Anesthetic agent" means any drug or combination of drugs administered with the purpose of creating conscious sedation, deep sedation, conduction anesthesia, or general anesthesia.

"Anesthetizing location" means any location in a health care facility where anesthetic agents are administered.

"Conduction anesthesia" means the administration of anesthetic agents to interrupt nerve impulses without loss of consciousness. Major conduction blocks include regional nerve blocks (epidural, caudal, and spinal anesthesia). Minor conduction blocks include local infiltration, local nerve blocks, and nerve blocks by direct pressure and refrigeration.

"Conscious sedation" means the administration of drugs to obtund, or dull or reduce the intensity of, pain and awareness without the loss of defensive reflexes.

"Credentialed" means having been granted privileges by the hospital to provide specified anesthesia services, such as administration or supervision of one or more types of anesthetic agents or procedures.

"Deep sedation" means the administration of drugs which results in some loss of defensive reflexes; the patient, however, remains arousable by strong stimulation.

"Defensive reflexes" means the ability of an individual to counteract noxious events, especially to defend the breathing passages against foreign material.

"General anesthesia" means the administration of drugs which cause loss of consciousness, that is, complete unawareness of routine surroundings. During general anesthesia, the patient cannot make meaningful responses to even the strongest stimulation.

"Local anesthetic" means an agent which produces a transient and reversible loss of sensation in a circumscribed portion of the body.

"Minor conduction block" means the injection of a local anesthetic to stop a painful sensation in a severely circumscribed area of the body

(that is, local infiltration or local nerve block), or the block of a nerve by direct pressure and refrigeration.

"Monitoring" means the observation of a patient using instruments to measure, display, and/or record (continuously or intermittently) the values of certain physiologic variables such as pulse, blood pressure, oxygen saturation, and respiration.

"Operating room" means a unit for the performance of surgery.

"Regional anesthesia" means a major conduction block such as epidural, caudal, and spinal anesthesia.

"Special procedure" means patient care which requires entering the body with instruments in a potentially painful manner. Examples are: Endoscopy (diagnostic and surgical), oral surgery, radiologic procedures, or emergency procedures.

"Special procedure room" means the specially equipped hospital location in which special procedures are performed.

"Supervision" means responsibility by a physician who is credentialed in accordance with medical staff bylaws, and who is immediately available for overseeing the administration and monitoring of anesthesia by anesthesia personnel.

8:43G-[6.1] **6.2** (No change in text.)

8:43G-[6.2] **6.3** Anesthesia staff; [Qualifications] **qualifications** for administering anesthesia

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

[(c) Anesthetic agents, including intravenous conscious sedation, shall be administered in operating suites, obstetric suites, endoscopy rooms, and any other anesthetizing location only in accordance with medical staff policies and procedures that specify who may administer anesthetic agents and under what conditions. For purposes of this section, intravenous conscious sedation shall consist of the proper administration of drugs to obtund, or dull or reduce the intensity of, pain and awareness without the loss of defensive reflexes.

(d) Anesthetic agents other than minor local blocks or intravenous conscious sedation shall be administered only by the following:

1. A physician;
2. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

3. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification;

4. A physician resident or a dental resident participating in a nationally approved graduate medical education training program in anesthesiology;

5. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology.

(e) An anesthesiologist, anesthesia resident, or certified registered nurse anesthetist shall be continuously present in the operating room to monitor the patient and provide anesthesia care whenever a patient is receiving any anesthesia. If radiation or another direct hazard necessitates the absence of such personnel, provision shall be made for remote monitoring of the patient.

(f) If the anesthesia consists of a minor local block or intravenous conscious sedation, the administrator of anesthesia shall be continuously present in the operating room or other anesthetizing location to monitor the patient.

(g) Except for minor local blocks and minor procedures performed in special procedure rooms, anesthesia shall not be administered by the individual who is performing the surgical procedure.]

(c) Anesthetic agents administered with the purpose of creating conscious sedation, deep sedation, conduction anesthesia, or general anesthesia shall be administered in any location in the hospital only in accordance with medical staff policies and procedures.

(d) All anesthetic agents, except those utilized for conscious sedation or as minor conduction blocks, shall be administered and monitored only by the following:

1. An anesthesiologist;
2. Under the supervision of an anesthesiologist:

i. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA), provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

ii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty;

3. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise the administration of anesthesia, a certified registered nurse anesthetist who holds a current certification under a program governed or approved by the AANA; or

4. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology or oral and maxillofacial surgery.

(e) The administration and monitoring of any anesthesia, except those agents utilized for conscious sedation or minor conduction blocks, shall be provided by an individual who is continuously present and separate from the individual who is performing the procedure.

(f) The supervision of any anesthesia, except those agents utilized for conscious sedation or minor conduction blocks, shall be provided by a physician who is immediately available and who has no direct patient care responsibilities.

(g) Anesthetic agents used for conscious sedation shall be administered only by the following:

1. A physician who has been credentialed in accordance with medical staff bylaws to administer anesthetic agents used for conscious sedation; or

2. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise anesthetic agents used for conscious sedation and who is immediately available:

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology or oral and maxillofacial surgery.

(h) The monitoring of patients who have been given an anesthetic agent for the purpose of creating conscious sedation shall be provided by an individual who is continuously present for the primary purpose of anesthesia monitoring, and who is separate from the individual performing the procedure. This individual shall be one of the personnel identified in N.J.A.C. 8:43G-6.3(g), or a registered professional nurse who is certified in Advanced Cardiac Life Support (ACLS) by the American Heart Association and who has training and experience in the use of monitoring devices.

(i) Minor conduction blocks shall be administered only by one of the following:

1. A physician who has been credentialed in accordance with medical staff bylaws to administer minor conduction blocks;

2. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise minor conduction blocks and who is immediately available:

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology or oral and maxillofacial surgery.

(j) Minor conduction blocks shall be monitored continuously by medical or nursing personnel.

(k) Provision shall be made for remote monitoring of the patient if radiation or another direct hazard necessitates the removal of personnel.

8:43G-[6.3] 6.4 (No change in text.)

8:43G-[6.4] 6.5 Anesthesia patient services

(a) A preanesthesia note, reflecting evaluation of the patient and review of the patient record prior to administration of anesthesia, shall be made by the [anesthesiologist] **physician administering or supervising the administration of anesthesia** and entered into the medical record of each patient receiving anesthesia [in the operating suite].

(b) (No change.)

(c) [A postanesthesia note] **Postanesthesia notes** shall be entered into the patient's medical record by a member of the hospital's anesthesia [services] **team** early in the postoperative period and after the patient's discharge from the postanesthesia care unit. [For patients receiving only minor local anesthesia without anesthesia services' participation and in conformance with hospital policies and procedures, the postanesthesia note may be made by the surgeon.]

[(d) An anesthesiologist shall discharge each patient from the postanesthesia care unit personally or through established criteria for discharge.

(e) The patient shall receive postoperative anesthesia surveillance as required by the patient's condition and by requirements of the hospital's anesthesia services. Upon conclusion of anesthesia surveillance, the anesthesiologist shall enter into the patient's medical record the postanesthesia status of the patient who has received anesthesia care from anesthesia services.]

8:43G-[6.5] 6.6 Anesthesia supplies and equipment; safety systems

(a) Diameter index safety systems **or equivalent** shall be used on all large cylinders of medical gases and wall and ceiling outlets of medical gases.

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

(d) An oxygen failure-protection device ("fail-safe" system) shall be used on all anesthesia machines to announce **a reduction in oxygen pressure**, and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced.

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

(j) There shall be a **written** protocol to assure that[, when technically feasible,] surgery does not proceed [where] **when** there are disabled alarms, depleted batteries and inactive sensors in oxygen monitors, improperly positioned breathing-circuit sensors, or other insufficiencies.

[(k) Each hospital shall have six months from the effective date of this subchapter to purchase equipment necessary to comply with the provisions of this section. Thereafter, hospitals either shall have such equipment in place or else shall have written proof that, within six months of the effective date of this rule, that is, until August 21, 1989, an order for such equipment has been received by a manufacturer or legitimate vendor of the equipment. Such proof shall include an anticipated date of delivery. All such equipment shall be properly installed in a timely fashion after delivery, and shall be used in conformance with this section.]

8:43G-[6.6] 6.7 (No change in text.)

8:43G-6.8 Anesthesia supplies and equipment; patient monitoring

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

(c) The body temperature of each patient under **general or regional** anesthesia shall be continuously monitored.

(d) Pulse oximetry shall be performed continuously during administration of [all] anesthesia, including intravenous conscious sedation, **general anesthesia, regional anesthesia, and conscious sedation** at all anesthetizing locations, [when technically feasible] **unless such monitoring is not clinically feasible for the patient.** Any alternative

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

(a)

CAPITAL CITY REDEVELOPMENT CORPORATION

Project Review Procedures

Proposed New Rules: N.J.A.C. 17:41

Authorized By: The Capital City Redevelopment Corporation,
Robert M. Litke, Executive Director.

Authority: N.J.S.A. 52:9Q-13 and 52:9Q-17.

Proposal Number: PRN 1990-560.

Submit comments by December 19, 1990 to:

Robert M. Litke, Executive Director
Capital City Redevelopment Corporation
4 North Broad Street
CN 203
Trenton, NJ 08625-0203
Telephone: (609) 984-5664

The agency proposal follows:

Summary

The Capital City Redevelopment Corporation (the Corporation) was created by the Capital City Redevelopment Corporation Act, P.L. 1987, c.58 (N.J.S.A. 52:9Q-9 et seq.) to promote and encourage the revitalization of the City of Trenton. The Act also created a Capital City District within the City of Trenton, as delineated by N.J.S.A. 52:9Q-14.

As required under N.J.S.A. 52:9Q-17, on October 30, 1989, after public hearings and an opportunity for public comment, the Corporation adopted the Capital City Renaissance Plan (the Plan) to guide the use of lands within the Capital City District in a manner which promotes the economic vitality of the District and enhances the quality of the public environment. The Plan includes design, culture, transportation, land use, and relocation plan elements, and a statement of objectives, principles, assumptions and policies upon which the Plan proposals for the physical, economic and social development of the District are based. All government entities with plans affecting physical development within the District were required to review and revise their plans to ensure that they are consistent with the Capital City Renaissance Plan; plans adopted after October 30, 1989 must be consistent with the Plan.

N.J.S.A. 52:9Q-18 requires government entities, or instrumentalities thereof, which undertake any construction, reconstruction or extension of any building, structure or facility or other improvement within the Capital City District, and government entities having final authority to review and approve plans for private development proposed for the District, to file Impact Statements with the Corporation. The Impact Statements shall describe the ways in which the proposed construction, reconstruction or extension or private development, is consistent with the Plan. Private developers may be required by the government entity with final authority to review and approve their plans to prepare the Impact Statements for their proposed development.

The proposed new rules at N.J.A.C. 17:41 consist of two subchapters. Subchapter 1 contains general provisions, including the purpose and scope of the rules and definitions of words and terms used in the rules. Subchapter 2 contains procedures for the filing and processing of Impact Statements during the development review process. These rules establish a schedule for the submission of Impact Statements by the City of Trenton and other governmental entities; describe the actions the Corporation shall undertake upon receipt of an Impact Statement; and set forth criteria for the Corporation to use to evaluate Impact Statements. The two Exhibits in the proposed Appendix to subchapter 2 are designed to provide guidance to entities in the preparation of Impact Statements. Exhibit A is appropriate for all projects, except those involving only interior rehabilitation, for which no Impact Statements are required. Exhibit B should be used in preparing Impact Statements for new construction or for exterior rehabilitation projects estimated to cost more than \$5,000.

Social Impact

These rules will positively affect those parties required to file Impact Statements by (1) providing guidance to entities in the preparation of

Impact Statements, (2) clarifying when Impact Statements must be filed, and (3) describing how they will be reviewed and processed by the Capital City Redevelopment Corporation. The rules are designed to minimize disruption to the parties engaged in the development review process. The rules will affect the City of Trenton and any other government entity, or instrumentality thereof, undertaking a development project (not including interior rehabilitation) in the Capital City District of the City of Trenton.

Economic Impact

In the near term, the rules will have no significant economic impact upon the Capital City Redevelopment Corporation which is required to review the Impact Statements, the City of Trenton and other public entities who must prepare the Impact Statements, or the property owners undertaking development projects.

The expense of preparing an Impact Statement will vary greatly, depending upon the complexity of the project. For some projects, it can be completed within a few minutes, while other projects may require an hour or more of work. Technical expertise will not be required to prepare the Impact Statement for most projects.

In the long term, the rules will have a positive economic effect by facilitating the implementation of the Renaissance Plan, leading to downtown revitalization, enhanced property values and increased tax revenues.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. These rules have no direct impact on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules follow the statutory mandate that government entities furnish the Corporation with an Impact Statement prior to commencing a project or after final approval for a private project has been granted. In the case of private development projects, the governmental entity with authority to grant final approval of an action decides who prepares the Impact Statement. Should a small business be required to prepare an Impact Statement (by the government entity which is considering approval of the business' project), the costs involved would be as described in the Economic Impact statement above.

Full text of the proposal follows:

CHAPTER 41

CAPITAL CITY REDEVELOPMENT CORPORATION

SUBCHAPTER 1. PROJECT REVIEW PROCEDURE RULES

17:41-1.1 Purpose and scope

This chapter shall constitute the rules of the Capital City Redevelopment Corporation (the Corporation) governing the filing and processing of Impact Statements during the development review process. As required by N.J.S.A. 52:9Q-18, government entities (or instrumentalities thereof) which undertake any development project or which have the authority to grant final approval of plans for private development projects in the Capital City District of the City of Trenton must file Impact Statements with the Corporation.

17:41-1.2 Definitions

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

"Capital City District" means that portion of the City of Trenton delineated under N.J.S.A. 52:9Q-14.

"Capital City Renaissance Plan" (the Plan) means the plan adopted by the Corporation on October 30, 1989, in accordance with N.J.S.A. 52:9Q-17. The Plan may be reviewed at a copy obtained from the Capital City Redevelopment Corporation, 4 North Broad Street, CN 203, Trenton, New Jersey 08625-0203.

"Corporation" means the Capital City Redevelopment Corporation.

"Project" means (1) the acquisition, construction, reconstruction, redevelopment, historic restoration, repair, alteration, improvement or extension of any building, structure or facility, or public area or (2) the acquisition and improvement of real estate and the extension or provision of utilities, access roads and other appurtenant facilities in connection therewith, provided that the work undertaken is consistent with the Capital City Renaissance Plan; a project may also include planning, designing, acquiring, constructing, reconstructing

TREASURY-GENERAL

PROPOSALS

or otherwise improving a building, structure or facility and extension or provision of utilities, access roads and other appurtenant facilities in connection therewith, or any redevelopment undertaken by any person pursuant to section 12 of the Capital City Redevelopment Corporation Act.

17:41-2.1 Impact Statement requirement

(a) Pursuant to N.J.S.A. 52:9Q-18:

1. Any department, board, agency, division or commission of the State and any county or municipal government entity, or instrumentality thereof, which undertakes any construction, reconstruction or extension of any building, structure or facility or other improvement within the district shall, prior to undertaking such action, file with the corporation a Capital District Impact Statement which describes the ways in which the proposed construction, reconstruction or extension is consistent with the Plan in its various elements.

2. Whenever a governmental entity is granted final authority to review and approve plans for private development proposed for the district, the appropriate governmental entity with authority to grant final approval of an action shall file an impact statement for each development which is granted final approval explaining the ways in which the proposed development is consistent with the Plan.

i. The approving authority is empowered to require the preparation and submission of that impact statement by the developer as part of the application for development.

(b) For projects involving only interior rehabilitation, no Impact Statement is required.

17:41-2.2 Impact Statement format and contents

(a) To simplify their preparation, Impact Statements should include the information described and follow the format substantially in accordance with Exhibits A and B in the Appendix to this subchapter, incorporated herein by reference.

1. Exhibit A should be used for all projects.

2. Exhibit B should be used only if the project involves exterior rehabilitation estimated to cost more than \$5,000 or if the project involves new construction.

17:41-2.3 Deadlines for filing Impact Statements

(a) For a private development or construction project within the Capital City District, the appropriate governmental entity with authority to grant final approval of an action such as the City Planning Board, Zoning Board of Adjustment, Historic Landmarks Commission or Zoning Officer, shall file an Impact Statement with the Corporation not more than 45 days after final project plan approval, but not less than 10 days prior to the issuance of a construction permit by the City.

(b) For any project proposed within the Capital District by a government entity or instrumentality thereof, which requires an Impact Statement, that entity shall file an Impact Statement with the Corporation at least 60 days prior to advertising bids for construction of a project, and in no event less than 90 days prior to the commencement of construction.

17:41-2.4 Impact Statement review

(a) The Corporation shall review each Impact Statement filed and the plans submitted by the project applicant. An Impact Statement shall be deemed to be consistent with the Capital City Renaissance Plan if the proposed project described therein meets the requirements of the Plan or if any deviations from the Plan satisfy the requirements for the grant of a variance pursuant to N.J.S.A. 40:55D-70 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. If a proposed project is found not to be consistent with the Plan, the Corporation shall promptly notify, in writing, the City of Trenton, or such other governmental entity that filed the Impact Statement, of its determination and the reasons therefor.

(b) The Corporation may delegate its responsibilities with respect to Impact Statements to its Executive Director, subject to review by the Corporation's Board of Directors.

APPENDIX

EXHIBIT A—ALL PROJECTS* CAPITAL DISTRICT IMPACT STATEMENT

I. Applicant Information

Name: _____

Company: _____

Address: _____

Phone number: _____

II. Project Information

Location: (street address or block and lot number) _____

Zone: Type I ☐ Pedestrian Continuity Frontage:
Type II ☐ Yes ☐ No ☐
Type III ☐ (See Map 7 in the Renaissance Plan)
Type IV ☐
(See Map 3a in the Renaissance Plan)

Land Use: Residential ☐ Does the project involve demolition?
Retail ☐ Yes ☐ No ☐
Office ☐ Does the site involve surface parking?
Parking ☐ Yes ☐ No ☐
Mixed Use ☐ Is it existing? ☐ proposed? ☐
Vacant Lot: Streetwall ☐
Other (explain): _____

Building: New Construction ☐ Estimated Value of Improvement
Exterior Rehab. ☐ Up to \$5,000 ☐
More than \$5,000 ☐

List project approvals along with the date granted: _____

III. Consistency with the Renaissance Plan Urban Code

Explain how the project is in compliance with the appropriate requirements:

a. External signs shall be frontlit only. Signs on the inside of glazed openings may be backlit or neon.

b. Lots without buildings shall have a Streetwall** along 80% of their Frontage**.

c. Surface parking lots shall have a Streetwall** on all Frontages**. Surface parking lots shall not be permitted on corner lots or along Pedestrian Continuity Frontages**.

d. The exterior finish materials on all Facades** shall be limited to brick, stone, terra cotta, cast stone, and clear or lightly tinted glass. For Type III buildings, stucco may be added as an exterior finish material on all Facades**. For Type IV buildings, wood clapboards and/or wooden shingles may be added as an exterior finish material on all Facades**.

*Projects involving only interior rehabilitation do not require an Impact Statement.

**Terms are defined in the Capital City Renaissance Plan Urban Code.

IV. Drawings and Related Materials

List drawings and related materials submitted with this Impact Statement, if any, that define, clarify and support the descriptions required to demonstrate consistency.

This Impact Statement was prepared and submitted by:

Name: _____

Date: _____

Phone number: _____

Continue on to Exhibit B if the project involves exterior rehabilitation estimated to cost more than \$5,000 or if it involves new construction.

EXHIBIT B—REHABILITATION OR NEW CONSTRUCTION CAPITAL DISTRICT IMPACT STATEMENT

Exhibit B is to be completed only if the project involves exterior rehabilitation estimated to cost more than \$5,000 or if the project involves new construction.

Complete only those sections that are applicable.

I. Consistency with the Renaissance Plan Urban Code

a. Parking

Explain how the project is in compliance with these requirements:

Buildings with 5,000 sq. ft. or more of Gross Floor Area* shall provide a minimum of one parking space for each 500 sq. ft. of Commercial Use*, and one parking space for each Residential* Unit. These parking requirements shall be calculated from the first square foot.

Unless the required Parking Spaces are provided within 1,000 ft. of the lot they serve, adequate shuttle service must be available.

Note: Parking is not required for Independent Buildings* with less than 5,000 sq. ft. of Gross Floor Area*.

b. Building Use

Explain how the project is in compliance with these requirements:

In Type I, II and III zones, if the project is on a Primary Frontage*, Commercial* or Residential* Uses are required to a minimum depth from a Primary Frontage* of not less than 15 ft. The remaining depth may also be used for Parking. The only parking exposure allowed on a Primary Frontage* is an entrance or an exit not greater than 30 ft. in width across the Frontage*.

Note: Parking may be exposed on all Frontages* designated as Non-Primary*.

In Type I, II and III zones, if the project is on a Pedestrian Continuity Frontage* 70% of the Frontage* at the sidewalk level shall be for Commercial Use* to a minimum depth of not less than 15 ft.

In Type I, II and III zones, on other Frontages*, Stories* may be used for Commercial*, Residential* or Parking Use.

In Type IV zones, if the project is on a Pedestrian Continuity Frontage* 70% of the Frontage* at the sidewalk level shall be for Commercial Use* to a minimum depth of not less than 15 ft.

In Type IV zones, on other Frontages*, all Stories* may be used for Commercial* and/or Residential* Use.

In Type IV zones, at lots with Frontage* on Stockton Street, all Stories* may be for Commercial*, Residential* or Parking Use.

c. Building Height

Explain how the project is consistent with these requirements:

In Type I zones, building height shall be a maximum of 10 Stories*. Buildings shall have an Expression Line* at the top of the second Story* and a Recess Line* at the top of the sixth Story*.

Note: In Type I zones, a building may be built to the height of an existing building provided both buildings are integrated and all Facades* are complete.

In Type II zones, building height shall be a maximum of 6 Stories*. Buildings shall have an Expression Line* at the top of the second Story*.

In Type III zones, building height shall be a maximum of 4½ Stories*, including a half basement. Buildings shall have an Expression Line* at the top of the second Story*.

In Type IV zones, building height shall be a maximum of 3½ Stories*, including a half basement.

Note: No building shall be less than two Stories* in height, or 16 ft. from the sidewalk to the top of the parapet.

Note: The height limit shall not apply to a church, spire, radio mast, belfry, clock tower, chimney flue, water tank, elevator bulkhead, stage tower, scenery loft or similar structure.

Note: For Type I and Type II, the building height limitations shall be suspended for two years from the date of adoption of the Capital City

Renaissance Plan for any building for which final site plan approval has been obtained from the Trenton Planning Board prior to the adoption of the Renaissance Plan.

On Pedestrian Continuity Frontages* in Type I, II and IV zones, Stories* at sidewalk level shall be a minimum of 12 ft. in height from finished floor to finished ceiling.

d. Building Placement

Explain how the project is consistent with these requirements:

In Type I and II zones, Facades* shall be built on the Frontages* along 80% of their Length without any Setback* to a minimum height of two Stories*.

In Type III and IV zones, Facades* shall be built on the Frontages* along 80% of their length without any Setback*. Alternatively, the Facades* may be Setback* exactly 8 ft. from the Frontage* to provide a front Yard*.

Note: In the event of pre-existing Setbacks*, special adjustments may be allowed/required.

e. Architectural Standards

1. Exterior finish materials

Explain how the project is in compliance with these requirements:

The exterior finish materials on all Facades* shall be limited to brick, stone, terra cotta, cast stone, and clear or lightly tinted glass.

For Type III buildings, stucco may be added as an exterior finish material on all Facades*.

For Type IV buildings, wooden clapboards and/or wooden shingles may be added as an exterior finish material on all Facades*.

2. Facade* Design

Explain how the project is in compliance with these requirements:

The glazed area and all other openings of a Facade* shall not exceed 55% of the total area of such Facade*, with each Facade* being calculated independently.

On Pedestrian Continuity Frontages*, the Facade* of the Story* at sidewalk level shall not be less than 70% glazed.

For glazed areas and all other openings in a Facade*, height must be equal to or greater than the width.

f. General Requirements

Explain how the project is in compliance with these requirements:

Loading docks are not permitted on Pedestrian Continuity Frontages*.

All buildings shall have the main entrance on a Frontage*.

II. Consistency with the Renaissance Plan Land Use Element

a. Demonstrate how the project is consistent with the proposals described in the Land Use Element and depicted in the Illustrative Site Plan (Map 4) of the Renaissance Plan:

III. Consistency with the Renaissance Plan Transportation Element

a. Will the project generate any traffic? Yes ☐ No ☐

If so, describe how much traffic is expected and at what times. Describe any transportation improvements and other measures that will be made to accommodate the increased traffic. Describe what impact, if any, the traffic will have on the pedestrian environment around the project.

b. Will the project generate any truck traffic? Yes ☐ No ☐

If so, describe how much truck traffic is expected at what times and how it will be accommodated.

c. Does the project involve road construction or reconstruction?

Yes ☐ No ☐

If so, describe how the project is consistent with the proposals described in the Transportation Element, Design Element and Land Use Element and depicted on the Illustrative Site Plan (Map 4) of the Renaissance Plan.

IV. Drawings and Related Materials

List drawings and related materials submitted with this Impact Statement that define, clarify and support the descriptions required to demonstrate consistency.

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Administrative Correction

Special Education Program

Appeal, Use of Hearing Record, Obtaining Copy of Record, and Contents of Record

N.J.A.C. 1:6A-18.3

Take notice that the Office of Administrative Law has discovered an error in the text of N.J.A.C. 1:6A-18.3(a). That subsection concludes with a reference to 20 U.S.C.A. 1415(e)(3). This reference is not correct; the correct reference is to 20 U.S.C.A. 1415(e)(2). 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]):

1:6A-18.3 Appeal, use of hearing record, obtaining copy of record, and contents of record

(a) Any party may appeal the decision of the judge either to the Superior Court of New Jersey, pursuant to the Rules Governing the Courts of the State of New Jersey, or to a district court of the United States, pursuant to 20 U.S.C.A. 1415(e)[(3)](2).

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

AGRICULTURE

(b)

DIVISION OF ADMINISTRATION

Departmental Administration and Organization Rules of Practice

Adopted New Rules: N.J.A.C. 2:1

Proposed: September 17, 1990 at 22 N.J.R. 2865(a).

Adopted: October 25, 1990, by Arthur R. Brown, Jr., Secretary

Department of Agriculture; and State Board of Agriculture.

Filed: October 25, 1990, as R.1990 d.579 **without change**.

Authority: N.J.S.A. 52:14B-3(1) and (2) and 52:14B-4(b).

Effective Date: November 19, 1990.

Expiration Date: November 19, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Farm Bureau stated no specific objection to the proposed rules. However, they expressed concern that the Department keep the "limited financial means of many farmers" in mind when levying fees for Department services. Also, Farm Bureau desires to have proposed rules circulated early in the rulemaking process.

RESPONSE: The Department recognizes and shares the concern of the New Jersey Farm Bureau which represents the majority of the State's commercial farmers and has over 5,300 members. Every effort will be made to minimize fees where appropriate and, subject to N.J.A.C. 2:1-3.2(c) of the Department rules, the Department shall provide "the maximum amount of public participation . . ." in its rulemaking process.

COMMENT: The New Jersey Department of the Public Advocate, with respect to N.J.A.C. 2:1-2 of the proposed rules, called for the creation of a new operating division within the Department to administer its food distribution programs, and further that this new operating division consist of two bureaus, one to administer the Temporary Emergency Food Assistance Program (TEFAP), and the other (already existing) to administer the Department's remaining food distribution programs.

This action, as expressed by the Public Advocate, would provide for increased management attention to the TEFAP program while maximizing the distribution of food to New Jersey's needy citizens.

RESPONSE: The Department recognizes and shares the concern of the Public Advocate for the welfare of the State's needy citizens and for that reason performed a thorough analysis on the proposal delineated in the comment.

While the creation of a new operating division (and a new bureau within it) has been expressed by the Public Advocate as the optimum way of maximizing the receipt and distribution of food commodities to the State's needy citizens, the Department believes that recent organizational changes implemented with the existing Bureau of Food Distribution within the Division of Markets will allow for the above objective to be similarly attained. Moreover, the relative fiscal status of the Department and New Jersey government in general is not conducive to the assumption of administrative costs associated with the formation and operation of an additional Department division and added bureau.

For these reasons, the Department believes that its organization, as stated in its proposed rules, will effectively meet the needs of the TEFAP and other food distribution programs and the citizens of the State they serve.

Full text of the adoption follows.

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. ORGANIZATION

2:1-2.1 Department responsibilities

The State Department of Agriculture is responsible for development, regulatory, service, promotion and information programs in support of agriculture and agribusiness and those natural and renewable resources associated with agriculture and open lands for the benefits of all citizens as prescribed in Titles 4, 5, 13, 24, 54 and other applicable titles in the New Jersey Statutes Annotated.

2:1-2.2 Tables of organization

Tables showing the organization of the Department and the major sections within each Division are appended to the end of this chapter.

2:1-2.3 Functions of departmental units

(a) Functions of the various units within the State Department of Agriculture are as follows:

1. The State Board of Agriculture is the head of the Department and consists of eight farmers of the State engaged in the production of farm crops or livestock. The State Board of Agriculture, with the approval of the Governor, appoints the Secretary of Agriculture who serves as the principal executive officer of the Department and secretary to the Board. The Board has the authority to establish rules and regulations for its own proceedings and for the government, control and program performance of the Department.

2. The Office of the Secretary includes the Secretary of Agriculture, an Assistant Secretary and an Associate Secretary. It is responsible for the executive management policy development, legislative liaison, public information programs and rules for the Department and the State Board of Agriculture.

3. The Division of Administration provides personnel, budget, accounting, training and administrative support services to the Divisions.

4. The Division of Animal Health is responsible for programs for the prevention, control and eradication of livestock and poultry diseases affecting such livestock, livestock products, and human health.

5. The Division of Dairy Industry is responsible for fostering a stable and competitive dairy industry, including the regulation and enforcement of the production and distribution of fluid dairy products.

6. The Division of Markets provides market development services, market news, support for agricultural cooperatives, equine programs, product promotion, and distributes Federal donated food to schools, institutions and qualified individuals.

7. The Division of Plant Industry is responsible for programs to prevent, control and eradicate pests and diseases of plants and trees; conducts beneficial insect development and production, and provides seed certification and control.

8. The Division of Regulatory Services is responsible for the quality assurance of animal feeds, fertilizers, agricultural liming materials, agricultural product grading and inspection, and the regulation of credit buyers of perishable agricultural products.

9. The Division of Rural Resources provides programs and services to support farming, agricultural and rural development, soil and water conservation, agricultural statistics, farmland retention, and conducts studies on rural issues through the Rural Advisory Council.

10. Functions of units assigned to the State Department of Agriculture are as follows:

i. The State Agriculture Development Committee is independent of, but allocated within the Department of Agriculture. It administers the Farmland Preservation Program which consists primarily of cooperative easement purchase programs with local government and a soil and water conservation cost-share program with landowners.

SUBCHAPTER 3. RULES OF PRACTICE

2:1-3.1 Purpose of rules of practice

The State Board of Agriculture and the New Jersey Department of Agriculture, in order to more fully represent and carry out their duties and functions, adopts this subchapter as its rules of practice.

2:1-3.2 Development of rules

(a) Rules shall be clear and concise to encourage the maximum amount of voluntary compliance by those who are regulated.

(b) Rules may be established by the Board for its own proceedings, for the governing and control of the Department, its programs, and the officers and employees of the Department.

(c) The Department shall provide the maximum amount of public participation in the review of existing or establishment of proposed rules.

2:1-3.3 Procedure to petition for a rule

(a) An interested person may petition for the promulgation, amendment or repeal of any rule of the Department of Agriculture. A petition shall be in writing, shall be legible and intelligible and shall be signed by the petitioner. Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request; and
4. The statutory authority under which the Department of Agriculture may take the requested action.

(b) The Department of Agriculture shall immediately date stamp and log each document submitted as a petition. Upon filing, the Department of Agriculture shall forthwith publish the notice of petition for a rule in the New Jersey Register pursuant to the requirements of N.J.A.C. 1:30-3.6(a).

(c) No later than 30 days after receiving a petition, the Department of Agriculture shall mail to the petitioner and file for publication in the New Jersey Register, a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b). The notice of action shall include either:

1. A statement denying the petition;
2. A notice of proposed rule or a notice of pre-proposal for a rule for publication in the Register; or

3. A statement that the matter is being referred for further deliberations, the nature of which shall be specified and which shall conclude upon a date certain. The results of these further deliberations shall be mailed to the petitioner and shall be submitted for publication in the Register.

2:1-3.4 Hearings

(a) Any person who feels aggrieved by any action or inaction of the Department may request an informal meeting with the Department to settle any dispute, or seek clarification of the Department's rules and regulations. The Department shall respond, in writing, to any such request stating the reasons for its determination.

(b) If any dispute is required by law or regulation to be heard formally, or if the Department determines the matter a contested one, the matter shall be treated 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.

2:1-3.5 Instructions for Departmental forms on file

A description and instructions for use of the forms used in carrying out the Department's responsibilities may be obtained from the Office of the Secretary, Department of Agriculture, Trenton, N.J. 08625.

2:1-3.6 Information available to public

(a) The public may obtain complete information or make submissions or requests concerning any Departmental programs by contacting the Office of the Secretary, Department of Agriculture, Trenton, N.J. 08625.

(b) An annual report of all Department activities is made to the Governor and Legislature. Copies are available from the Public Information Office, N.J. Department of Agriculture, Trenton, N.J. 08625.

2:1-3.7 Public records; copies; fees

(a) All records which are required by law to be made, maintained, or kept on file shall be considered public records. This includes records of all public meetings of the New Jersey State Board of Agriculture and all other Boards, Committees or Councils of the Department. Such records are available for reasonable inspection, under supervision, during regular working hours at the main offices of the New Jersey Department of Agriculture, John Fitch Plaza, Trenton, New Jersey.

(b) Any person may obtain copies of public records by written request upon payment of a fee as follows:

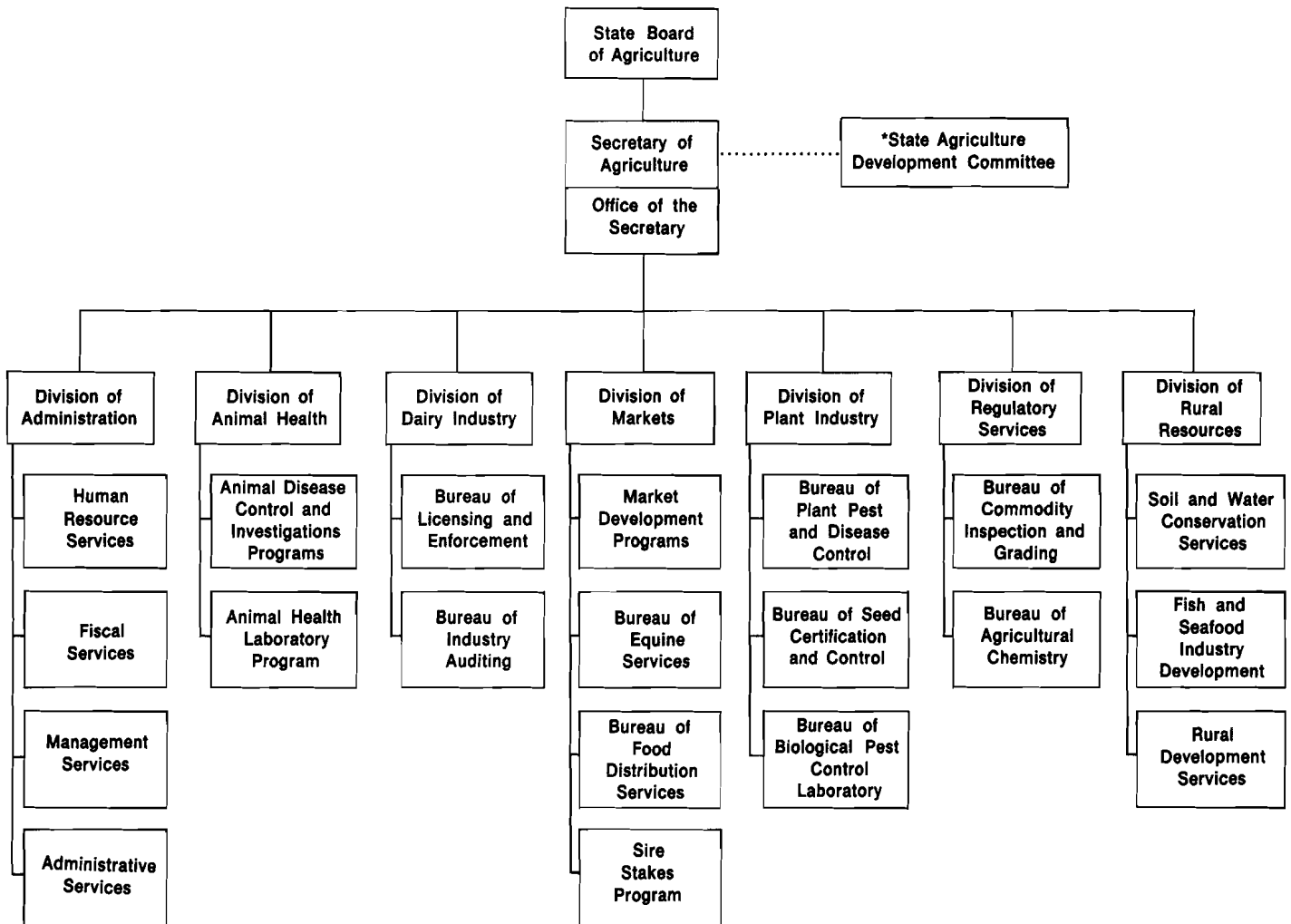
1. First page to tenth page: \$0.50 per page;
2. Eleventh page to 20th page: \$0.25 per page;
3. All pages over 20: \$0.10 per page.

(c) The Department may charge the costs of any delivery service over and above ordinary Postal Service rates for any requested overnight, express or other special delivery service.

(d) Records may be requested for transmittal by a telefacsimile machine upon payment, for cost reimbursement, at the rate of \$5.00 per page.

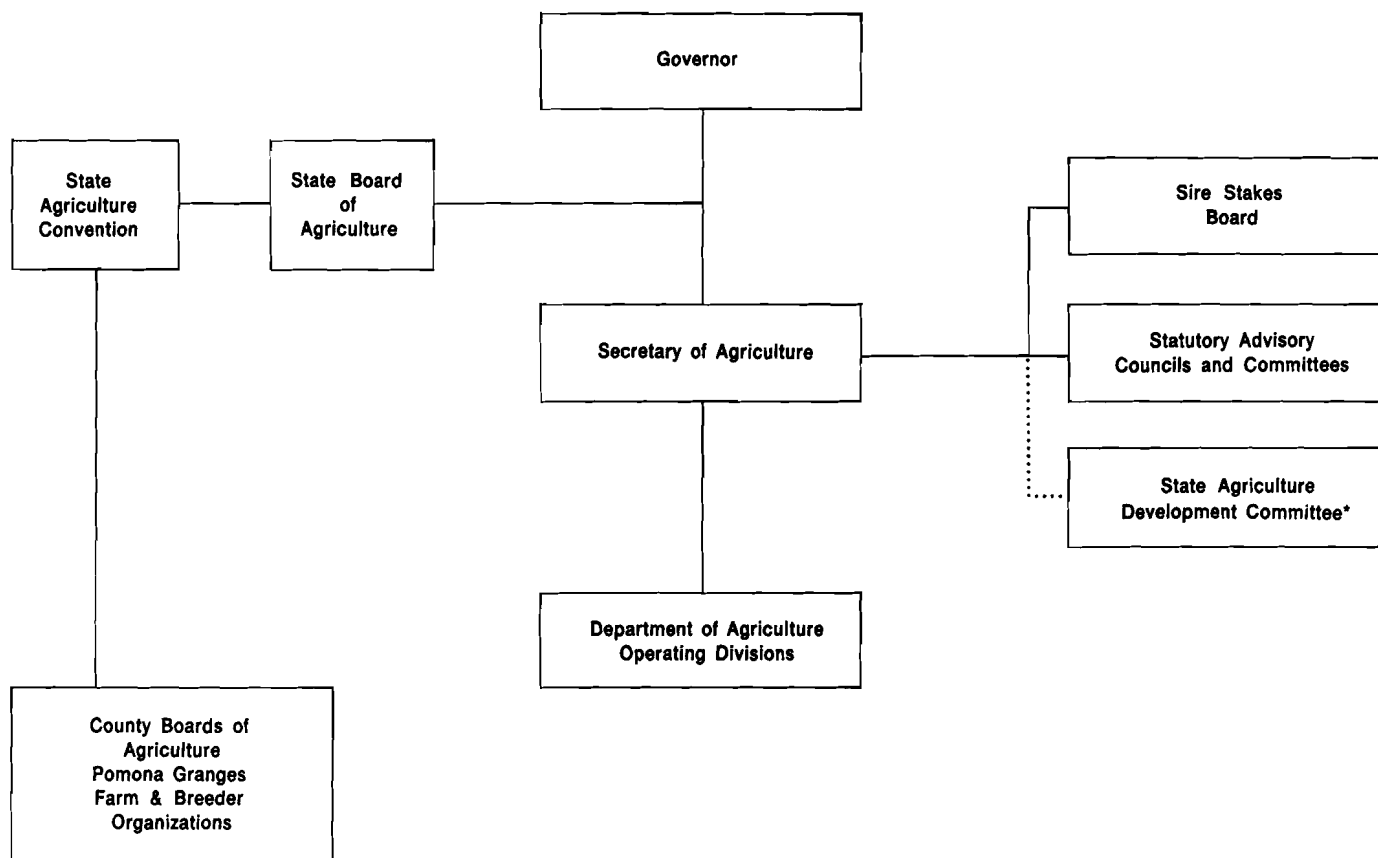
(e) Payment shall be made by check payable to the New Jersey Department of Agriculture.

NEW JERSEY DEPARTMENT OF AGRICULTURE



*The State Agriculture Development Committee is independent of, but allocated within, the Department of Agriculture.

NEW JERSEY DEPARTMENT OF AGRICULTURE



*The State Agriculture Development Committee is independent of, but allocated within, the Department of Agriculture.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Overtime Compensation

Adopted Amendments: N.J.A.C. 4A:3-5.2 and 5.5

Proposed: September 4, 1990 at 22 N.J.R. 2627(b).

Adopted: October 16, 1990 by the Merit System Board;

William G. Scheuer, Acting Commissioner,
Department of Personnel.

Filed: October 18, 1990 as R. 1990 d.552, **with a technical change**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 11A:6-24.

Effective Date: November 19, 1990.

Expiration Date: September 6, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Only one comment was received. The Director, Division of Human Resources, Department of Transportation, suggested that the amendment to N.J.A.C. 4A:3-5.5, which requires overtime to be recorded in one-tenth hour units, should be clarified to explain that a one-tenth hour unit is six minutes. She also asked whether overtime would be recorded in minutes following the first six minutes of overtime or whether it would be counted in six-minute intervals.

RESPONSE: In response to the comment, the words "six minutes" will be added in parentheses. With regard to the question, the intention of the amendment is to have overtime recorded in six-minute intervals.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

4A:3-5.2 Definitions: State service

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

"Regular rate" means the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. For employees in covered titles, the regular rate includes clothing allowances unless the allowance is for the purchase or maintenance of prescribed clothing required by the employer. Employees in covered non-limited titles (NE) shall be deemed to have a 40-hour workweek for determining the hourly proration. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

...

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

(a) (No change.)

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

1.-7. (No change.)

PERSONNEL

8. Work credited toward overtime compensation shall be in one-tenth hour units ***(six minutes)*** of continuous work beyond each regular work day.

(a)

MERIT SYSTEM BOARD

Promotional Examinations

Adopted Amendment: N.J.A.C. 4A:4-2.4

Proposed: September 4, 1990 at 22 N.J.R. 2628(a).

Adopted: October 16, 1990 by the Merit System Board;

William G. Scheuer, Acting Commissioner,
Department of Personnel.

Filed: October 18, 1990 as R.1990 d.554, **without change**.

Authority: N.J.S.A. 11A:4-14.

Effective Date: November 19, 1990.

Expiration Date: June 6, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

4A:4-2.4 Promotional title scope: local service

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

(d) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either:

1. Serving in the next lower or next two lower in-series non-competitive titles; or

2. Serving in all related noncompetitive titles.

(e) (No change.)

(b)

MERIT SYSTEM BOARD

Working Test Period

Adopted Amendment: N.J.A.C. 4A:4-5.5

Proposed: September 4, 1990 at 22 N.J.R. 2629(a).

Adopted: October 16, 1990 by the Merit System Board;

William G. Scheuer, Acting Commissioner,
Department of Personnel.

Filed: October 18, 1990 as R.1990 d.553, **without change**.

Authority: N.J.S.A. 11A:4-15.

Effective Date: November 19, 1990.

Expiration Date: June 6, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

4A:4-5.5 Restoration to eligible list or former title

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

(c) A permanent employee serving a working test period in another title shall continue to accrue seniority in his or her permanent title for the duration of the working test period. See N.J.A.C. 4A:4-1.9 for procedures on restoration to a former title.

ADOPTIONS

(c)

MERIT SYSTEM BOARD

Employee Layoff Rights

Adopted Amendment: N.J.A.C. 4A:8-2.2

Proposed: September 4, 1990 at 22 N.J.R. 2629(b).

Adopted: October 16, 1990 by the Merit System Board;

William G. Scheuer, Acting Commissioner,
Department of Personnel.

Filed: October 18, 1990 as R.1990 d.555, **without change**.

Authority: N.J.S.A. 11A:8-1.

Effective Date: November 19, 1990.

Expiration Date: January 16, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

4A:8-2.2 Exercise of lateral and demotional rights

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

(f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. In such cases, displacement may be made only on the basis of greater permanent continuous service.

(g) (No change.)

COMMUNITY AFFAIRS

(d)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Underground Storage Tank Systems

Adopted Amendments: N.J.A.C. 5:23-1.1 and 3.1

Adopted New Rule: N.J.A.C. 5:23-3.11B

Proposed: September 4, 1990 at 22 N.J.R. 2629(c).

Adopted: October 17, 1990 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: October 23, 1990 as R.1990 d.562, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124 and 58:10A-25.

Effective Date: November 19, 1990.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

The Department of Environmental Protection submitted a comment in which they corrected the citation to their rules in N.J.A.C. 5:23-3.11B(a) and requested deletion of all reference to written determinations by DEP that no DEP permit is required, suggesting changes to be made on adoption. The reason for this latter request is that DEP rules contain no requirement for a written determination when no DEP permit is required.

In response, the Department has corrected the reference to the DEP rules, has eliminated the inconsistencies with the DEP rules, and has restated the categories of exempt underground storage tank systems set forth in N.J.A.C. 7:14B-1.4(b) that are subject to construction permit requirements so that construction officials will have ready access to them when they are called upon to determine if a prior DEP approval is needed.

The requirement for submission of engineering drawings at N.J.A.C. 5:23-3.11B reiterates requirements elsewhere in the Uniform Construction Code, and the certification requirement was added to ensure N.J.A.C. 7:14B compliance.

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

5:23-1.1 Title; division into subchapters

- (a) (No change.)
- (b) The regulations consist of the following subchapters:
 - 1-2. (No change.)

3. "Subcodes" which may be cited throughout the regulations at N.J.A.C. 5:23-3 and when referred to in subchapter 3 of this chapter may be cited as this subchapter.

i. N.J.A.C. 5:23-3.11B contains references to the Department of Environmental Protection's rules concerning underground storage tanks, codified at N.J.A.C. 7:14B, which are jointly enforced by this Department and local enforcing agencies pursuant to this chapter.

5:23-3.1 Title; scope; intent

- (a)-(d) (No change.)
- (e) Provisions concerning underground storage tanks, jointly enforced by the Department of Environmental Protection (DEP), are in N.J.A.C. 5:23-3.11B and in the DEP'S rules at N.J.A.C. 7:14B.

5:23-3.11B Underground storage tank systems

(a) The installation, repair (other than "minor repair," as defined in N.J.A.C. 7:14B-10.5), and closure (or "demolition") of underground storage tank systems, as defined in N.J.A.C. 7:14B-10.1, shall be controlled by the State Uniform Construction Code and by N.J.A.C. 7:14B-1 through *10**15*.

(b) A DEP permit for the installation, repair or closure of an underground storage tank system ***that requires a DEP approval***, or any part thereof, ***[or the DEP's written determination that no DEP permit is required,]*** or an emergency permit granted pursuant to N.J.A.C. 7:14B, shall be a prior approval for any permit application submitted pursuant to the State Uniform Construction Code Act and these rules. ***[If an underground storage tank system or any part thereof is designated by DEP as an approved secondary containment device, no additional prior approval for compliance with N.J.A.C. 7:14B shall be required.]*** ***Applicants installing secondarily contained systems for which no prior DEP approval is necessary shall be required to submit engineering drawings of the secondarily contained systems and to certify that the underground storage tank system meets all requirements of N.J.A.C. 7:14B.***

(c) Construction code officials shall retain all penalty powers, as set forth in these rules, with respect to the installation, usage or closure (demolition) of underground storage tank systems and parts thereof in violation of the State Uniform Construction Code Act or these rules.

***(d) The following types of underground storage tank systems requiring a construction permit are exempt from the requirements of N.J.A.C. 7:14B:**

1. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building;
3. Tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a residential building;
4. Septic tanks installed in compliance with rules adopted by DEP pursuant to P.L. 1954, c.199 (N.J.S.A. 58:11-23 et seq.);
5. Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor;
6. Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is equipped with secondary containment and is uncovered so as to allow visual inspection of the exterior of the tank;
7. Wastewater treatment tanks;
8. Electrical equipment;
9. Hydraulic lift tanks; and
10. Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of N.J.A.C. 7:14B as set forth in (b)1 to 9 above.*

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Permit Exemption for Temporary Greenhouses

Adopted Amendments: N.J.A.C. 5:23-2.14 and 3.14

Proposed: July 2, 1990 at 22 N.J.R. 1969(b).

Adopted: October 16, 1990 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: October 19, 1990 as R.1990 d.558, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: November 19, 1990.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the New Jersey Department of Agriculture and from representatives and members of the agricultural community expressing concern that, despite the Department's stated intention of exempting hoopouses from permit requirements, the Department was still burdening farmers unreasonably by excluding from the exemption hoopouses with electrical or mechanical equipment or with a length in excess of 300 feet and by requiring access to the wall area in a way that would make the hoopouse unusable for storing anything that might block a path of exit, which was certainly not the intent. In response, and after consultation with the Department of Agriculture, the Department has revised the rules as proposed so as to better reflect the intention of not regulating agricultural operations to a greater extent than is clearly necessary to protect health and safety.

In the proposed amendment to N.J.A.C. 5:23-3.14, it was incorrectly stated that the membrane of the hoopouse must be **greater** than six mils thick. It should be **no greater** than six mils. This correction has been made on adoption.

The language about there being no residential or retail use is deleted on adoption because it is redundant. The rule already makes it clear that the exemption from permit requirements applies only to temporary greenhouses used exclusively for the production or storage of live plants.

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

AGENCY NOTE: The reference in the proposed amendment to N.J.A.C. 5:23-3.14(b)5xii to "Section 626.1.1" was changed to "Section 624.1.1" by amendment adopted at 22 N.J.R. 3214(a). The text of that subparagraph in this adoption reflects that change.

5:23-2.14 Construction permits when required

- (a) (No change.)
- (b) The following are exceptions from (a) above:
 - 1.-3. (No change.)

4. Permit requirements for tents and membraned structures shall be as set forth in N.J.A.C. 5:23-3.14(b)5xii. A temporary greenhouse meeting the criteria set forth in N.J.A.C. 5:23-3.14(b)5xii(4) shall not require a permit ***except as otherwise provided in N.J.A.C. 5:23-3.14(b)5xii(5)***.

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

(f) Construction requirements for commercial farm buildings shall be as set forth in N.J.A.C. 5:23-3.2(d).

5:23-3.14 Building subcode

- (a) (No change.)
- (b) The following articles or sections of the building subcode are modified as follows:

- 1.-4. (No change.)

5. The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements":

- i.-xi. (No change.)

xii. Section 624.1.1 is deleted in its entirety and the following language is substituted in lieu thereof:

- (1)-(3) (No change.)

(4) A temporary greenhouse, also called a "hoophouse" or "polyhouse," used exclusively for the production or storage of live plants, shall be exempt from the permit requirements of the Uniform Construction Code if it meets the following criteria:

[(A)](A) It does not contain any device subject to the electrical subcode or any mechanical equipment for which a mechanical subcode permit is required;

(B) If connected to a potable water system, a plumbing subcode permit is obtained to ensure adequate backflow prevention;]*

[(C)](A)* There is no permanent anchoring system or foundation;

[(D)](B)* There *[shall be]* ***is*** no storage, temporary or otherwise, of solvents, fertilizers, gases or other chemical or flammable materials *[and no residential or retail use of the structure]*;

[(E)](C)* The structure *[shall be no longer than 300 feet and]* ***is*** no wider than 31 feet and there *[shall be]* ***is*** an unobstructed path of no greater length than *[15.5]* ***150*** feet from any point to a door or fully accessible wall area; and

[(F)](D)* The covering of the structure *[shall be]* ***is*** of a material ***no*** greater than six mils (152.4 micrometers) in thickness, conforming to N.F.P.A. 701 standard, that yields approximately four pounds of maximum impact resistance to provide egress through the wall.

(5) The provisions of (b)5xii(4) above notwithstanding, if a temporary greenhouse contains any device subject to the electrical subcode or any mechanical equipment subject to the mechanical subcode, then a permit shall be required for the system or fixture only. If the temporary greenhouse is connected to a potable water system, a permit shall be required for the backflow prevention devices only.

xiii. (No change.)

6.-21. (No change.)

EDUCATION

(a)

THE COMMISSIONER OF EDUCATION

Organization of the Department of Education

Adopted New Rules: N.J.A.C. 6:5-2

Adopted Recodification: N.J.A.C. 6:5-2 to 6:5-3

Adopted: October 3, 1990 by John Ellis, Commissioner,
Department of Education

Filed: October 22, 1990 as R.1990 d.561.

Authority: N.J.S.A. 52:14B-3(l).

Effective Date: October 22, 1990.

Expiration Date: October 22, 1995.

The adopted new rules are organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and are effective upon filing. As ancillary to the new rules, the adopted recodification is also effective upon filing.

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

SUBCHAPTER 2. ORGANIZATION OF THE DEPARTMENT OF EDUCATION

6:5-2.1 Basic composition of the Department

(a) The Department of Education consists of a State Board of Education, the Commissioner of Education and such divisions, bureaus, branches, committees, other organizational units and officers and employees as allowed by law and as necessary to carry out the Department's statutory mandates.

(b) The basic organizational design of the Department is indicated in the Organizational Chart (see Appendix to this subchapter, incorporated herein by reference) with the executive functions as follows:

1. The Commissioner of Education is the chief executive and administrative officer of the Department.

2. The Deputy Commissioner serves as Acting Commissioner during the Commissioner's absence and reports directly to the Commissioner.

6:5-2.2 Reporting responsibilities

(a) The following senior managers, with corresponding divisions, report directly to the Commissioner:

1. The Assistant Commissioner for the Division of Urban Education;

2. The Assistant Commissioner for the Division of County and Regional Services. The following organizational units and their chief officers report directly to the Assistant Commissioner for the Division of County and Regional Services:

i. The county superintendent of schools in each of the 21 counties;

ii. The directors of the three Regional Curriculum Services Units; and

iii. The Director of the Academy for the Advancement of Teaching and Management;

3. The Assistant Commissioner for the Division of General Academic Education;

4. The Assistant Commissioner for the Division of Finance;

5. The Assistant Commissioner for the Division of Vocational Education;

6. The Director for the Division of Compliance; and

7. The State District Superintendent(s) for the State-operated school district(s).

(b) The following senior managers, with corresponding divisions, report directly to the Deputy Commissioner:

1. The Assistant Commissioner for the Division of State Library;

2. The Director for the Division of Administration;

3. The Director for the Division of Adult Education;

4. The Director for the Division of Direct Services;

5. The Director for the Division of Executive Services;

6. The Director for the Division of Special Education; and

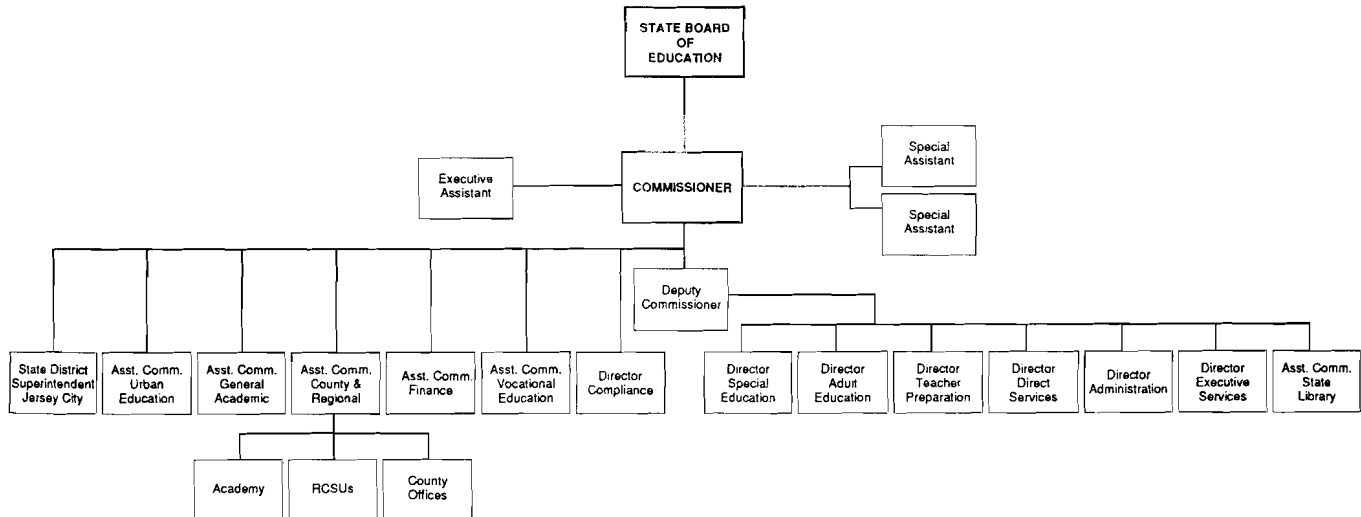
7. The Director for the Division of Teacher Preparation and Certification.

6:5-2.3 Public information requests

Members of the public may obtain general information from the Department of Education by writing to or telephoning the Public Information Office, Department of Education, 225 West State Street, Trenton, NJ 08625, (609) 292-4041.

Recodify existing N.J.A.C. 6:5-2 as 6:5-3 (No change in text.)

**State of New Jersey
Department of Education
October 1990**



HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Adopted Amendment: N.J.A.C. 9:11-1.5

Proposed: June 4, 1990 at 22 N.J.R. 1659(a).

Adopted: October 18, 1990 by the Board of Directors of Educational Opportunity Fund, Judith Cambria, Chairperson.

Filed: October 18, 1990 as R.1990 d.556, **without change**.

Authority: N.J.S.A. 18A:71-33.

Effective Date: November 19, 1990.

Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial EOF grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth below in the EOF Income Eligibility Scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. EOF Dependent Student Eligibility Scale:

Applicants With a Household of:	Gross Income (Not to Exceed):
2 persons	\$15,210
3	17,430
4	19,650
5	21,870
6	24,090
7	26,310

2. For each additional member of the household, an allowance of \$2,220 shall be added to this amount in order to determine eligibility for EOF for the 1990-91 Academic Year. This allowance shall be adjusted annually to reflect changes in the Standard Maintenance

Allowance as published by the College Scholarship Service. In addition, the gross income level for each household size also shall be adjusted to reflect the change in the annual Standard Maintenance Allowance.

3. (No change.)

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

(d) An independent student is financially eligible for an E.O.F. grant providing his or her gross annual income (including spouse) for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the following schedule:

1. \$9,340 family size (including student) 1;
2. \$11,560 family size (including spouse) 2;
3. \$13,780 family size (including spouse) 3;
4. \$16,000 family size (including spouse) 4;

5. Add \$2,220 for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Allowance as published by the College Scholarship Service.

6. (No change.)

(e)-(g) (No change.)

(b)

BOARD OF DIRECTORS OF EDUCATIONAL OPPORTUNITY FUND

Part-Time Students

Adopted Amendment: N.J.A.C. 9:11-1.23

Proposed: June 4, 1990 at 22 N.J.R. 1660(a).

Adopted: October 18, 1990 by the Board of Directors of Educational Opportunity Fund, Judith Cambria, Chairperson.

Filed: October 18, 1990 as R.1990 d.557, **without change**.

Authority: N.J.S.A. 18A:71-33.

Effective Date: November 19, 1990.

Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:11-1.23 Part-time students

(a) (No change.)

(b) Part-time grant eligibility shall only be available to EOF students attending those institutions approved by the Board of Directors of EOF to award part-time EOF grants to students pursuant to the provisions of N.J.A.C. 9:11-1.8(a).

(c)-(g) (No change.)

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Food Stamp Program

Miscellaneous Program Requirements

Adopted Amendments: N.J.A.C. 10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, and Appendix A

Proposed: August 6, 1990 at 22 N.J.R. 2219(a).

Adopted: October 23, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: October 24, 1990 as R.1990 d.565, **without change**.

Authority: N.J.S.A. 30:4B-2; 7 CFR parts 245 and 273; P.L. 99-498, P.L. 99-198, P.L. 99-603, P.L. 100-50, and P.L. 100-435.

Effective Date: November 19, 1990.

Expiration Date: January 27, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:87-1.14 Confidentiality and disclosure of information

(a) (No change.)

(b) Disclosure of information: The CWA may release information concerning an applicant or recipient household in the following situations only:

1.-8. (No change.)

9. School officials: Households that provide a food stamp or AFDC case number on the school meal application are categorically eligible for free school meals. The CWA shall honor requests from school officials to verify Food Stamp Program participation for households applying for free school meals. The CWA shall not release any information with regard to the household beyond the verification of Food Stamp Program participation. Section 169 of the Food Stamp Application Privacy Act (P.L. 97-253) allows such information to be provided to officials verifying eligibility for free school meals.

10. (No change.)

10:87-4.3 Resources defined

(a) The resources of a household shall include the following which shall be recorded by the CWA in sufficient detail to permit verification if necessary (see N.J.A.C. 10:87-2.20, 2.21 and 4.5).

1. Liquid resources: Liquid resources such as cash on hand, money in checking and/or savings accounts, savings certificate, stocks and/or bonds, lump-sum payments as described in N.J.A.C. 10:87-5.9(a)13, funds held in Individual Retirement Accounts (IRAs), and funds held in Keogh plans that do not involve the household member in a contractual relationship with individuals who are not household members.

i.-ii. (No change.)

2.-3. (No change.)

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; no other income shall be excluded.

1.-6. (No change.)

7. Educational grants and loans: Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran's educational benefits and the like shall be excluded to the extent that they are used for tuition and mandatory school fees of post-secondary

education, including correspondence schools at that level, or a school for the physically or mentally handicapped at any level (see N.J.A.C. 10:87-5.11).

8. Loans: All loans, including loans from private individuals as well as commercial institutions, are excluded from income. Additionally, deferred payment educational loans that provide income assistance beyond that used for tuition and mandatory fees shall be excluded if the lender/financial aid office of the school specifically designates portions of the loan as educational expenses rather than living expenses (see N.J.A.C. 10:87-2.21(d)).

9.-15. (No change.)

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1.-2. (No change.)

3. Excess medical deduction: That portion of medical expenses in excess of \$35.00 per month, excluding the cost of special diets, incurred by any household member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. Spouses or other persons (that is, essential persons) receiving benefits as dependents of the SSI or disability and/or blindness recipient are not eligible to receive this deduction. Persons receiving "emergency" SSI benefits based on presumptive eligibility are eligible for this deduction.

i. Allowable medical costs: The following items are allowable medical costs:

(1)-(9) (No change.)

(10) Attendant care: Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services, necessary because of age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal related deduction shall be that in effect at the time of initial certification. The CWA shall update the allotment amount no later than the next scheduled recertification. It is not necessary for the CWA to update this deduction at the time of the annual allotment adjustment. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the CWA shall treat the cost as a medical expense.

4.-5. (No change.)

10:87-5.11 Treatment of educational assistance

(a) (No change.)

(b) Institution of post secondary education is defined as any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in New Jersey. The institution must be legally authorized or recognized by the State to provide an educational program beyond secondary education or a training program to prepare students for gainful employment.

(c) (No change.)

(d) Federal education assistance, funded in whole or part under Title IV of the Higher Education Act of 1986 (Public Law 99-498) or by the Bureau of Indian Affairs (BIA) Higher Education Grant Program, which is made available to the student for tuition, mandatory school fees or specified costs related to college expenses shall be excluded from both income and resources. Title IV programs include Pell, Supplemental Educational Opportunity Grants (SEOG), State Student Incentive Grants (SSIG), the National Direct Student Loan (NDSL) and Perkins Loans, Guaranteed Student Loans (GSL), the PLUS program, the College Work Study Program, and the Byrd Honor Scholarships.

1. (No change.)

2. The institution or grantor shall indicate on budget sheets or other appropriate documentation that the assistance is made available for allowable costs of attendance. The student is not required to verify how the assistance is actually used. However, assistance provided for room, board and dependent care shall not be excluded under this provision.

(e) Origination fees and insurance premiums on student loans are excludable charges.

ADOPTIONS

(f) State educational assistance such as Tuition Assistance Grants (TAG), Educational Opportunity Fund (EOF), Garden State Scholarships, and the PLUS program, shall be excluded from income to the extent that it is made available for tuition, mandatory school fees and specified costs relating to education as designated by the "grantor" or the financial aid office of the school when that office takes part in determining eligibility for, and level of educational assistance.

(g) Non-Federal educational assistance (local and private) shall be excluded from income to the extent that it is made available to the student for tuition, mandatory school fees and specified costs of education such as books, supplies, transportation, and other miscellaneous educational expenses. In order to be excluded, private educational assistance must be "earmarked" by the "grantor" for specific educational expenses.

(h) (No change in text.)

(i) The following shall not be considered as excludable reimbursements:

1. (No change.)

2. No portion of any Federal educational grant, scholarship, fellowship, or veteran's educational benefit, to the extent that it provides income assistance beyond that made available for tuition and mandatory fees as set forth in N.J.A.C. 10:87-5.9(a)7. This provision does not apply to assistance provided by programs funded under Title IV of the Higher Education Act, except as specified under N.J.A.C. 10:87-5.9(a)15xiii.

3.-4. (No change.)

10:87-6.3 Application for recertification

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

(c) Any household that receives a notice of expiration at the time of certification, as discussed in N.J.A.C. 10:87-9.1(a) shall not be subject to proration for the first month of its certification period if the deadline for filing for recertification falls after the end of its current certification period. However, households found ineligible for the first month following the end of their certification shall have the first month of any subsequent participation considered an initial month.

(d) (No change.)

10:87-7.14 Treatment of income and resources of certain nonhousehold members

(a) During the period of time that a household member cannot participate because he or she is an ineligible alien, disqualified due to intentional program violation, failed/refused to obtain and provide a social security number, or is ineligible for failing to sign the declaration attesting to his or her citizenship or alien status, the eligibility and benefit level of the remaining household member(s) shall be determined in accordance with this section.

(b) (No change.)

(c) Excluded for other causes: The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible for being an ineligible alien, for failing to sign the declaration attesting to his or her citizenship or alien status, or because of disqualification for refusal to obtain or provide a Social Security number shall be determined as follows:

1.-2. (No change.)

3. Deductible expenses: The 20 percent earned income deduction shall only apply to that portion of the ineligible members' earned income which is attributed to the household in N.J.A.C. 10:87-7.14(c)2. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the ineligible member(s) shall be divided evenly among the household members including the ineligible member(s). All but the ineligible members' share is counted as a deductible shelter and/or dependent care expense for the remaining household members.

4. (No change.)

(d) (No change.)

10:87-10.2 State Plan general requirements

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

(c) Quarterly reporting requirements: The Division of Economic Assistance shall submit a quarterly report (FNS-583) no later than

45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

1.-3. (No change.)

4. E&T mandatory participants, including Food Stamp Program applicants, who commence an approved E&T component; and

5. Work registrants sent a notice of adverse action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component.

(d) (No change.)

10:87-10.10 Voluntary quit

(a) No household whose head of household, as defined in N.J.A.C. 10:87-2.6, voluntarily quits his or her job without good cause shall be eligible for participation in the Food Stamp Program except as provided in (c) below. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer shall not be considered as a voluntary quit. If an individual quits a job, secures new employment at comparable wages or hours, and is then laid off or, through no fault of his or her own, loses the new job, the earlier quit shall not be the basis of a disqualification. An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike shall be considered to have voluntarily quit his or her job without good cause (see N.J.A.C. 10:87-10.16 concerning strikers). The CWA shall explain to the household at the time of application not only the potential consequences of the head of household quitting a job without good cause, but also the consequences of an individual subsequently joining the household as its head after that individual voluntarily quit employment.

(b) Determining whether a voluntary quit occurred: When a household files an application for participation, or when a participating household reports the loss of a source of income, the CWA shall determine if any currently unemployed (that is, employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for full-time work has voluntarily quit his or her job (that is, employment involving 20 hours or more per week or having received weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) without good cause. For applicant households, the CWA shall determine if a voluntary quit occurred within the last 60 days. If the CWA learns that a household has lost a source of income after the date of application but before the household is certified, the CWA shall determine whether a voluntary quit occurred. For participating households, the CWA shall determine whether any household member voluntarily quit his or her job while participating in the program.

1. (No change.)

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

APPENDIX A FISCAL MANAGEMENT SECTION A

Technical requirements and specifications

The Division of Economic Assistance is responsible for designing, implementing and monitoring fiscal management procedures which ensure the security and control of Authorizations to Participate (ATPs) and Food Coupons.

The Bureau of Business Services/Food Stamp Program Fiscal Office (BBS/FSPFO) operating requirements in Appendix A are unique to the State of New Jersey Food Stamp Program fiscal administration. CWAs are encouraged to submit suggestions to improve this Appendix to:

Supervisor
Food Stamp Program Fiscal Office
Bureau of Business Services
Division of Economic Assistance—CN 716
Trenton, N.J. 08625

1.-2. (No change.)

HUMAN SERVICES

3. Processing of returned books: Upon receipt of an improperly manufactured (see 1(F) above) or mutilated (see 1(L) above) coupon book(s) from a participant, the CWA Fiscal or Food Stamp Supervisor, with the authorization of the CWA Director, shall:

(A)-(D) (No change.)

(E) The State/county welfare agencies are required to complete form FNS-135, Affidavit of Return or Exchange of Food Coupons.

4.-9. (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephone

Inspection of Outgoing Correspondence

Adopted Amendment: N.J.A.C. 10A:18-2.7

Proposed: December 18, 1989 at 21 N.J.R. 3913(a).

Adopted: October 19, 1990 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: October 24, 1990 as R.1990 d.564, **without change**.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: November 19, 1990.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received a comment which is addressed below.

COMMENT: Commenter objected to the comprehensive list of public officials and governmental agencies because the list cannot possibly contain all possible categories of officials or agencies to whom mail may be sent.

RESPONSE: The list is not intended to be all inclusive, but is a representative sample of permissible categories. This was recognized and approved by the New Jersey Supreme Court in its recent decision in an appeal concerning the issue of inmate mail (see *In The Matter of Rules Adoption Regarding Inmate Mail to Attorneys, Public Officials and News Media*, 1990). *Representatives* (N.J.A.C. 10A:18-1.3; 18-2.7; 18-2.8; 18-3; 18-4.7), ___ N.J. ___ (1990), Docket No. A-115, decided July 17, 1990.)

Full text of the adoption follows.

10A:18-2.7 Inspection of outgoing correspondence

(a) (No change.)

(b) Outgoing mail shall not be opened, read or censored if it is considered legal correspondence or if it is addressed to:

1. Public officials such as:

- i. The President of the United States;
- ii. The Vice-President of the United States;
- iii. Members of Congress;
- iv. The Governor;
- v. Members of the State Legislature;
- vi. Members of the County Board of Freeholders; or
- vii. The Mayor;

2. Governmental agency officials, such as:

- i. The Director of the Federal Bureau of Prisons;
 - ii. Commissioner, New Jersey Department of Corrections;
 - iii. Members of the Federal Parole Board; or
 - iv. Members of the State Parole Board; or
3. News media representatives.

(c) Outgoing mail from inmates to public officials, governmental agency officials and news media representatives may be held long enough to verify that the addressee is a legitimate public official, governmental agency official or news media representative.

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

INSURANCE

(b)

DIVISION OF PUBLIC AFFAIRS

Automobile Insurance Written Notice

Buyer's Guide and Coverage Selection Form

Adopted Amendments: N.J.A.C. 11:3-7.2, 7.4 and 7.5, 14.2, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7 and 15.9

Adopted New Rule: N.J.A.C. 11:3-14.5

Proposed: June 4, 1990 at 22 N.J.R. 1681(a).

Adopted: October 25, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: October 26, 1990 as R.1990 d.580, **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. 39:6A-23, P.L. 1990, c.8; and N.J.S.A. 17:1C-6(e).

Effective Date: November 19, 1990.

Operative Date: January 1, 1991.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: The section heading of N.J.A.C. 11:3-15.5, concerning the content of the written notice, refers to "receipt by public". Subsection (b) provides that "Each named insured of an automobile insurance policy shall receive a Buyer's Guide and a Coverage Selection Form." Insurers are incapable of guaranteeing receipt of documents by their policyholders. The above language should be amended to indicate that written notice is to be provided to policyholders and that Buyer's Guides and Coverage Selection Forms are to be provided to named insureds. The recommended change would be consistent with N.J.A.C. 11:3-15.1(a) which refers to "standards for the written notice to be provided to applicants"; N.J.A.C. 11:3-15.4 which requires the application for the policy or renewal to be "accompanied by a written notice"; and N.J.A.C. 11:3-15.9(b) which requires insurance companies to provide its Coverage Selection Form to the named insured with the notice of renewal.

RESPONSE: The language in question is consistent with the statutory requirement at N.J.S.A. 39:6A-23f that "Each named insured of an automobile insurance policy shall, at least annually or as otherwise ordered by the commissioner, receive a buyer's guide and coverage selection form." Any change must be initiated by the Legislature.

COMMENT: Eight commenters expressed their concern with the phrase "Each named insured" appearing in N.J.A.C. 11:3-15.5(b). Several suggested that the word "Each" should be changed to "The" so as to provide that only the named insured of an automobile insurance policy shall receive a Buyer's Guide and a Coverage Selection Form rather than have the requirement apply to all persons insured under the policy. The commenters stated that the new requirement would impose additional expense on insurers in terms of both printing and mailing costs and it would be very difficult if not impossible for insurers in some instances to determine how many named insureds were on each policy. If there were disagreement as to what coverages would be selected, which named insured would prevail? Would an insurer be required to have all Coverage Selection Forms returned for each named insured in order to effect a change, or could an insurer initiate a change if only one of the insureds signed the Coverage Selection Form? The reasonable interpretation of the quoted language would require that the named insured as listed should receive a Buyer's Guide and Coverage Selection Form, but not that each individual named insured should receive their own set of forms.

RESPONSE: The language in question including the phrase "Each named insured" is statutory language that first appeared in section 13 of the FAIR Act of 1990 (N.J.S.A. 39:6A-23f). The Department shares the concerns expressed and has determined that when there is more than one named insured on the policy, the Buyer's Guide and Coverage Selection Form will be sent to the first named insured on the declarations page of the policy.

COMMENT: Consistent with the preceding comment and to remove any confusion, the last sentence of N.J.A.C. 11:3-15.9(a) should read: "Coverage shall not become effective until the signed Coverage Selection Form is received from the named insured, unless otherwise authorized by law." This change should also be made where applicable in subsection

(b). Further, in this same subsection, subparagraph v should be changed to read: "Where the named insured desires a health insurance carrier to be the primary insurer . . .".

RESPONSE: The Department agrees and the suggested changes have been made accordingly.

COMMENT: A new paragraph 4 should be added to N.J.A.C. 11:3-15.5(b) to read as follows:

4. When the insured desires his health insurance carrier to be the primary insurer for PIP medical expense coverage benefits.

Addition of this circumstance requiring use of a Coverage Selection Form is consistent with the requirements of N.J.A.C. 11:3-15.9(b)lv. This change is also consistent with the new language at N.J.A.C. 11:3-15.7(h)(5).

RESPONSE: The suggested change is not necessary since it is included by reference in N.J.A.C. 11:3-15.5(b)3.

COMMENT: The Buyer's Guide and Coverage Selection Form should be issued only for renewal purposes on annual anniversary dates (not on six-month renewal dates). This would help reduce printing, mailing and administration costs.

RESPONSE: N.J.S.A. 39:6A-23f provides that the Buyer's Guide and Coverage Selection Form shall be issued to each named insured of an automobile insurance policy "at least annually or as otherwise ordered by the Commissioner". N.J.A.C. 11:3-15.4, for which amendments have not been proposed at this time, provides for a written notice (including Buyer's Guide and Coverage Selection Form) to accompany all applications for new private passenger automobile insurance policies or renewals. (Emphasis added.)

COMMENT: The coordination of benefits section in the Buyer's Guide cover sheet could be clarified further to explain that this is not a total switch of benefits, but rather a coordination.

RESPONSE: The Department agrees and appropriate changes have been made for clarification.

COMMENT: Some confusion may result from the "Agency Note" at N.J.A.C. 11:3-15.6(n) which states that the revised text of the Buyer's Guide "will become operative on January 1, 1991." This language should be amended to read ". . . will be operative for policies written or renewed on or after January 1, 1991."

RESPONSE: The Department agrees and the suggested change has been made accordingly. The phrase "with effective dates" has been added for further clarification.

COMMENT: The reference to "changes in New Jersey" law should be deleted because the Buyer's Guide will be used for an indeterminate period—longer than any introductory period to the FAIR Act.

RESPONSE: The Department believes the language is appropriate presently and for the immediate future.

COMMENT: The summary section of the Buyer's Guide should be rewritten to avoid oversimplification at the expense of accuracy.

RESPONSE: The Department has added clarifying language to several paragraphs of the summary section of the Buyer's Guide. However, the Department has rejected suggested language which would limit the insurer's obligation to communicate with would-be applicants to those who are "eligible persons". Insurers must communicate with all would-be applicants—even those who may turn out to be ineligible under the circumstances.

COMMENT: The fifth paragraph of the Buyer's Guide summary indicates that an agent must provide premium rates for all companies the agent represents. This should be clarified to read as follows: ". . . from all companies [he] the agent represents "for which you qualify." This change would be consistent with the fourth paragraph of the summary which states that the agent or company also must tell the insured whether he or she may be eligible for insurance from one of its other companies or affiliates.

RESPONSE: The Department agrees and the suggested change has been made accordingly.

COMMENT: Language in the eighth paragraph of the Buyer's Guide summary stating ". . . you can choose whether your health insurance will pay for injuries stemming from auto accidents, or whether to keep coverage with your auto insurer" is inaccurate. The consumer would not know whether his health insurance coverage will cover auto-related injuries. Specific direction is needed from the Commissioner as to which health insurance policies or group policies provide such auto related coverage. The best that can be accomplished in the Buyer's Guide is to caution the consumer that health insurance coverage may not respond to auto related injuries and explain that the selection here involves which coverage is to be regarded as the primary payer (auto or health). This

problem is also apparent in the PIP section of the Buyer's Guide notice and under the Health Insurance Option section.

RESPONSE: The language has been rewritten to clarify that the consumer's choice is whether health insurance or auto insurance will be primary with regard to the payment of medical benefits. In the PIP Health Insurance Option section of the Buyer's Guide and the Coverage Selection Form, consumers are advised to check with their health insurers concerning coverage limits and eligibility, respectively. The Department has expanded the advisory language appearing in the Buyer's Guide section. The Commissioner is not in a position to advise concerning the coverage of specific health insurance policies or plans because many such policies or plans are not required to be filed with the Department.

COMMENT: The statement in the ninth paragraph of the summary that "Your medical benefits are now capped at \$250,000" may be misleading. The following phrase should be added: "less any deductible or co-payments."

RESPONSE: To the contrary, the Department interprets the \$250,000 medical benefits cap to mean that the insurer's total liability is \$250,000 after deductibles and co-payments.

COMMENT: The Department should delete references to optional additional PIP medical expense benefits, specifically, the last sentence of the ninth paragraph in the summary section: "But, for an additional premium, you may be able to purchase more coverage for yourself or your family". The Department should also delete the description of Additional PIP Coverage in the Personal Injury Protection (PIP) section of the Buyer's Guide. Finally, the Department should delete the phrase "unless you choose otherwise" from the second paragraph of the PIP Medical Expenses Deductible section. Without these changes, the Buyer's Guide would not clearly reflect that insurers may choose not to offer optional additional PIP medical expense benefits. Further, the language recommended for deletion is not necessary, as proposed N.J.A.C. 11:3-15.6(q) would allow insurers which do offer additional PIP medical expense benefits to modify the Buyer's Guide to explain those higher benefits.

RESPONSE: Rather than delete references to optional additional PIP medical expense benefits, the Department has clarified the types of coverage for which higher benefits are available—stating that auto insurers may offer medical expense benefits above the \$250,000 limit.

COMMENT: The Additional PIP Coverage section of the Buyer's Guide should be amended to include funeral expense and death benefits in the list of available increased benefits.

RESPONSE: Increased funeral expense benefits may not be available and are therefore not specified in the clarifying language.

COMMENT: The first paragraph of the Additional PIP Coverage section of the Buyer's Guide should be amended for further clarification to read: ". . . and relatives who live with you and who do not have their own auto policies."

RESPONSE: The Department agrees and the suggested phrase has been added to the clarifying language.

COMMENT: The fifth paragraph of the PIP Medical Expenses Deductible section of the Buyer's Guide should be amended by deleting the reference to a \$250.00 deductible following the sentence—"A way to lower the price of your auto insurance is to have a larger PIP deductible." While it is true that a policyholder can choose a \$250.00 deductible, such an election will not result in lower costs.

RESPONSE: The Department has clarified the fifth paragraph of the PIP Medical Expenses Deductible section of the Buyer's Guide simply by reversing the first two sentences.

COMMENT: The reference to underinsured motorist coverage in the last paragraph of the Uninsured/Underinsured Motorist Coverage section of the Buyer's Guide is inaccurate and incomplete and should be amended to read as follows: ". . . but not enough insurance or insufficient coverage limits to pay all of your damages . . ."

RESPONSE: The Department has added a new third paragraph to this section which is intended as a more adequate explanation of underinsured motorist coverage. The last paragraph of the section has been deleted altogether.

COMMENT: In the Collision and Comprehensive Coverages section of the Buyer's Guide, the eighth paragraph stating that "some companies will provide collision coverage only if you buy comprehensive coverage too" should be relocated to follow the second paragraph. This provision belongs in the body of the description of these optional coverages rather than in the Cost Saver section.

RESPONSE: The Department agrees and the change has been made accordingly.

COMMENT: The first sentence of the seventh paragraph of the Collision and Comprehensive Coverages section of the Buyer's Guide should be amended to read as follows: "Collision and comprehensive coverage will reimburse you [only for] up to the actual cash value of your car." Not every claim under this coverage will result in a payment of actual cash value of the vehicle.

RESPONSE: The Department agrees and the change has been made with slight variation in language.

COMMENT: The paragraph beginning with the words "Please note" under the Collision and Comprehensive Coverages section of the Buyer's Guide should be amended to reflect that the statute permits inspection by the insurance company or its authorized representative. The Buyer's Guide should reflect the statutory permission. Companies are likely to contract with third party vendors to supply inspection services.

RESPONSE: The Department, in the interest of brevity, has rewritten this section omitting non-essential references to car inspection.

COMMENT: Several commenters objected to the inclusion of the Questionnaire in the Buyer's Guide, questioned the value of the data that would be obtained from it and suggested that it be deleted.

RESPONSE: The Department has withdrawn the Questionnaire from the proposal. In the event the Department decides to use the Questionnaire in some other form at a later date, all comments will be considered.

COMMENT: The proposed Buyer's Guide permits companies to substitute the company name where appropriate. It is not clear if there are similar allowances for the Coverage Selection Form.

RESPONSE: See the first Note at N.J.A.C. 11:3-15.7(h) which permits the company's name to be included on the Coverage Selection Form.

COMMENT: Coverage Selection Forms should only be required and completed for renewals and mid-term changes involving items 1 through 4 set forth on the Coverage Selection Form.

RESPONSE: Use of a Coverage Selection Form is also required at N.J.A.C. 11:3-15.9(b)1v when the insured changes his or her health insurer. This is important when there is a loss of coverage; otherwise there may be a penalty if a claim arises. Use of the form is also required in connection with newly added subparagraph (b)1vi.

COMMENT: N.J.A.C. 11:3-15.7(h) and 15.9 should be modified to expand the required use of a Coverage Selection Form to execute mid-term or renewal changes. It would be appropriate to require a Coverage Selection Form to be executed in order to effect the following types of change:

1. Change in election of the specific health plan named in the Coverage Selection Form as being the primary source of PIP medical benefits. As people change jobs, or their employers change health insurers, people will become covered by different health plans. They need to investigate the terms of this new coverage to ascertain that it will provide the primary coverage. The producer is protected by the execution of the Coverage Selection Form since the designation of the current health plan as primary satisfies the legal requirement that the insured provide proof of coverage. If insureds turn out not to be covered because they have changed health plans, they face a \$750.00 penalty.

2. Change from the election of the health insurance as primary, reverting to the auto policy as the primary source of benefits. Again, an insured may lose their health coverage, or a change in plan may mean that they are no longer covered for primary PIP benefits. Or, perhaps they discover there is a serious illness in their family, and they do not want to jeopardize the full availability of their health benefits by keeping them primary for auto accident injuries. An insured should be required to execute a Coverage Selection Form to revert to primary coverages under the auto policy. This "paper trail" will protect the insured from the imposition of a \$750.00 penalty in the event of a subsequent dispute over the change in election.

3. Change in the limits of PIP medical benefits. Insurers are permitted, though not required, to offer PIP medical benefits higher than the minimum \$250,000. The use of a Coverage Selection Form should be required to raise or lower this important coverage mid-term or at renewal. This protects the producer in the event of a subsequent dispute over the level of coverage selected.

RESPONSE: 1. Use of the Coverage Selection Form is required to effect a mid-term or renewal change in the election of a specific health plan as the primary source of PIP medical expense coverage benefits (see comment and response immediately preceding).

2. A new subparagraph has been added at N.J.A.C. 11:3-15.9(b)1vi to require the use of a Coverage Selection Form for a coverage change when the insured desires his auto insurer to be the primary insurer for PIP medical expense coverage benefits (see comment and response immediately preceding).

3. The auto insurer or producer may require use of a Coverage Selection Form to offer PIP medical benefits higher than \$250,000, but this is not required since some insurers do not offer the additional coverage.

COMMENT: On the Coverage Selection Form, a statement should be added to the "PIP Medical Expenses Only Coverage" provision at item 3 that neither basic nor added PIP is available if this option is chosen; and the description of "Additional PIP coverage" should indicate that this coverage includes basic PIP.

RESPONSE: For purposes of clarification, the Department has separated the choice of "Additional PIP Coverage" into two parts: (1) "Additional PIP Coverage" which includes higher limits of income, essential service benefits and expanded death benefits (this option is not available to one who has selected PIP Medical Expenses Only Coverage); and (2) "Additional Medical Expense Coverage."

COMMENT: On the Coverage Selection Form, item 4 should be entitled "PIP Medical Expenses Deductible" to be consistent with the corresponding section of the Buyer's Guide.

RESPONSE: The Department agrees and the change has been made accordingly. Note also that for emphasis, the order of appearance of this item and item 5 (the PIP Health Insurance Option) have been reversed in both the Buyer's Guide and Coverage Selection Form.

COMMENT: On the Coverage Selection Form, a sentence should be added to item 6 indicating that the Uninsured/Underinsured Motorists Coverage limit chosen may not exceed the policy liability limits.

RESPONSE: The Department agrees and has added appropriate language for clarification.

COMMENT: N.J.A.C. 11:3-14.5(b) requires insureds to identify their health insurers in order to list them as primary for medical expense coverage on their auto policies. Further, this provision states that merely identifying the health insurer fulfills the insured's statutory obligation to "provide proof that he and members of his family residing in his household are covered." On the other hand, the Coverage Selection Form requests the name of the insurer and the policy or group number. It is therefore inconsistent with N.J.A.C. 11:3-14.5(b) which requires only the name of the insurer. The rule and the form should be made consistent by requiring both the name of the insurer, self-insurer or other health plan, and the group or control number, in addition to the certificate number. Information sufficient to permit verification should be required of the policyholder. An auto insurer will probably not be able to verify coverage, if desired, with just the name of the health insurer.

RESPONSE: The identification required by N.J.A.C. 11:3-14.5(b) must be provided on the Coverage Selection Form which requires the applicant to include the policy, plan, membership or group certificate number. Thus, the name of the insurer and the identifying number together make up the required "proof".

COMMENT: Whenever an insured elects his or her health insurance carrier to be primary, the identification of the health carrier without further verification as to whether auto related injuries are covered creates an enormous exposure for the auto carrier who would be charging a discounted premium and required to provide primary coverage. Auto insurers should be provided with a list of health insurance carriers and group policies which are responsive to auto related injuries. If such an election identifies a health carrier not "qualified" to provide such coverage, the election should be disregarded and the insured notified that his or her health carrier will not satisfy a primary health coverage option.

RESPONSE: As noted in a prior response, it would be impossible for the Department to provide a list of health insurance policies or plans responsive to auto related injuries since many such policies and plans are not required to be filed with the Department.

COMMENT: On the Coverage Selection Form, the PIP Health Insurer Option election line at item 6 should be amended to read as follows: "Yes, I choose the PIP health insurer option. All members of my family residing in my household are covered by at least one of the health insurers named below." This addition will make it very clear that when the Health Insurance Option is elected, the health carrier is primary for all family members.

RESPONSE: This concern is adequately covered by the third sentence of N.J.A.C. 11:3-15.7(h)4 relating to the PIP Health Insurance Option: "To choose this option, health coverage must cover the named insured and members of his family residing in the household."

COMMENT: Some minor changes should be made to the effective dates preceding the signature line on the Coverage Selection Form. As proposed, for new policies and mid-term policy changes, the choices are effective upon receipt of the Coverage Selection Form. As a matter of practice, policies and endorsements are effective as of 12:01 A.M. of the date made. Conceivably, an insured could still effectuate a coverage

change subsequent to the occurrence of an accident. While the elimination of the seven-day period removes much of the potential for fraud, a window of opportunity for dishonest behavior still exists under the current proposal. Changes should therefore be made effective the day after receipt of the form.

RESPONSE: The Department agrees and the language preceding the signature line on the Coverage Selection Form and appearing at N.J.A.C. 11:3-15.9(c)1 has been revised accordingly.

COMMENT: The last paragraph of the Coverage Selection Form and N.J.A.C. 11:3-15.9(c)1 state that coverage selections for new business and mid-term changes will become effective "upon receipt" of the form by the company or insurance producer. Since direct market insurers do not use agents, coverage under the proposed regulations would be effective when the company receives the form. Depending upon mail delivery, there may be a gap of several days before the insured would have the coverage he or she selected. Currently, in most states the procedure is to make coverage changes effective 24 hours after the postmark on the request envelope unless the insured requests a later effective date. This is equitable to both the insured and the insurer since it utilizes a date that is assigned impartially by the United States Postal Service. The effective date requirement should be changed accordingly.

RESPONSE: The Department agrees and the change has been made.

COMMENT: Several commenters expressed concern over the meaning of "timely received" with regard to the effective date for changes upon renewal. N.J.A.C. 11:3-15.7(h)—before the signature line—and N.J.A.C. 11:3-15.9(c)2 both state that renewal changes required to be made on the Coverage Selection Form "shall be effective on the date of the next policy renewal if timely received . . .". So that policyholders will not expect any degree of retroactive coverage, changes at renewal should be "effective on the date of the next policy renewal if received before the renewal date . . .". Because receipt of the insured's request is the operative fact for both new policies and mid-term changes, any deviation from effectiveness "upon receipt" will give the impression that effectiveness can take place at renewal, even if receipt of the request takes place after renewal. The use of the word "timely" may give the impression that receipt is not required before renewal, provided it occurs soon thereafter. One suggestion was that the form could specify that if it is received prior to renewal, the changes are effective as of renewal. If received later, the changes are effective the day after receipt. Another suggestion was that the language would be more certain if "timely received" were followed by "and prior to the policy's renewal." A direct market insurer suggested a change in language so that renewal changes would be effective on the renewal date if the envelope is postmarked prior to such date or if received by a producer prior to the renewal date. Such changes would ensure that there would be no argument over the effective date of the coverage change when policies are renewed.

RESPONSE: The Department agrees that clarification is necessary and has, in effect, removed the term "timely received" by providing that changes upon renewal required to be made on the Coverage Selection Form shall be effective on the date of the next policy renewal "if postmarked or received by the insurance company or by an insurance producer with the company's binding authority prior to the renewal date."

COMMENT: The Coverage Selection Form usage requirements at N.J.A.C. 11:3-15.9 present a great administrative burden. The requirements are potentially detrimental to quality customer service, especially for companies dealing mainly with policy changes conveyed over the telephone, either to the agent or a home office service center. The potential delay in affording coverage pending receipt of a properly completed form creates fertile ground for consumer complaint and is detrimental to the intent of obtaining insurance protection. The delay could easily prohibit customers from completing loan and lease agreements where the coverage confirmation cannot be made and the financial institutions exhibit reluctance to release funds or the vehicle. A more customer-friendly approach which would provide adequate coverage at fair limits pending the insured's submission of the Coverage Selection Form to effect other limits, is proposed. Another commenter states that N.J.A.C. 11:3-15.9(c)1 presents difficulties particularly with respect to when mid-term policy changes become effective. Under the present regulation, changes become effective immediately upon receipt of the Coverage Selection Form by the insurer or producer with binding authority. Or, if the form is received by the insurer or producer within seven calendar days of execution by the policyholder, the changes become effective upon the date of execution. The proposed regulation states that the mid-term changes are only effective upon receipt of the executed change form by the insurer or the producer. This will cause difficulty for policyholders

seeking to make mid-term changes which can now be made without requiring the policyholder to visit their insurer or producer. The most common situation involves a policyholder purchasing a new vehicle which requires comprehensive and collision coverage which was not in effect on their previous vehicle. Typically, this type of change is made as a result of a telephone call with the Coverage Selection Form completed afterwards. This permits the policyholder to take possession of and operate the new vehicle with the requested full coverage in effect. Under the proposed regulation, this would no longer be possible. The new procedure will be unduly cumbersome, particularly for policyholders who are not geographically close to their insurer or producer. This situation could be avoided by changing the proposed regulation to permit a change to be made without the insurer or producer having physical possession of an executed change form provided that the insurer or producer is required to forward a change form to the policyholder requesting the change with an appropriate notice that the form must be executed and returned within seven days. The commenter is aware of the intent of the regulation with respect to fraud prevention and has no objection to requiring receipt of the executed change form for mid-term policy changes regarding threshold and health insurance options.

RESPONSE: Use of a Coverage Selection Form is required only for those changes specified at N.J.A.C. 11:3-15.9(b)1i through vi. Use of the form is not required as to other changes including addition of collision and comprehensive coverage, changes in PIP deductibles, changes in liability limits, and the addition or subtraction of drivers. Most changes, therefore, may continue to be made by customer service representatives without undue delay.

Summary of Agency Initiated Changes:

The Department initiated clarifying and technical changes to several sections including N.J.A.C. 11:3-14.5(a), N.J.A.C. 11:3-15.6(n), the Health Insurance Option section, and N.J.A.C. 11:3-15.7(h)4, to which a "Note" has been added.

The Department has clarified provisions in the regulation, Buyer's Guide and Coverage Selection Form relating to the Health Insurance option by stating, consistent with Federal law, that the option has no application to any coverage or benefits provided pursuant to Medicare or Medicaid.

Regarding the Note at N.J.A.C. 11:3-15.7(h)4, under the proposed new subchapter entitled Order of Benefit Determination Between Automobile Personal Injury Protection and Health Insurance at N.J.A.C. 11:3-37, automobile insurers may choose to verify the existence of a named insured's health coverage when that named insured selects the health coverage option. Ineffective health coverage will invalidate the health coverage option selection and the insurer may recover the premium reduction amounts. The contract is not automatically cancelled, however. The intention is to provide a method of early detection of fraud and error. Because the Department does not know what the costs would be to set up and implement a verification system, or whether verification would be cost-effective, verification is merely permissive. Insurers are left to determine whether verification is ultimately beneficial. Since consumers will be aware that the automobile insurer may verify the existence of health coverage, they will be more apt to check beforehand that they have the appropriate health coverage.

As previously noted, the order of appearance of the PIP Health Insurance Option and PIP Medical Expenses Deductible sections have been reversed in both the Buyer's Guide and Coverage Selection Form in order to give the Health Insurance Option increased prominence.

References at the end of the Buyer's Guide to contacting one's insurance company, agent or broker and/or filing complaints have been deleted as non-essential information.

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

11:3-7.2 General requirements applicable to additional personal injury protection benefits

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

(h) Insurers may also make available to named insureds covered under N.J.S.A. 39:6A-4, and at their option, to resident relatives in the household of the named insured or to other persons provided medical expense coverage pursuant to this statutory provision, or both, additional first party medical expense benefit coverage pursuant to N.J.S.A. 39:6A-10.

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11:3-7.4 Minimum schedule of additional personal injury protection coverage benefits

(a) Every rate filer's schedule of rates for additional personal injury protection benefits, other than medical expense benefits, shall provide at least the benefit schedules set forth in Table 1 in (b) below.

(b) (No change.)

11:3-7.5 Notice requirements

(a) Additional personal injury protection benefits that are required to be offered by an insurer shall be offered by the insurer at least annually as part of the Coverage Selection Form required pursuant to N.J.S.A. 39:6A-23 and N.J.A.C. 11:3-15.

1. (No change.)

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

11:3-14.2 Scope

This subchapter applies to every insurer, including any residual market mechanism created by any New Jersey statute, authorized to transact the business of automobile insurance in this State.

11:3-14.5 Option to choose health care insurance coverage as primary coverage

(a) Pursuant to N.J.S.A. 39:6A-4.3, for policies issued or renewed on or after January 1, 1991, an insurer shall provide the option that other health insurance coverage or benefits of the insured, including health care services provided by a health maintenance organization and any coverage or benefits provided under any Federal or State program, are the primary coverage for medical expense benefits for personal injury protection coverage*; **provided, however, that this option shall not apply to any coverage or benefits provided pursuant to Medicare or Medicaid*.**

(b) The Coverage Selection Form (see N.J.A.C. 11:3-15.7) shall require insureds or prospective insureds to identify the health insurer(s) providing primary personal injury protection medical expense benefits. This identification shall fulfill the requirement in N.J.S.A. 39:6A-4.3 that named insureds provide proof that they and members of their family residing in the household are covered by health insurance coverage or benefits.

11:3-15.1 Purpose

(a) N.J.S.A. 39:6A-23 requires the Commissioner of the Department of Insurance to promulgate standards for the written notice to be provided to applicants for automobile insurance and to policyholders seeking renewal of coverage. This written notice includes a Buyer's Guide and a Coverage Selection Form as required by N.J.S.A. 39:6A-23. This subchapter implements this statutory requirement and establishes the necessary minimum standards insurance companies authorized to transact the business of private passenger automobile insurance, including any residual market mechanism created by any New Jersey statute, shall use in giving notice of available coverages, options and rate credits.

(b) (No change.)

11:3-15.2 Scope

This subchapter applies to every insurance company authorized to transact the business of private passenger automobile insurance in this State and to any residual market mechanism created by any New Jersey statute.

11:3-15.3 Definitions

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

"Insurance company" means any person, corporation, association, partnership, company and any other legal entity issuing a contract of private passenger automobile insurance, including any residual market mechanism established pursuant to any New Jersey statute. As appropriate, "insurance company" shall also mean a servicing carrier for a residual market mechanism.

11:3-15.5 Content of written notice; receipt by public

(a) The written notice shall include the New Jersey Auto Insurance Buyer's Guide and the Coverage Selection Form as they appear in this subchapter.

(b) Each named insured of an automobile insurance policy shall receive a Buyer's Guide and a Coverage Selection Form:

1. When application is made for a new policy;

2. As part of a notice of renewal; and

3. When mid-term changes are requested which require the use of a Coverage Selection Form (see N.J.A.C. 11:3-15.9).

(c) The Coverage Selection Form shall be used in accordance with the requirements of N.J.A.C. 11:3-15.9.

11:3-15.6 Minimum standards for New Jersey Auto Insurance Buyer's Guide

(a) Any insurance company may comply with this subchapter by using a camera-ready typeset Buyer's Guide produced by the Department. To obtain this camera-ready Buyer's Guide, an insurance company may contact the Division of Public Affairs, Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625-0325.

(b) Insurance companies that wish to produce their own plates may do so according to the requirements prescribed in this subchapter.

(c) In preparing the Buyer's Guide, insurance companies shall use the text provided in this subchapter. Insurance companies which do not offer all the coverages described in the Buyer's Guide may ~~*[eliminate]*~~ ~~*delete*~~ those sections and shall indicate clearly that they do not offer those coverages. Insurance companies may add information to the Buyer's Guide provided that the additional information is consistent with the purpose of the written notice.

(d) To assure conformity with this subchapter, each insurance company shall file its Buyer's Guide with the Division of Public Affairs. The filing shall include a sample copy of the insurance company's Buyer's Guide and a letter listing all alterations ***and additions***, if any, made from the text appearing in this section. The filing shall be made once when the first Buyer's Guide is issued by the insurance company and again whenever changes are made.

(e) When changes are made in a Buyer's Guide, the new Buyer's Guide shall be filed with the Division of Public Affairs within seven days of its use, and the bottom of the last page shall clearly state the month and year in which the changes were implemented.

(f) (No change.)

(g) An insurance company which uses the Department's camera-ready Buyer's Guide shall not reduce the image or the size of its pages. The Buyer's Guide shall be bound by glue or staples. If an insurance company intends to fit this printed booklet in a common-size four-inch by nine-inch business envelope, the booklet may be folded once lengthwise.

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

(j) The type style used shall be within the discretion of the insurance company, but it shall be suitable for the use of ***[italics or]*** boldface type for emphasis. In the text required by this subchapter, material which ***[is underlined]*** ***appears in boldface*** shall be printed in ***[italics or]*** boldface type. The type style used in the camera-ready material provided by the Department shall be ***[New Century Schoolbook]*** ***Times Roman***.

(k) (No change.)

(l) The Buyer's Guide shall have a cover with the following title in large type: "New Jersey Auto Insurance Buyer's Guide." In regular type, the cover shall state, "This contains only general information and is not a legal document." An insurance company may include its name and/or company logo on the cover.

(m) An insurance company which writes at least two percent of the New Jersey private passenger automobile market shall print its name and toll-free telephone number on the last page of the Buyer's Guide.

(n) The text of the New Jersey Auto Insurance Buyer's Guide follows:

AGENCY NOTE: The text of the current Buyer's Guide is deleted in its entirety. That text is currently reproduced in the New Jersey Administrative Code. The text reproduced below entirely replaces the current text and will be operative for policies written or renewed with effective dates on or after January 1, 1991. For purposes of this publication in the New Jersey Register, those words appearing in the following new text in boldface appear as they should in the actual

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Buyer's Guide, and do not signify proposed additions except where indicated with asterisks.

New Jersey
Auto Insurance
Buyer's Guide

This contains only general information
and is not a legal document

Summary

There have been several important changes in New Jersey law that affect your insurance coverage.

The changes give New Jersey consumers additional rights.

For instance, if the ***insurance*** company you choose won't sell you ***auto*** insurance, ***[it]* *the company*** has to tell you why, and, if you request it, the company has to respond in writing. If you're not satisfied, you can ask the ***[insurance department]* *New Jersey Department of Insurance*** for help. ***[You can]* *Under certain circumstances, you may*** also ask for a hearing.

The insurance agent or ***the insurance*** company also must tell you whether you ***[may be eligible]* *qualify*** for ***auto*** insurance from one of its other ***insurance*** companies or affiliates.

You also have the right to receive from your agent ***auto insurance*** premium rates from **all the *insurance* companies** he represents ***for which you qualify***.

The law requires that you maintain ***auto*** liability coverage^[,] which^{*}, **subject to the terms and limits of the policy,**^{*} protects you in case you are sued, and pays for damages that you cause to someone else's property. **Please see page XX.**

You are also required to purchase personal injury protection^[,] which pays the auto accident-related medical bills of you and your family. **Please see page XX.**

Effective immediately, you can choose whether your health insurance will pay ***first*** for injuries stemming from auto accidents ***[if you have health insurance which pays for such injuries]***, or whether ***[to keep the coverage with]* *you want*** your auto insurer ***to pay medical expenses first***. You may save on your auto premiums by choosing the health insurance option. To find out more about ***[your medical benefits and]* *this*** option^{[s]*}, please see the section beginning on **page XX.**

Your medical benefits are now capped at \$250,000. That means your auto insurer can only pay up to \$250,000 ***[for any one]* *per person, per*** accident^[,] per person injured^[,]. But, for an additional premium, you may be able to purchase more coverage for yourself or your family.

You must also carry uninsured^[,]/underinsured^[,] motorist coverage, which pays for damages caused by a driver who has no insurance. **Please see page XX.**

If you want additional coverage, you can buy collision or comprehensive^[,] which pays for damages to your own car or for auto theft. These will add to your total insurance cost. You can save on your collision or comprehensive coverage by choosing higher deductibles. **Please see page XX.**

The law also allows you to choose whether you want an unlimited right to sue for auto-related damages—the “no threshold” option—or to save money by limiting your right to sue for serious injuries only—the “lawsuit threshold” option (also known as the “verbal threshold”). **Please see page XX.**

The Buyer's Guide will explain each of these terms. It will ***[also]*** help you fill out the Coverage Selection Form. You can also learn how to get a comparison of premiums for all auto insurers (**page XX**). ***[There is also a survey to let the department of insurance know what you think of your company's service (page XX).]***

Explanation of Coverages

Your auto insurance policy is actually several kinds of policies, or coverages, rolled into one.

For each coverage, you are charged a separate price^[,] which is known as the premium.

You pay only one price for auto insurance, but that price is determined by adding the premiums for all the coverages you buy.

INSURANCE

Use your Coverage Selection Form to indicate what coverages you will buy in accordance with New Jersey law.

The coverages are:

**LIABILITY
PERSONAL INJURY PROTECTION
UNINSURED/UNDERINSURED MOTORIST
COLLISION
COMPREHENSIVE**

Use these explanations to help you complete the Coverage Selection Form.

Liability Coverage (Required by Law)

Item 1 on the Coverage Selection Form

Liability coverage pays for injuries to other people or damages to their property^[,] if you are legally responsible for their losses. The company will pay ***[only as much in damages as]* *damages only up to*** the amount of coverage you have chosen.

There are two kinds of liability coverage:

Bodily injury coverage involves cases in which another person is hurt or dies as a result of an auto accident. If you are legally responsible, it will compensate for pain, suffering or other personal hardships, and will also pay for some economic damages^[,] such as lost wages.

Property damage coverage will reimburse other people if you are legally liable for damage to their belongings as a result of an auto accident.

If a liability claim is filed against you, your insurance company will investigate the claim and will decide whether it should be paid, negotiated, or defended in court. Your insurance company will pay the legal bills.

Under state law, you must buy coverage which will pay, for each accident, at least the following amounts:

- \$15,000 for any one person's injuries;
- \$30,000 when more than one person is injured;
- \$ 5,000 for property damage.

Some companies sell a combined^[,] single limit^[,] which must be at least \$35,000 per accident.

Higher limits of liability coverages are available at relatively low cost.

If you cause an accident and don't have enough insurance to cover your legal responsibilities, you then are personally responsible and could lose some of your assets or spend years paying this debt.

COST SAVER: Lawsuit Threshold (Verbal Threshold)

Item 2 on the Coverage Selection Form

In order to hold down insurance premiums, New Jersey motorists may choose to limit when they may sue for non-economic loss^[,] which means pain, suffering and inconvenience resulting from an auto accident.

The “**Lawsuit Threshold**” option, also known as the “**Verbal Threshold**,” uses words, rather than a dollar amount of medical bills, to describe when a suit may be filed. If you select this limitation, then you, your spouse and children living with you who are not covered by name by another auto insurance policy will not be able to sue unless the injury sustained appears on this list:

“death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment.” (N.J.S.A. 39:6A-8, effective January 1, 1989)

You can reject this threshold and retain the right to sue for any auto-related injury. This option, called “**No Threshold**,” will increase the price of your insurance policy.

Under state law, you must choose either the Lawsuit Threshold or the No Threshold option. The same choice should be made under

all policies that you have. **If you do not choose one of these options, you are considered by law to have selected the Lawsuit Threshold option.**

**Personal Injury Protection (PIP)
(Required by Law)**

Item 3 on the Coverage Selection Form

New Jersey law requires Personal Injury Protection, sometimes called PIP or no-fault coverage, which pays all reasonable medical bills up to a maximum of \$250,000 per person, per accident regardless of who caused an auto accident.

However, you may also have the option to select your health insurer or health maintenance organization to pay your auto accident no-fault claims.

Basic PIP Coverage

In addition to paying medical bills, the Basic PIP Coverage provides these benefits:

- **Income Continuation:** If you can't work because of an auto accident injury, you can collect up to \$100 a week for one year for lost wages.

- **Essential Services:** You can collect as much as \$12 a day for one year to pay someone to do necessary services that you normally do yourself, such as cleaning your house, mowing your lawn, shoveling snow or doing laundry.

- **Death Benefit:** If you die from auto accident injuries, your family or estate will receive any benefits you haven't already collected under the income continuation and essential services coverages.

- **Funeral Expense Benefit:** In addition to the death benefit, reasonable funeral expenses are covered up to \$1,000.

[Regardless of whether you select your auto or health insurer as primary, your auto insurer will still provide income continuation, essential services, death benefits, and funeral expense benefits under basic PIP coverage.]

COST SAVER: PIP Medical Expenses Only *Coverage*

If you wish, you can buy PIP medical coverage without any income continuation, essential services, death benefits and funeral expense benefits. This is called PIP Medical Expenses Only.

You might want this cost-saving option if you and relatives who live with you wouldn't lose income if any of you were disabled by an auto accident. For example, this option should be considered if your sources of income are pensions, Social Security or investments which would continue regardless of an auto accident, and if someone is always available to care for your personal needs, and if your funeral expenses are covered in some other way.

But the option is a package deal. Either you keep all four of these ***non-medical expense*** PIP benefits, or you drop them all. You can't pick and choose.

Additional PIP Coverage

On the other hand, you and relatives who live with you ***and who do not have their own auto insurance policies*** might want higher benefits*. **You can purchase higher benefits*** for income protection and essential services*, **and higher death benefits***, than the amounts provided in the basic PIP plan.

Additional Medical Expense Coverage

Your auto insurance company may also offer additional medical expense benefits above limits of \$250,000 per person, per accident.

If you buy ***[these]*** additional benefits, ***[including medical benefits higher than \$250,000,]*** the price of your insurance will be higher.

***[PIP Medical Expenses Deductible
Auto Insurer Option
Item 4 on Coverage Selection Form]**

This option involves only the medical bills paid by PIP, not the income continuation, essential services or funeral expense benefits.

Under New Jersey law, unless you choose otherwise, your auto insurance policy will cover your medical bills up to a maximum of \$250,000 per person, per accident if you are injured in an auto accident.

However, for the first \$5,000 of medical bills per accident, your auto policy will pay only part of the cost of your treatment or the

treatment of others covered by your policy. There is a \$250 deductible, meaning the first \$250 will not be covered. The deductible applies only once per accident regardless of the number of people injured.

There is also a 20 percent co-payment, which means that for the bills from \$251 to \$5,000, the policy will pay only 80 percent. Medical bills above \$5,000 are paid in full by the policy.

A way to lower the price of your auto insurance is to have a large PIP deductible. You can choose a \$250 deductible, a \$500 deductible, a \$1,000 deductible or a \$2,500 deductible. The 20 percent co-payment still applies to expenses between the deductible chosen and \$5,000.

You should consider the \$2,500 PIP deductible if you are already covered by a health insurance policy, Medicare and a Medicare supplement policy, or a health maintenance organization (HMO). In most cases, those plans will pay part of the medical bills which auto insurance won't pay.

Before taking this option, ask your Medicare or Medicaid office, your health insurance company or HMO two things:

- Will your health policy or HMO cover auto-related medical bills not paid by auto insurance? The state Department of Insurance requires that health insurance sold in New Jersey cover treatment for auto-related injuries the same as other injuries. But your policy may not follow this rule because you may be covered by a health insurance group based out of state or an employer self-insurance plan. Find out.

- What are your health policy's or HMO's own deductible, co-payments and exclusions? Find out what your health plan covers. For instance, it may cover only hospitalization but not doctor visits. Also, your health insurance or HMO has its own rules regarding what you pay out of your pocket for medical treatment. Those rules will apply if you use your health plan to cover the \$2,500 PIP deductible.]*

**Personal Injury Protection (PIP)
Health Insurance Option (Cost Saving Option)
Item *[5]* *4* on Coverage Selection Form**

Most New Jersey residents now have the option of selecting their health ***[insurance company]* *coverage provider***, rather than their auto insurance company, to pay for their no-fault ***medical expense*** claims. ***A health coverage provider may be an insurance company, an HMO or some other type of benefit plan provided by your employer.***

Medicare and Medicaid will NOT provide primary coverage. If your health benefits are provided by either Medicare or Medicaid, you cannot choose this option.

If you select your health ***[insurer, HMO, or government-sponsored health insurance program]* *coverage provider*** to be the primary payer of auto no-fault claims, you ***[will]* *may*** save on your auto premium. ***Before selecting this option, however, check to make sure that your health coverage provider will pay for auto accident injury treatment expenses. If your employer supplies your health coverage, your company should be able to give you this information; otherwise, check with your health coverage provider directly.***

Deductibles and co-pays of your health ***[insurer or HMO]* *policy or plan will*** still apply. And coverage limits of your health ***[insurer or HMO]* *policy or plan*** will be in effect.

Most HMOs offer unlimited coverage. Most ***other*** health ***[insurer]* *coverage providers*** offer lifetime benefit limits of \$1 million.

That means the ***[insurer]* *health coverage provider*** will pay all eligible health claims, as long as they do not total more than \$1 million during your lifetime. **Be sure to ask your *insurer* *health coverage provider* what limits apply under your policy *or plan*.**

[If your employer supplies your health insurance, check with your health benefits officer at work. Be sure your plan will cover auto accident injuries. If you are covered by an employer's self-insurance plan or out of state group, you may not be eligible to choose this option.]

[And, your]* *Your* health *insurer or HMO* *policy or plan may not cover all procedures or treatments. Exclusions listed in your policy ***or plan*** will apply. But your auto insurer should pay for

necessary expenses not covered by your health policy or *[HMO]* *plan*.

If you choose your health *[insurer or HMO]* *coverage provider* to be responsible for paying auto accident-related medical bills, you must provide *[proof that you have the necessary coverage]* *the name of your health coverage provider and the policy, plan, membership or group certificate number on the Coverage Selection Form*. You must also maintain your health *[insurance or HMO]* coverage.

If you are in an accident and your coverage is no longer in effect, your auto insurer must pay PIP medical benefits. However, you will be required to pay *[any deductibles and co-payments as well as]* a \$750 additional deductible.

***PIP Medical Expenses Deductible
Auto Insurer Option
Item 5 on Coverage Selection Form**

This option involves only the medical bills paid by PIP, not the income continuation, essential services, death benefits or funeral expense benefits, which will be paid under Basic PIP coverage regardless of whether you select your health insurer or auto insurer to be the primary payer of your auto-accident related medical bills.

Under New Jersey law, unless you choose your health insurer to pay your auto-accident related medical bills, your auto insurance policy will cover your medical bills up to a maximum of \$250,000 per person, per accident, if you are injured in an auto accident.

However, for the first \$5,000 of medical bills per accident, your auto policy will pay only part of the cost of your treatment or the treatment of others covered by your policy. There is a \$250 deductible, meaning the first \$250 will not be covered. The deductible applies only once per accident regardless of the number of people injured.

There is also a 20 percent co-payment which means that for the bills from \$251 to \$5,000, the policy will pay only 80 percent. Medical bills above \$5,000 are paid in full by the policy.

You can choose a \$250 deductible, a \$500 deductible, a \$1,000 deductible or a \$2,500 deductible. A way to lower the price of your auto insurance is to have a larger PIP deductible. The 20 percent co-payment still applies to expenses between the deductible chosen and \$5,000.

You should consider the \$2,500 PIP deductible if you are already covered by a health insurance policy or a health maintenance organization (HMO). In most cases, those plans will pay part of the medical bills which auto insurance won't pay.

Before taking this option, ask your health insurance company or HMO two things:

- Will your health policy or HMO cover auto-related medical bills not paid by auto insurance? The Department of Insurance requires that health insurance sold in New Jersey cover treatment for auto-related injuries the same as other injuries. But your policy may not follow this rule because you may be covered by a health insurance group sold out of state or an employer self-insurance plan. Find out.

- What are your health policy's or HMO's own deductible, co-payments and exclusions? Find out what your health plan covers. For instance, it may cover only hospitalization but not doctor visits. Also, your health insurance or HMO has its own rules regarding what you pay out of your pocket for medical treatment. Those rules will apply if you use your health plan to cover the \$2,500 PIP deductible.*

**Uninsured*/Underinsured*
Motorist Coverage
(Required by Law)**

Item 6 on the Coverage Selection Form

Despite New Jersey law, which requires auto insurance, many cars are not covered by insurance. Some motorists break the law. Many other motorists are residents of other states which don't require auto insurance by law.

Because these motorists can cause accidents, you are required to buy uninsured motorist coverage. This coverage does not benefit the uninsured driver. It will provide benefits to you, your passengers or relatives living with you if a motorist without insurance is legally liable for injuries to these persons or for damage to your car or its contents.

There are other motorists who have auto insurance coverage but with very low limits. When you buy uninsured motorist coverage, you are also provided coverage to protect you from those motorists who are underinsured. If you are in an accident caused by such a motorist, underinsured motorist coverage will pay damages up to the difference between your underinsured motorist coverage limit and the other driver's liability coverage limit.

You must by law purchase *uninsured motorist* coverage which will pay, for each accident, at least the following amounts:

- \$15,000 for any one person's injuries;
- \$30,000 when more than one person is injured;
- \$ 5,000 for property damage.

Many companies sell a combined*[,* single limit]* which must be at least \$35,000. The property damage coverage has a basic \$500 deductible, which means you pay the first \$500 of a claim under that coverage.

You can buy higher uninsured/underinsured motorist coverage limits, but only as high as the liability coverages you have purchased. Most companies sell up to \$250,000/\$500,000/\$100,000 coverage or a combined single limit of \$500,000.

[A higher limit of uninsured/underinsured motorist coverage may help if damages are caused by a motorist who has insurance, but not enough insurance to pay all of your damages—in other words, an "underinsured" motorist. In such an accident, your policy will pay the uncompensated damages up to the dollar difference between your underinsured motorist coverage limit and the other driver's liability coverage limit.]

**Collision and Comprehensive Coverages
(Optional)**

Items 7 and 8 on Coverage Selection Form

Collision coverage and comprehensive (also known as "other than collision") coverage pay for damage to your car. These coverages will pay to repair your car or pay for its value at the time of the loss if it is stolen or declared a total loss.

These coverages are **not** required by law. But, if you borrowed money to buy your car or if you are leasing the car, the lender or lessor may require you to buy these coverages. ***Note that some companies will provide collision coverage only if you buy comprehensive coverage too. Contact your company for details.***

Collision pays for damage to your car caused by your car hitting things like other cars, trees or telephone poles, or for the car overturning, or for other moving objects hitting your car.

Comprehensive insurance pays for nearly every other kind of damage to your car, such as fire, theft, flood, vandalism, or contact with a bird or animal.

COST SAVER: No Collision or No Comprehensive

If your car is older and is paid for, consider eliminating collision or comprehensive coverage, or both. This decision will reduce your premium.

To make the decision, consider what you will pay for these coverages versus the possible benefit if you file a claim.

Collision and comprehensive coverage will reimburse you only *[for]* *up to* the actual cash value of your car. *[This is the maximum payout you will ever receive from any collision or comprehensive claim.]* The insurance payment probably will be less than the actual cash value because of deductibles.

[Note that some companies will provide collision coverage only if you buy comprehensive coverage too. Contact your company for details.]

COST SAVER: Collision and Comprehensive Deductibles

If you decide that you need collision or comprehensive coverage or both, a significant way to hold down the price of your insurance policy is to select higher deductibles.

If you file a claim, a deductible is the amount of money you will pay before the insurance company starts paying. Deductibles are a way of *[controlling]* *reducing* insurance company costs, and thereby *[reducing]* *lowering* the price of your insurance policy.

*[For example, during the late 1970s and early 1980s, the "basic" deductibles were \$200 for collision coverage and \$100 for com-

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prehensive coverage. Now, to hold down auto insurance prices, New Jersey law says the "basic" deductible for each coverage is \$500.]*

The standard deductible for auto insurance in New Jersey is \$500. You still have the right to buy collision or comprehensive coverage with the ***higher or lower*** deductibles¹, but the ***lower** the deductible, the higher the price of your insurance policy.

¹[It may be a more efficient use of your insurance dollar to pay for coverage for large losses—for such things as auto theft or a major wreck—than to pay extra for deductibles less than \$500.

Your insurance policy will cost even less if you have deductibles of \$1,000, \$1,500 or \$2,000. But only you can decide whether you can afford to pay that much if you have an accident. Also if you are paying a car loan or are leasing your car, you should check if your contract requires certain deductibles.

In deciding what to do, think about how much collision and comprehensive coverages cost and about what would happen if you file a claim.

Please note: If you are applying for a new insurance policy, your insurance company **cannot** issue comprehensive or collision coverage before it inspects your car.

If you are **renewing** your policy, the company **may** require an inspection of your vehicle.

If you **replace** your car, or **add** another car to an existing policy, the company **must** inspect the car before the collision and comprehensive coverage becomes effective. **New cars do not have to be inspected.**

During its inspection, the insurance company may take photographs of your car.

For your convenience, the insurance company must conduct the inspection at a time and place reasonably convenient to you. However, if you do not make your car available for inspection, the company can refuse to provide physical damage coverage.

Inspecting cars before they are insured for collision and comprehensive coverage makes it harder to file fraudulent insurance claims.

By fighting fraud, rates can be kept down for drivers who obey state laws. Drivers who break fraud laws can face up to a \$5,000 fine for a first offense, or time in jail.]*

Price Comparison *[Filing Complaints]

If you have any questions about your insurance policy, call your company, agent or broker.]*

If you would like a copy of the annual auto insurance premium comparison published by the New Jersey Department of Insurance, please send a stamped, self-addressed envelope to:

Auto Comparison
Division of Public Affairs
NJ Department of Insurance
CN 325
Trenton, NJ 08625-0325

¹[If you want to file a complaint against your insurance producer or company, please call the Department of Insurance for a complaint form at: (609) 984-2426.]*

*[Questionnaire]

The insurance department wants to know how you feel about your insurance company. Please help the insurance department and answer the few questions below. However, you are under no legal obligation to complete the survey. Whether you send it to the insurance department or not, your insurance coverage will not be affected. Please complete the short questionnaire and mail it to:

ADOPTIONS

Division of Public Affairs
NJ Department of Insurance
CN 325
Trenton, NJ 08625-0325

Insurance Company Name _____

On a scale of 1 to 5, with 1 being excellent and 5 being poor, please circle the number that best answers how your company performs.

Question	Excel- lent	Very Good	Good	Fair	Poor
1. Has your agent clearly explained your auto policy, including all the options available to you?	1	2	3	4	5
2. Did you get enough advance notice to pay your premium?	1	2	3	4	5
3. Has your company promptly sent an adjuster to examine your car in the event of a claim?	1	2	3	4	5
4. Has your company promptly paid your claim?	1	2	3	4	5
5. Has your company accurately paid your claim?	1	2	3	4	5
6. How would you rate your company overall?	1	2	3	4	5]*

(o) As appropriate, an insurance company may substitute its name in the Buyer's Guide.

(p) As appropriate, an insurance company which offers only split limits may delete language in the Buyer's Guide explaining combined limits, and an insurance company which offers only combined limits may delete language regarding split limits. If an insurance company does not offer limits as low as the minimums required by law, that information may be inserted in this paragraph.

(q) An insurance company which offers higher benefits than described in the text of the Buyer's Guide may modify the relevant paragraph to explain those higher benefits.

(r) An insurance company which uses only one term, "Comprehensive" or "Other Than Collision," to describe this coverage, may delete reference to the inappropriate term.

¹[(s) The last paragraph of the "Cost Saver: No Collision or No Comprehensive" section may be deleted by an insurance company if it permits collision coverage without the purchase of comprehensive coverage.]*

11:3-15.7 Minimum standards for Coverage Selection Form

(a) (No change.)

(b) The insurance company may include additional lines for application number, policy number or other necessary information.

(c) An insurance company may expand the form to solicit additional information, including, but not limited to, the names of resident relatives eligible for PIP benefits, or different collision and comprehensive deductibles applying to different vehicles covered by the same policy.

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

(f) The Coverage Selection Form shall include the range of premium rate differences as indicated by this subchapter. Each insurance company shall determine the numbers for use in these sections. When the numbers on the Coverage Selection Form change for any reason, including, but not limited to, rate changes, a new Coverage Selection Form with the current numbers shall be printed.

(g) The Coverage Selection Form shall include the language in (h) below, except the language marked ("NOTE"), which describes language which the insurance company shall insert.

(h) The text of the Coverage Selection Form follows:

(NOTE: Company's name may be included here.)

(NOTE: If a company has more than two percent of the New Jersey private passenger automobile market, it shall include its name and toll-free number here.)

COVERAGE SELECTION FORM

Name: _____

For new policies, you must choose one option for each item below. For changes upon renewal and mid-term policy changes, you must use this Form when you*:*

*[(1)]***(a)* elect the "No Threshold" option;

*[(2)]***(b)* change from the "No Threshold" option to the "Lawsuit Threshold" option;

*[(3)]***(c)* desire collision or comprehensive deductibles other than \$500*[.00]*;

*[(4)]***(d)* desire to change to the \$500*[.00]* deductible for collision or comprehensive coverage; *or*

*[(5)]***(e)* desire your health insurer to be the primary insurer to pay for your auto accident-related medical bills*; or*

*[(f)]***(f)* desire your auto insurance carrier to be the primary insurer for your auto accident-related medical bills*.

The *following* item numbers match the explanations in the New Jersey Auto Insurance Buyer's Guide. Read the Buyer's Guide for information and help in completing this form.

1. Liability Coverage

How much coverage do you choose for damage you may do to others?

- ☐
☐
☐
☐

(NOTE: At least four of the most popular coverage limits shall be listed, including the lowest limit offered.)

(NOTE: If a complete list is not provided, state that other coverage limits are available.)

2. Lawsuit Threshold (Otherwise known as the "Verbal Threshold")

Do you accept the basic limit on the right to sue if injured in an auto accident?

☐ Yes. I want the Lawsuit Threshold.

☐ No. I want No Threshold. My bodily injury liability premium will be _____% to _____% higher if I select the No Threshold option instead of the Lawsuit Threshold, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium at current rates will be \$_____ to \$_____ higher on each _____ renewal of my policy if I select the No Threshold option instead of the Lawsuit Threshold. I understand that I can contact my insurance company or my insurance producer *(i.e., agent or broker)* for specific details.

(Note: Insurance companies writing six month policies should insert the word "semi-annual" in the blank space above. Companies writing 12 month policies should insert the word "annual".)

(Note: Insurance companies writing single limit liability coverage may add a footnote to inform insureds that the policy declaration page will not include a specific premium for "bodily injury liability" coverage.)

3. Personal Injury Protection (PIP). Choose the kind of coverage you want.

☐ Basic PIP Coverage *which includes income continuation, essential services, death benefits and funeral expense benefits as well as medical expense benefits, or*

☐ PIP Medical Expenses Only Coverage, for a _____% to _____% savings in the _____ premium. (NOTE: Include the range of percentage savings and the base, i.e., basic PIP premium.)*;

☐ Additional PIP coverage*[, including medical benefits,]* at an extra cost. *Note: This option is not available if you have selected PIP Medical Expenses Only coverage.* Contact your insurance company or insurance producer *(i.e., agent or broker)* for details. (NOTE: Company's name may be used here or a chart listing options may

be enclosed.) *[(You must select Basic PIP Coverage if you choose Additional PIP Coverage.)]*

☐ Additional Medical Expense Coverage.*

*[4. PIP Deductible. Choose only one:

☐ \$250 deductible, minimum required by law.

☐ \$500 deductible, for a _____% to _____% reduction in the _____ premium.

☐ \$1,000 deductible, for a _____% to _____% reduction in the _____ premium.

☐ \$2,500 deductible, for a _____% to _____% reduction in the _____ premium.]*

*[5.]*4.* PIP Health *[(Insurer)* *Insurance* Option. Choose if you want your health insurer*, other than Medicare or Medicaid,* to be your primary carrier to pay your auto accident-related medical benefits. Check with your employer or health insurer to see if you are eligible *and request an answer in writing*. To choose this option *,* *[(your)* health *[(insurance)* coverage must cover the named insured and members of his family residing in the household. For policies issued or renewed *[(before January 1, 1992)* *during 1991]*, you will save at least 25% on your PIP medical expense benefits coverage. For policies issued or renewed after January 1, 1992, you will receive an appropriate discount on your PIP medical expense benefits coverage.

☐ Yes, I choose the PIP health insurer option.

NOTE: Your auto insurance company may invalidate this option selection and request payment of the discounted premium amount if it checks but cannot verify that (1) your health coverage is in effect, and (2) your health insurer will provide primary coverage for your auto accident-related medical expenses.

The name of my health insurer(s) is (are):

1. _____
Number: _____

Policy, *Plan,* Membership or *Group*
Certificate Number (circle *one* *[appropriate choice]*)

2. _____
Number: _____

Policy, *Plan,* Membership or *Group*
Certificate Number (circle *one* *[appropriate choice]*)

☐ No, I do not want the PIP health insurer option.

*5. PIP Medical Expenses Deductible. Choose only one:

☐ \$250 deductible, minimum required by law.

☐ \$500 deductible, for a _____% to _____% reduction in the _____ premium.

☐ \$1,000 deductible, for a _____% to _____% reduction in the _____ premium.

☐ \$2,500 deductible, for a _____% to _____% reduction in the _____ premium.*

6. Uninsured/Underinsured Motorists Coverage

How much coverage do you choose for damage which another driver who has little or no insurance may do to your car, your family, your passengers or yourself? *Your auto insurance company must offer this coverage up to the bodily injury and property damage liability limits you have selected.*

- ☐
☐
☐
☐

(NOTE: List the same options available for liability coverage above. Other options may also be listed.)

7. Do you choose "collision" coverage?

☐ No. I do not wish to be covered for collision damage.

☐ Yes, with the basic \$500 deductible.

☐ Yes, with the deductible circled here: \$1,000, \$1,500 or \$2,000. This premium will be proportionately less than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: \$100, \$150, \$200 or \$250. This premium will be proportionately more than the premium with

the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

8. Do you choose "comprehensive" coverage? (NOTE: If appropriate, use the term "other than collision" coverage throughout this section.)

- ☐ No. I do not wish to be covered for comprehensive damage.
- ☐ Yes, with the basic \$500 deductible.
- ☐ Yes, with the deductible circled here: \$1,000, \$1,500 or \$2,000.

This premium will be proportionately **less** than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: \$50, \$100, \$150, \$200 or \$250. This premium will be proportionately **more** than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(NOTE: For both collision and comprehensive, if either the \$200 deductible or \$250 deductible is not offered, that option may be deleted from this form. Also, all other available collision and comprehensive deductibles shall be listed where appropriate.)

I have read the Buyer's Guide outlining the coverage options available to me. My choices are shown above. I agree that each of these choices will apply for all vehicles insured by my policy and to each subsequent renewal, continuation, replacement or amendment until the insurance company or its insurance producer **(i.e., agent or broker)*** with the company's binding authority receives my request that a change be made.

For new policyholders, I understand that*:

(a)* if I do not make a written choice for Item 2, I will receive the Lawsuit Threshold option;

(b)* if I carry collision or comprehensive coverage without making a written choice for item 7 or Item 8, I will receive the \$500 deductible; and

(c)* if I do not make a written choice for the PIP health insurer option in Item **[5]**4***, my auto insurer will be the primary health insurer for PIP medical expense benefits.

I understand that if this is a policy renewal and I do not complete choices, I will receive the same coverage as in my previous policy except **[where]* *when*** changes are **[set]* *required*** by a law becoming effective **[after the effective date]* *during the term*** of my previous policy.

I understand that these choices take effect in the following manner: (1) for new policies ***and mid-term policy changes***, the choices on this Form are effective ***the day following the date of postmark or, when personal delivery is made or the postmark is illegible, the day following* *upon*** receipt of this Form by the insurance company or by an insurance producer **(i.e., agent or broker)*** with the company's binding authority; ***and*** (2) for **[mid-term policy changes, the choices required to be made on this Form are effective upon receipt of this Form by the insurance company or an insurance producer with the company's binding authority; and (3) for]*** changes upon renewal, the changes to be made on this Form are effective on the date of the next policy renewal if **[timely]* *postmarked or*** received by the insurance company or by an insurance producer **(i.e., agent or broker)*** with the company's binding authority ***prior to the renewal date***.

Signature _____ Date _____

(i) To assure conformity with this subchapter, each insurance company shall file its Coverage Selection Form with the Division of Public Affairs. Whenever the Coverage Selection Form is changed, the new form shall be filed, and the month and year the changes were implemented shall be clearly stated at the bottom of the revised form. Deadlines for implementation and filing requirements regarding the Coverage Selection Form shall be the same as for the Buyer's Guide. See N.J.A.C. 11:3-15.6(e).

(j) Insurance company shall be required to calculate the percentage and dollar change in premium (or rate) arising from the selection

of the No Threshold option as indicated in (j)1 through 4 below. In these calculations, premium (or rate) shall include any expense fee, but shall not include any policy constant or RMEC.

1.-3. (No change.)

4. Insurance companies **[and NJAFIUA servicing carriers]*** shall submit to the Division of Public Affairs, New Jersey Department of Insurance, CN 325, Trenton, New Jersey 08625, within seven days of its first use, a copy of the Coverage Selection Form prepared pursuant to this subsection together with:

i.-v. (No change.)

(k) (No change.)

11:3-15.9 Use of Coverage Selection Form

(a) For all new policies, an insurance company or an insurance producer with the company's binding authority shall receive a signed Coverage Selection Form indicating the prospective insured's coverage choices. Coverage shall not become effective until the signed Coverage Selection Form is received from the ***named*** insured, unless otherwise authorized by law.

(b) For all policy renewals, the insurance company shall provide its Coverage Selection Form to the ***named*** insured with the notice of renewal. For mid-term policy changes, the insurance company shall provide its Coverage Selection Form to the ***named*** insured upon his request for a mid-term change **[where]* *when*** the change is required to be made on the Form. Coverage may be renewed or amended, with or without the signed Coverage Selection Form from the ***named*** insured, **[in accordance with the requirements of]* *except as set forth in* (b)1i through [iv]* *vi*** below ***where a signed Coverage Selection Form is required***.

1. An insurance company may require the receipt by it or an insurance producer with the company's binding authority of a signed Coverage Selection Form for any coverage change; provided, however, that an insurance company shall require the receipt by it or an insurance producer with the company's binding authority of a signed Coverage Selection Form for any of the coverage changes in (b)1i to **[iv]* *vi*** below.

i. The election of the "No Threshold" option;

ii. Changing from the "No Threshold" option to the "Lawsuit Threshold" option;

iii. **[Where]* *When*** the ***named*** insured desires collision or comprehensive deductibles other than \$500.00;

iv. **[Where]* *When*** the ***named*** insured desires to change to the \$500.00 deductible for collision or comprehensive coverage; **[or]***

v. **[Where]* *When*** the ***named*** insured desires his health insurance carrier to be the primary insurer for PIP medical expense coverage benefits; **or***

vi. When the named insured desires his auto insurance carrier to be the primary insurer for PIP medical expense coverage benefits.

(c) The coverage changes in (b)1i through **[v]* *vi*** above shall become effective in the following manner:

1. For all new policies and mid-term policy changes required to be made on the Coverage Selection Form, the choices on the Coverage Selection Form shall be effective ***the day following the date of postmark or, when personal delivery is made or the postmark is illegible, the day following* *upon*** receipt of the Form by the insurance company or an insurance producer with the company's binding authority;

2. For changes upon renewal, the changes required to be made on the Coverage Selection Form shall be effective on the date of the next policy renewal if **[timely]* *postmarked or*** received by the insurance company or by an insurance producer with the company's binding authority ***prior to the renewal date***.

LABOR**(a)****OFFICE OF WAGE AND HOUR COMPLIANCE****Notice of Administrative Correction****Wage and Hour****Payroll Deductions for Mass Transportation****N.J.A.C. 12:55**

Take notice that the Office of Administrative Law has discovered an error in the notice of readoption with amendments of N.J.A.C. 12:56 published in the November 5, 1990 New Jersey Register.

While the Department of Labor indicated in the Summary of Public Comments and Agency Responses that it was recodifying upon adoption N.J.A.C. 12:56-16, Payroll Deductions for Mass Transportation, as a separate chapter, N.J.A.C. 12:55, the Agency Note following the readoption text indicated that the recodification only applied to N.J.A.C. 12:56-16.1. Since the Department of Labor intended for the entire subchapter to be recodified as N.J.A.C. 12:55, this notice of administrative correction is published to correct the erroneous impression given by the agency note and text publication. In the November 19, 1990 update to the New Jersey Administrative Code, the subchapter will be correctly recodified.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

LAW AND PUBLIC SAFETY**(b)****DIVISION OF CONSUMER AFFAIRS****BOARD OF PHARMACY****Application for Written Examination****Adopted Amendments: N.J.A.C. 13:39-2.2 and 2.8**

Proposed: August 20, 1990 at 22 N.J.R. 2395(b).

Adopted: October 10, 1990 by the State Board of Pharmacy,
Melvin Mack, R.P., President.

Filed: October 18, 1990 as R.1990 d.551, **without change**.

Authority: N.J.S.A. 45:14-26.2; 45:14-36.1.

Effective Date: November 19, 1990.

Expiration Date: June 19, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

13:39-2.2 Application to be filed

An applicant for the written examination must file an application for such examination at least 30 days prior to the date of the examination unless this requirement is waived by the Board because of extenuating circumstances. The required fees as prescribed in N.J.A.C. 13:39-1.3 must also be submitted.

13:39-2.8 Proof of identity of applicant

An applicant for the written examination must submit to the Board 30 days in advance of the date of the written examination a bust photograph mounted on a document to be supplied by the Board requesting certain identification information.

(c)**NEW JERSEY RACING COMMISSION****Thoroughbred Rules****Employee Compensation Insurance****Adopted Amendment: N.J.A.C. 13:70-3.41**

Proposed: June 4, 1990 at 22 N.J.R. 1717(a).

Adopted: August 23, 1990 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: October 25, 1990 as R.1990 d.574, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:5-30.

Effective Date: November 19, 1990.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Change:

The following technical change has been made to clarify the date for which the certificate of compliance must be valid. In proposed N.J.A.C. 13:70-3.41(a), "through December 31" has been added.

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

13:70-3.41 Employee compensation insurance

(a) All owners and trainers shall carry compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by owners and trainers in the training and racing of horses. All concessionaries shall carry compensation insurance covering all their employees.

(b) An individual or entity shall provide adequate proof of compliance with (a) above before he or she will be licensed as an owner, trainer, and/or concessionaire by the New Jersey Racing Commission. Such proof shall be in the form of:

1. A certificate of insurance, valid for the year ***through December 31*** (for which licensing is sought), issued by an insurance company authorized to do business in the State of New Jersey; or

i. A certificate, if offered and found not to be valid, may result in penalties provided in N.J.A.C. 13:70-23 up to and including revocation of license of the person who submitted the certificate; or

2. Proof of payment of the required premium entitling an individual or entity to participate in a workmen's compensation insurance group program.

i. Any group or organization sponsoring such a program shall guarantee worker's compensation coverage for those eligible individuals or entities which pay the required premium. A copy of the worker's compensation insurance group program and eligibility requirements shall be filed by the sponsoring group or organization with the New Jersey Racing Commission each year.

(d)**NEW JERSEY RACING COMMISSION****Thoroughbred Rules****Administering Medication to Respiratory Bleeders****Adopted Amendment: N.J.A.C. 13:70-14A.9**

Proposed: April 16, 1990 at 22 N.J.R. 1233(a).

Adopted: October 18, 1990 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: October 25, 1990 as R.1990 d.576, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: November 19, 1990.

Operative Date: January 1, 1991.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the adoption follows.**13:70-14A.9 Administering medication to respiratory bleeders**

(a) The stewards may permit the administration of medication to control respiratory bleeding in animals that:

1.-3. (No change.)

4. Have been certified as respiratory bleeders in other racing jurisdictions by a veterinarian employed by that jurisdiction's regulatory body or have been placed on another racing jurisdiction's respiratory bleeder's list.

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

(a)**NEW JERSEY RACING COMMISSION****Harness Rules****Employee Compensation Insurance****Adopted Amendment: N.J.A.C. 13:71-6.1**

Proposed: June 4, 1990 at 22 N.J.R. 1717(a).

Adopted: August 23, 1990 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: October 25, 1990 as R.1990 d.573, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:5-30.

Effective Date: November 19, 1990.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:

The proposed amendment was published on June 4, 1990. During the comment period, which closed on July 4, 1990, one comment was submitted by counsel for the Standardbred Breeders and Owners Association.

COMMENT: Counsel for the Standardbred Breeders and Owners Association supports the Racing Commission's proposed rule amendment; however, he questions the employee relationship between a licensed owner and the driver who drives the owner's horse at the racetrack in New Jersey.

RESPONSE: The Racing Commission has determined that the harness industry should be treated consistent with the way the Commission views the thoroughbred industry. Owners and trainers of thoroughbred horses are required to have Worker's Compensation to cover the rider who rides horses in races in New Jersey. The Commission has determined that the harness industry will have to comply with this policy unless the Worker's Compensation Board or a court of competent jurisdiction determines that the harness owners are not liable to provide Worker's Compensation coverage.

Summary of Agency-Initiated Change:

The following technical change has been made to clarify the date for which the certificate of compliance must be valid. In proposed N.J.A.C. 13:71-6.1(b)1, "through December 31" has been added.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).**13:71-6.1 Compensation insurance**

(a) Associations are required to carry adequate compensation insurance covering all persons in their employ.

(b) All owners and trainers shall carry compensation insurance covering all their employees, including drivers, grooms and all others acting in the capacity of training horses.

(c) All concessionaires shall carry compensation insurance covering all their employees.

(d) An individual or entity shall provide adequate proof of compliance with (b) and (c) above before he or she will be licensed as an owner, trainer, and/or concessionaire by the New Jersey Racing Commission. Such proof shall be in the form of:

1. A certificate of insurance, valid for the year ***through December 31*** (for which licensing is sought), issued by an insurance company authorized to do business in the State of New Jersey.

i. A certificate, if offered and found not to be valid, may result in penalties provided in N.J.A.C. 13:71-2.3 up to and including revocation of license of the person who submitted the certificate; or

2. Proof of payment of the required premium entitling an individual or entity to participate in a workmen's compensation insurance group program.

i. Any group or organization sponsoring such a program shall guarantee worker's compensation coverage for those eligible individuals or entities which pay the required premium. A copy of the worker's compensation insurance group program and eligibility requirements shall be filed by the sponsoring group or organization with the New Jersey Racing Commission each year.

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

(b)**NEW JERSEY RACING COMMISSION****Harness Rules****Administering Medication to Respiratory Bleeders****Adopted Amendment: N.J.A.C. 13:71-23.8**

Proposed: April 16, 1990 at 22 N.J.R. 1233(c).

Adopted: October 18, 1990 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: October 25, 1990 as R.1990 d.575, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: November 19, 1990.

Operative Date: January 1, 1991.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the adoption follows.**13:71-23.8 Administering medication to respiratory bleeders**

(a) The judges may permit the administration of medication to control respiratory bleeding in animals that:

1.-2. (No change.)

3. Have been certified as respiratory bleeders in other racing jurisdictions by a veterinarian employed by that jurisdiction's regulatory body or have been placed on another racing jurisdiction's respiratory bleeder's list.

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

TRANSPORTATION**(c)****DIVISION OF TRANSPORTATION ASSISTANCE
BUREAU OF FREIGHT SERVICES****Transportation of Hazardous Materials
Qualification and Disqualification of Drivers****Adopted Amendments: N.J.A.C. 16:49-1.1, 1.3, 1.5,
1.6, 2.1 and Appendix**

Proposed: September 4, 1990 at 22 N.J.R. 2676(a).

Adopted: October 5, 1990, Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Filed: October 17, 1990 as R.1990 d.550, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-25, Hazardous Materials Transportation Act, P.L. 93-633.

Effective Date: November 19, 1990.

Expiration Date: February 8, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 49
TRANSPORTATION OF HAZARDOUS MATERIALS

SUBCHAPTER 1. GENERAL REQUIREMENTS

16:49-1.1 Purpose

This chapter prescribes the requirements of the New Jersey Department of Transportation ("Department") governing the transportation of hazardous materials in the State of New Jersey. This chapter is adopted to establish comprehensive regulation of the shipping, packaging, marking, labelling, placarding, handling, and transportation of hazardous materials, and is established consistent with the regulations issued by the United States Department of Transportation.

16:49-1.3 General requirements

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

(g) The modes of transportation by air, water, or pipeline are governed by other agencies and other Federal regulations and are not under the jurisdiction of the Department. Thus, any portion of the Federal regulations governing transportation of hazardous materials by air, water, or pipeline within Parts 107, 171, 172, 173, 174, 177, 178, 179 and 180 are hereby excluded and not adopted by the Department.

(h) (No change.)

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation. The Federal "Hazardous Materials Regulations" referenced herein, are adopted as of October 1, 1989. The "Federal Motor Carrier Safety Regulations" as referenced in 49 CFR 177.804 are adopted as of October 1, 1989. The New Jersey Department of Transportation intends to amend these rules as new Federal publications become available.

(j)-(k) (No change.)

16:49-1.5 Document availability

(a) Copies of the Federal "Hazardous Materials Regulations," Title 49, Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, 179, and 180 revised as of October 1, 1989, and referenced herein, may be purchased from the places listed below. The "Federal Motor Carrier Safety Regulations", Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, 1989, and adopted by reference in Section 177.804 of the Appendix to the Regulations Regarding the Transportation of Hazardous Materials may also be purchased at the places listed below.

1.-3. (No change.)

(b) (No change.)

(c) Copies of the Title 49 CFR volumes noted above are further available for review at the New Jersey Department of Transportation, Bureau of Freight Services, 1035 Parkway Avenue, Trenton, New Jersey 08625. Hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. This office may be contacted at (609) 530-8026.

16:49-1.6 Assistance

(a) For general assistance and procedural questions in matters related to New Jersey's Hazardous Materials Regulations, as adopted herein, contact:

Bureau of Freight Services
 New Jersey Department of Transportation
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625
 (609) 530-8026

(b) For assistance in matters related to enforcement or interpretation of the Hazardous Materials Regulations, contact:

Hazardous Materials Transportation Unit
 New Jersey Division of State Police
 P.O. Box 7068
 West Trenton, New Jersey 08625
 (609) 882-2000, extensions 2581 or 2582

16:49-2.1 Parts adopted by reference

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by reference the following portions of Title 49—Transportation, Code of Federal Regulations, revised as of October 1, 1989. The parts adopted by reference are found in Chapter I, referred to as "Research and Special Programs Administration, U.S. Department of Transportation". These parts are detailed in the APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS. The portions adopted are summarized below.

1.-7. (No change.)

8. Part 180, Continuing Qualification and Maintenance of Packagings.

**APPENDIX TO THE REGULATIONS REGARDING THE
 TRANSPORTATION OF HAZARDOUS MATERIALS**

This Appendix to the Regulations Regarding the Transportation of Hazardous Materials details the adopted portions of Title 49, CFR, by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER I
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

(Subchapter B is not being incorporated upon adoption)

**SUBCHAPTER C—HAZARDOUS MATERIALS
 REGULATIONS**

**PART 171—GENERAL INFORMATION, REGULATIONS,
 AND DEFINITIONS**

Section 171.2 General Requirements.

Section 171.3 Hazardous Waste.

Section 171.7 Matter incorporated by reference.

These materials incorporated by reference are technical documents referred to, on occasion, in Title 49, Code of Federal Regulations. Specific technical document names, associations, and addresses where they may be found are contained in Section 171.7 of Title 49, Code of Federal Regulations.

Section 171.8 Definitions and abbreviations.

Section 171.9 Rules of construction.

Section 171.11 Use of ICAO Technical Instructions.

Section 171.12 Import and export shipments.

Section 171.12a Canadian shipments and packagings.

Section 171.13 Emergency regulations.

Section 171.14 Specification markings.

Section 171.15 Immediate notice of certain hazardous materials incidents. (New Jersey Revisions as noted below.)

Section 171.15 is revised to state the following. (Note: Paragraph (a) has been changed and paragraph (d) has been added.)

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) or paragraph (d) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which

(1) As a direct result of hazardous materials:

i. A person is killed; or

ii. A person receives injuries requiring his or her hospitalization;

or

iii. Estimated carrier or other property damage exceeds \$50,000;

or

iv. An evacuation of the general public occurs lasting one or more hours; or

v. One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

vi. The operational flight pattern or routine of an aircraft is altered; or

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(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§174.45, 175.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgement of the carrier, it should be reported in accordance with (b) and (d) of this section.

(b) Each notice required by paragraph (a) of this section shall be given to the U.S. Department of Transportation by telephone (toll free) on 800-424-8802. Notice involving etiologic agents may be given to the Director, Center for Disease Control, U.S. Public Health Service, Atlanta, Georgia, Area Code (404) 633-5313, in place of the notice to the U.S. Department of Transportation or (toll call) on 202-267-2675. Each notice must include the following information:

(1)-(7) (No change.)

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

Section 171.16 Detailed hazardous materials incident reports.
(New Jersey Revision as noted below.)

Section 171.16 is revised to state the following: (Note: (a) and (b) have been changed and paragraph (e) has been added.)

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form 5800.1 (Rev. 6/89) to the U.S. Department of Transportation within 30 days of the date of discovery, unless the requirements of paragraph (e) in this section are met, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which any of the circumstances set forth in Section 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge—

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any unremoved waste must be entered in Section IX of the report form (F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall send that report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the U.S. Department of Transportation.

(c) through (e) (No change.)

Section 171.18-Section 171.19 (No change.)

Section 171.21 Assistance in investigations and special studies

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATION REGULATIONS

Subpart A—General

Section 172.1 Purpose and scope.

Section 172.3 Applicability

(a) This part applies to: (1) Each person who offers a hazardous material for transportation, and (2) Each carrier by highway or rail who transports a hazardous material.

(b) When a person other than one of those provided for in paragraph (a) of this section, performs a packaging, labeling or marking function required by this part, that person shall perform the function in accordance with this part.

Subpart B—Tables of Hazardous Materials, Their Description, Proper Shipping Name, Class, Label, Packaging, and Other Requirements

ADOPTIONS

Section 172.101 Purpose and use of Hazardous Materials table, including the Hazardous Materials table, the CERCLA List, and the List of Hazardous Substances and Reportable Quantities.

Section 172.102 Purpose and Use of Optional Hazardous Materials Table for international shipments, including the Optional Hazardous Materials Table.

Appendix A to Subpart B above—Identification Number Cross Reference to Proper Shipping Names in Section 172.101 and Section 172.102.

Subpart C—Shipping Papers.

Section 172.200 Applicability

Section 172.201-Section 172.330 (No change.)

Section 172.331 Bulk packagings other than portable tanks, cargo tanks, tank cars and multi-unit tank car tanks.

Section 172.332-Section 172.558 (No change.)

Subpart G—Emergency Response Information

Section 172.600 Applicability and general requirements.

Section 172.602 Emergency response information.

Section 172.604 Emergency response telephone number.

Appendix A-Appendix C (No change.)

PART 173—SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Subpart A—General

Section 173.1 Purpose and scope.

Section 173.2 Classification of material having more than one hazard as defined in this part.

Section 173.3-Section 173.28 (No change.)

Section 173.29 Empty packagings.

Section 173.30-Section 173.32d (No change.)

Section 173.33 Hazardous materials in cargo tank motor vehicles.

Section 173.34-Section 173.80 (No change.)

Section 173.81 Cord, detonating.

Section 173.86-Section 173.91 (No change.)

Section 173.92 Jet thrust units (jato), Class B explosives; rocket motors, Class B explosives; igniters, jet thrust (jato), Class B explosives; igniters, rocket motors, Class B explosives; and starter cartridges, jet engine, Class B explosives.

Section 173.93-Section 173.110 (No change.)

Section 173.111 Cigarette loads, explosive auto alarms, toy propellant devices, toy smoke devices, trick matches, and trick noise makers, explosive.

Section 173.112-Section 173.118 (No change.)

Section 173.118a Exceptions for combustible liquids.

Section 173.119-Section 173.293 (No change.)

Section 173.294 Chloroacetic acid, liquid or solution.

Section 173.295-Section 173.372 (No change.)

Section 173.373 Nitroaniline, ortho or para.

Section 173.374-Section 173.1070 (No change.)

Section 173.1080 Sulfur, molten or solid.

Section 173.1090-Section 174.450 (No change.)

Section 174.480 Poisonous flammable solids with foodstuffs.

Section 174.510-Section 174.840 (No change.)

PART 177—CARRIAGE BY PUBLIC HIGHWAY

Subpart A—General Information Regulations

Section 177.800 Purpose and scope.

Section 177.801 Unacceptable hazardous materials shipments.

Section 177.802 Inspection.

Section 177.803-Section 177.804 (No change.)

Motor carriers and other persons subject to this part shall comply with 49 CFR Parts 390 through 397 (excluding Section 391.69, 393.81, and 397.3) revised as of October 1, 1989, to the extent those

ADOPTIONS

rules apply. Carriers transporting hazardous materials, substances, or wastes as defined herein must comply with these parts as listed below.

(See N.J.A.C. 16:49-1.3(1) herein).

MOTOR CARRIER SAFETY REGULATIONS

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart A—General Applicability and Definitions

- Section 390.1 Purpose
- Section 390.3 General applicability.
- Section 390.5 Definitions.
- Section 390.7 Rules of construction.

Subpart B—General Requirements and Information

- Section 390.9 State and local law, effect on.
- Section 390.11 Motor carrier to require observance of driver regulations.
- Section 390.13 Aiding or abetting violations.
- Section 390.19 Additional equipment and accessories.
- Section 390.21 Marking of motor vehicles.
- Section 390.23 Relief from hours-of-service regulations—disasters.
- Section 390.27 Locations of regional motor carrier safety offices.
- Section 390.31 Copies of records or documents.
- Section 390.33 Vehicles used for purposes other than defined.
- Section 390.35 Certificates, reports, and records: falsification, reproduction, or alteration.
- Section 390.37 Violation and penalty.

PART 391—QUALIFICATIONS OF DRIVERS

Subpart A—General

- Sections 391.1 and Section 391.2 (No change.)

Subparts B-D (No change.)

Subpart E—Physical Qualifications and Examinations.

- Section 391.41-Section 391.47 (No change.)
- Section 391.49 Waiver of certain physical defects.
(Section 391.49(a) is revised to state the following:)

(a) A person who is not physically qualified to drive under Section 391.41(b), but who has been a regularly employed driver, as defined in Section 390.5, as of January 1, 1991, and who is otherwise qualified under N.J.S.A. 39:3-10 to drive a motor vehicle, may continue to drive a motor vehicle, provided that person is in possession of a valid New Jersey driver license issued prior to January 1, 1991, or has been granted a waiver pursuant to 49, Code of Federal Regulations, Section 391.49.

- Section 391.49(b) through (1) (No change.)
- Section 391.51-Section 391.61 (No change.)
- Section 391.62 (Reserved)
- Section 391.63-Section 391.67 (No change.)
- Section 391.71 Intrastate drivers of vehicles transporting combustible liquids (Section 391.71(a) and (b) are revised to state the following:)

(a) The provisions of Section 391.11(b) (relating to minimum age), Section 391.21 (relating to application for employment), Section 391.23 (relating to investigations and inquiries), Section 391.31 (relating to road test), and Section 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in Section 390.5 of the subchapter) as of January 1, 1991, and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that:

- (1) Is transporting combustible liquids (as defined in Section 173.115 of this title), and
- (2) Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, the provisions of Section 391.41(b)(10) relating to minimum visual requirements, do not apply to a driver who was a regularly employed driver (as defined in Section 390.5 of this subchapter) as

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of January 1, 1991, and continues to be a regularly employed driver of that motor carrier and who drives a vehicle that:

- (1) Is a truck (as defined in Section 390.5 of this subchapter), and
- (2) Is operated in retail delivery service, and
- (3) Is transporting combustible liquids (as defined in Section 173.115 of this title), and
- (4) Is operated in intrastate commerce.

Subpart H—Controlled Substances Testing

- Section 391.81 Purpose and scope.
- Section 391.83 Applicability.
- Section 391.85 Definitions.
- Section 391.87 Notification of test results and recordkeeping.
- Section 391.93 Implementation schedule.
- Section 391.95 Drug use prohibitions.
- Section 391.97 Prescribed drugs.
- Section 391.99 Reasonable cause testing requirements.
- Section 391.101 Reasonable cause testing procedures.
- Section 391.103 Pre-employment testing requirements.
- Section 391.105 Biennial testing requirements.
- Section 391.107 Pre-employment and Biennial testing procedures.
- Section 391.109 Random testing requirements.
- Section 391.111 Random testing procedures.
- Section 391.113 Post-accident testing requirements.
- Section 391.115 Post-accident testing procedures.
- Section 391.117 Disqualifications
- Section 391.119 Employee Assistance Program (EAP).
- Section 391.121 EAP training program.
- Section 391.123 After-care monitoring.

PART 392—DRIVING OF MOTOR VEHICLES

- Section 391.1-Section 391.3 (No change.)
- Section 392.4 Drugs and other substances.
- Section 392.5-Section 392.66 (No change.)
- Section 392.67 Heater, flame producing; on vehicle in motion.
- Section 392.68-Section 393.1 (No change.)
- Section 393.3 Additional equipment and accessories.
- Section 393.5 Definitions.

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

- Section 393.9 (No change.)
- Section 393.11 Lighting devices and reflectors.
- Section 393.17 (No change.)
- Section 393.19-Section 393.106 (No change.)

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

- Section 393.201 Frames.
- Section 393.203 Cab and body components.
- Section 393.205 Wheels.
- Section 393.207 Suspension systems.
- Section 393.209 Steering wheel systems.

PART 394—NOTIFICATION AND REPORTING OF ACCIDENTS

- Section 394.1-394.3 (No change.)
- Section 394.5 (Reserved)
- Section 394.7-Section 394.20 (No change.)

PART 395—HOURS OF SERVICE OF DRIVERS

- Section 395.1 (Reserved)
- Section 395.2-Section 395.8 (No change.)
- Section 395.10 Adverse driving conditions.
- Section 395.11-Section 395.13 (No change.)
- Section 395.15 Automatic on-board recording devices.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

- Section 396.1-Section 396.15 (No change.)
- Section 396.17 Periodic inspection.
- Section 396.19 Inspector qualifications.

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- Section 396.21 Periodic inspection recordkeeping requirements.
Section 396.23 Equivalent to periodic inspection.

Appendix G to Subchapter B—Minimum Periodic Inspection Standards

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES.

- Section 397.1-Section 397.19 (No change.)

PART 177—CARRIAGE BY PUBLIC HIGHWAY (CONTINUED)

- Section 177.805-Section 177.813 (No change.)
Section 177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.
Section 177.815-Section 177.839 (No change.)
Section 177.840 Compressed gases.
Section 177.841-Section 178.241 (No change.)
- Subpart H—Specifications for Portable Tanks
Section 178.245 Specifications 51; steel portable tanks.
Section 178.251-Section 178.338 (No change.)
Section 178.340 (Reserved)
Section 178.341 (Reserved)
Section 178.342 (Reserved)
Section 178.343 (Reserved)
Section 178.345 General design and construction requirements applicable to Specifications DOT 406 (Section 178.346), DOT 407 (Section 178.347), and DOT 412 (Section 178.348) cargo tank motor vehicles.
- Section 178.346 Specification DOT 406; cargo tank motor vehicle.
Section 178.347 Specification DOT 407; cargo tank motor vehicle.
Section 178.348 Specification DOT 412; cargo tank motor vehicle.
- Subpart K through Section 179.13 (No change.)
Section 179.14 Coupler vertical restraint system.
- Subpart C through Section 179.221 (No change.)
Section 179.222 Special commodity requirements for DOT 115A tank car tanks.

- Subpart E through Section 179.500 (No change.)

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

Subpart A—General

- Section 180.1 Purpose and scope.
Section 180.2 Applicability.
Section 180.3 General requirements.

Subpart E—Qualification and Maintenance of Cargo Tanks

- Section 180.401 Applicability
Section 180.403 Definitions
Section 180.405 Qualification of cargo tanks.
Section 180.407 Requirements for test and inspection of cargo tanks.
Section 180.409 Minimum qualifications for inspectors and testers.
Section 180.411 Acceptable results of tests and inspections.
Section 180.413 Repair, modifications, stretching, or rebarrelling of cargo tanks.
Section 180.415 Test and inspection markings.
Section 180.417 Reporting and record retention requirements.

ADOPTIONS

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Notice of Administrative Correction Corporation Business Tax Act Rules Assessment and Reassessment N.J.A.C. 18:7-13.1

Take notice that the Division of Taxation has discovered an inconsistency between the provisions of N.J.A.C. 18:7-11.8(a) and 13.1(d) concerning the deadline for reporting a change in taxable income to the Division. As amended effective October 2, 1989, N.J.A.C. 18:7-11.8(a) requires such a change to be reported to the Division within 90 days (see 21 N.J.R. 1503(b) and 3177(a)). In revising this subsection, language similar to that found in N.J.A.C. 18:7-13.1(d) was deleted and replaced by this 90-day requirement. In order to remove the inconsistency between the deadline for reporting a taxable income change provided in these subsections, the Division has requested, and the Office of Administrative Law has agreed to allow, an administrative correction to N.J.A.C. 18:7-13.1(d), deleting paragraphs (d)2 and 3, which are causing the inconsistency, and combining paragraph (d)1 with subsection paragraph (d). This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

18:7-13.1 Assessment and reassessment

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

(d) If the amount of the taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in the taxable income, or if a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer shall file a report of the change or correction or an amended return[**:** 1. Within] **within** 90 days after the final determination of any change, correction, renegotiation, computation, or recomputation[**;** or

2. On its next return; or

3. As otherwise required by the Director].

(e) (No change.)

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Applications

Disposition of Property of a Casino Licensee or Applicant for a Casino License

Adopted Repeal: N.J.A.C. 19:41-7.2A

Proposed: September 4, 1990 at 22 N.J.R. 2651(a).

Adopted: October 16, 1990 by the Casino Control Commission,
Steven P. Perskie, Chairman.

Filed: October 22, 1990 as R.1990 d.560, **without change**.

Authority: N.J.S.A. 5:12-1b(4), 1b(10), 69a, and 84e.

Effective Date: November 19, 1990.

Expiration Date: May 12, 1993 (for N.J.A.C. 19:41).

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division), the Casino Association of New Jersey, the Claridge Casino Hotel (the Claridge), Harrah's Marina Hotel Casino (Harrah's), the Sands Hotel, Casino and Country Club (the Sands), Showboat Hotel and Casino (Showboat) and TropWorld Casino and Entertainment Resort (TropWorld).

ADOPTIONS

COMMENT: The Casino Association of New Jersey, the Claridge, Harrah's, the Sands, Showboat and TropWorld stated their general support for the proposed repeal.

RESPONSE: The Commission agrees with these comments, as evidenced by its adoption of the proposed repeal.

COMMENT: The Division notes that the period of rapid growth in Atlantic City appears to have subsided, and that the Commission and the Division retain the authority under the Casino Control Act to obtain any information deemed necessary to ensure that casino licensees' and applicants' real estate activities are consistent with the redevelopment goals of the Act and do not adversely affect Atlantic City.

RESPONSE: The Commission agrees with these comments.

Full text of the adoption follows.

19:41-7.2A (Reserved)

ENVIRONMENTAL PROTECTION (a)

OFFICE OF ENVIRONMENTAL SERVICES

Matching Grants Program for Local Environmental Agencies

Adopted New Rules: N.J.A.C. 7:5

Proposed: August 20, 1990 at 22 N.J.R. 2392(a).

Adopted: October 24, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: October 25, 1990 as R.1990 d.577, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1H-1 et seq. and 13:1B-3.

DEP Docket Number: 024-90-07.

Effective Date: November 19, 1990.

Expiration Date: November 19, 1995.

Summary of Public Comments and Agency Responses:

These rules were proposed on August 20, 1990. Five commenters submitted written comments during the comment period which closed on October 4, 1990.

COMMENT: Two comments were received requesting that the definition of "local environmental agency" be broadened so that county environmental agencies, as well as officially appointed advisory committees, could be eligible for funding.

RESPONSE: The Environmental Aid Act (N.J.S.A. 13:1H-1 et seq.) provides the authority under which the Department of Environmental Protection (Department) may make grants to local environmental agencies. That Act defines a "local environmental agency" as either "a municipal environmental commission, joint environmental commission established by two or more municipalities, county environmental commission or soil conservation district."

The Department does not have the authority to expand this definition beyond that contained in the Environmental Aid Act.

COMMENT: One comment requested that the definition of "local environmental agency" be modified to allow agencies such as the Lake Hopatcong Regional Planning Board to qualify for possible funding.

RESPONSE: The Department does not have the authority to modify this definition for the same reason as that given in response to the previous comment.

COMMENT: N.J.A.C. 7:5-4.2 would require a copy of the resolution by the local government which created the environmental agency. A soil conservation district is a special purpose subdivision of State government established pursuant to the Soil Conservation Act (N.J.S.A. 4:24-1 et seq.). Therefore, such resolution would not be applicable. Therefore, it would seem appropriate that a simple resolution adopted by the district governing body would satisfy the requirements of the application procedure.

RESPONSE: The Department agrees. N.J.A.C. 7:5-4.2 has been reversed in response to this comment.

COMMENT: One comment was made in support of N.J.A.C. 7:5-3.2 which initially allocates 90 percent of the funding available in any one

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year to municipal and joint municipal environmental commissions and 10 percent to county environmental commissions and soil conservation districts.

RESPONSE: The comment is noted.

COMMENT: One comment noted that the matching grants are not large, and that paperwork requirements have discouraged a number of communities from participating. The comment suggested if the value of professional municipal employee's services could be credited as part of an environmental commission's matching share, in lieu of funds dedicated to the project, then communities that otherwise would be discouraged by the paperwork requirements might be inclined to participate.

RESPONSE: The Environmental Aid Act at N.J.S.A. 13:1H-7 states that "The contribution by the department shall not exceed 50 percent of the cost of the project which qualifies for assistance under this act." The Department interprets this to mean that the local environmental agency must dedicate an amount of funding specifically to the project, which is equal to or greater than that provided by the Department. Municipal employees' services are already provided for in other categories of the municipal budget. To simply allocate a portion of their salaries and related expenses to an environmental commission's project costs would not stimulate any specific municipal investment in the project. Therefore, the Department has elected to retain the matching share requirements as proposed.

The Department has reduced paperwork requirements to only those which are necessary to judge the quality of a grant application and to prepare the required legal agreement between the local environmental agency and the Department. The staff of the Office of Environmental Services is available to assist local environmental agencies in preparing funding applications and other required documents.

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

CHAPTER 5 OFFICE OF ENVIRONMENTAL SERVICES MATCHING GRANTS PROGRAM FOR LOCAL ENVIRONMENTAL AGENCIES

SUBCHAPTER 1. GENERAL INFORMATION

7:5-1.1 Scope and authority

This chapter constitutes the rules of the Office of Environmental Services (OES) in the Department of Environmental Protection for the OES Matching Grants Program for Local Environmental Agencies, providing for the award of grants to such agencies in accordance with the Environmental Aid Act (Act), N.J.S.A. 13:1H-1 et seq.

7:5-1.2 Construction

This chapter shall be liberally construed to allow the Department to fully effectuate the purposes of the Act.

7:5-1.3 Definitions

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

"Act" means the Environmental Aid Act, P.L. 1972, c.49 as amended by P.L. 1975, c.334, N.J.S.A. 13:1H-1 et seq.

"Applicant" means the local environmental agency that submits an application for a matching grant in accordance with these rules.

"Department" means the Department of Environmental Protection.

"Local environmental agency" means either a municipal environmental commission, joint environmental commission established by two or more municipalities, county environmental commission or soil conservation district.

"OES" means Office of Environmental Services in the Department.

"OES Matching Grants" means grants awarded by the OES to local environmental agencies in accordance with the Act.

"Personal property" means capital-type goods, capable of being reused in the future, such as furniture, equipment, and machinery. It does not include such items as office supplies, gasoline and other consumable goods.

"Program" means the OES Matching Grants Program.

7:5-1.4 Severability

If any subchapter, section, subsection, clause or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter section, subsection, provision, clause portion or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

SUBCHAPTER 2. ELIGIBILITY FOR OES MATCHING GRANTS

7:5-2.1 Eligible applicants

Local environmental agencies are eligible to submit applications for OES Matching Grants.

7:5-2.2 Eligible projects and costs

(a) The following projects qualify for OES Matching Grants through the Program:

1. Natural and environmental resources inventories or portions thereof including, but not limited to, identification of stream corridors, wetlands, floodplains, forestry resources, steep slopes, important open spaces, scenic areas, wildlife habitat, cultural features and potential public recreation and conservation lands;

2. New and updated planning studies and reports describing strategies to protect natural and environmental resources including, but not limited to, plans for the creation, protection or preservation of greenways; open spaces; stream corridors; forestry or scenic resources; urban, suburban and rural trails or bikeways;

3. Preparation of draft ordinances or master plan amendments to protect natural and environmental resources, for referral to a municipal or county governing body; and

4. Projects designed to disseminate information to the public concerning environmental resources including, but not limited to, actions which individuals, public institutions and business entities can take to protect the environment.

(b) The following items are eligible for funding by the Program, when incurred in implementing qualifying projects listed in (a) above:

1. Costs of materials, supplies and reproduction for reports, policy recommendations, draft ordinances, publications, maps, diagrams and other similar documents;

2. Fees and direct expenses for consultants, including, but not limited to, those for architects, attorneys, cartographers, computer data base managers, engineers, environmental resource consultants, historic preservationists, landscape architects and planners; and

3. Up to \$500.00 total for the purchase of personal property which is determined by OES to be required for the execution of a project which is approved by OES.

(c) None of the following items and costs are eligible for funding by the Program, nor will they be considered matching funding on the part of a local environmental agency:

1. Charges for time spent by volunteers or paid municipal employees;

2. Any sums spent in excess of a total of \$500.00 for the purchase of personal property; or sums not approved by OES which are under \$500.00 and spent for the purchase of personal property;

3. Costs of acquisition of real property, although costs for planning studies on which eventual land acquisition may be based are eligible for funding;

4. Real estate appraisals;

5. Metes and bounds property surveys;

6. Construction or real estate improvement activities of any kind;

7. Bonus payments of any kind;

8. Charges for contingency reserves;

9. Charges for deficits or overdrafts;

10. Interest expenses;

11. Costs of services, materials or equipment obtained under any other State program;

12. Costs of discounts not taken;

13. Contract cost overruns, not approved by OES, that exceed the allowable amount as per the contract specifications;

14. Costs of fund raising;

15. Costs of lobbying;

16. Costs of all work which is performed outside the approved work period or which is not included in the scope of work set forth in the project agreement, unless later approved by OES as such; or

17. Work performed on behalf of a county or municipal government which has not been awarded in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

SUBCHAPTER 3. ALLOCATION OF OES MATCHING GRANT FUNDING

7:5-3.1 Funding availability

The availability of OES Matching Grants funds is subject to legislative appropriation and is not guaranteed to any applicant for any year until that applicant receives from OES a Notice of Award of Grant.

7:5-3.2 Funding categories

(a) OES Matching Grants funds available in any one year shall be allocated by OES within the following two categories:

1. Municipal Category: This category shall include municipal and joint municipal environmental commissions.

2. Non-municipal Category: This category shall include county environmental commissions and soil conservation districts.

(b) Ninety per cent of total OES funds annually appropriated to the Program shall be initially allotted to the municipal category. The remaining 10 percent shall be initially allotted to the non-municipal category. The actual amount awarded in each category may vary from these percentages in accordance with (c) below. OES may vary these percentages of initial funding allotted to each category for any one year by notifying the public of such through notice published in the New Jersey Register at the time funding availability and application dates are announced annually.

(c) If within any one year the total award of Matching Grants to eligible grant applicants in either one of the two funding categories above does not utilize all of the funding originally allotted to that category by OES, then the amount of unutilized funds from that category shall be transferred for award to eligible applicants within the other category for that year.

7:5-3.3 Ranking of grant applications

(a) Each year, available OES Matching Grant funds shall be allocated within each of the funding categories set forth in N.J.A.C. 7:5-3.2 in accordance with a ranking of applications received by OES, based upon the criteria listed in (b) below.

(b) Within each funding category, all applications for OES Matching Grants in a given year shall, for the purpose of determining priority for funding, be ranked on the basis of the degree to which the proposed project:

1. Has the broad support of other local or county agencies, civic groups, etc. Letters of endorsement may be submitted to OES as evidence of such support;

2. Is responsive to regional as well as local needs. Projects undertaken jointly by adjacent local environmental agencies are encouraged;

3. Helps to incorporate planning and regulatory responsibilities of the Department into the local and regional planning processes;

4. Will document and protect environmental resources that are of particular importance in implementing the State Development and Redevelopment Plan;

5. Is designed to produce a definitive strategy to protect a resource area, particularly projects which integrate regulation of environmentally sensitive areas with local, regional and Statewide open space and recreation planning;

6. Will address urban environmental needs, particularly planning which integrates such things as open space and recreation with historic resources protection and urban forest management;

7. Will raise awareness of the public's responsibility to actively participate in protecting the environment;

8. Demonstrates a strong likelihood of tangible results; and

9. Has the demonstrated support of the local governing body in charge of allocating matching funding. Resolutions or letters of intent

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to provide matching funding shall be considered as evidence of such support.

7:5-3.4 Grant amount

The minimum Matching Grant shall be \$1,000; the maximum grant shall be \$2,500 to any local environmental agency, except that in the case of joint environmental commissions the maximum shall be \$2,500 per participating municipality. The contribution by the Department shall not exceed 50 percent of a cost of the project which qualifies for assistance under the Act and this chapter.

7:5-3.5 Grant payment

The entire grant amount shall be paid to the grant recipient in one sum, following receipt and acceptance by OES of all agreed upon work product of a project, and upon compliance with all terms of the project agreement required under N.J.A.C. 7:5-4.2(c).

7:5-3.6 Matching funds

A local environmental agency's share of project funding shall be in the form of funding dedicated to the agency for the project.

SUBCHAPTER 4. APPLICATION PROCEDURES

7:5-4.1 Announcement of funding availability

Announcement of funding availability and the opening and closing dates for submission of OES Matching Grants applications shall be published by the OES in the New Jersey Register as required by and in accordance with N.J.S.A. 52:14-34.4.

7:5-4.2 Application and review sequence

(a) Local environmental agencies shall submit the following items to the OES:

1. A completed application form provided by OES;
2. A certified true copy of an ordinance creating the local environmental agency, which ordinance shall indicate that such agency has the power to conduct projects such as the proposed project and to accept grants such as the OES Matching Grant*[, and].* ***In the case of Soil Conservation Districts, evidence of State certification shall suffice to satisfy this requirement.***

(b) A notice of receipt of the application will be sent by the OES to each applicant.

(c) OES shall notify each applicant of its determination to approve, conditionally approve or deny the application.

1. No final approval shall be granted unless and until the applicant submits a copy of a resolution *[of the governing body of the county or municipality which created the local environmental agency]* recommending that the application for funding under the OES Matching Grants Program be approved. ***For municipal, joint municipal and county environmental commissions,* such a resolution should follow the form of the model resolution approved by OES for this purpose. Copies of this model resolution are available from OES upon request. The model resolution is published as a non-regulatory appendix at N.J.A.C. 7:5, Appendix A. *For soil conservation districts, the resolution generally shall follow the model resolution referred to above, but it shall be adopted by the governing body of the soil conservation district rather than by a municipal or county governing body.***

2. Final approval shall be contingent upon such other conditions as OES shall include in a notification of conditional approval to the applicant.

(d) If the application is approved, funds shall be distributed as specified at N.J.A.C. 7:5-3.4 and in accordance with a project agreement between the OES and the applicant which specifies, among other things, the following:

1. Amount of grant;
2. Project scope;
3. Work period, not to exceed one year;
4. Itemized budget; and
5. Work product to be submitted to the OES.

(e) Application materials become the property of the Department and will not be returned to the applicant.

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APPENDIX A

MODEL RESOLUTION RECOMMENDING APPROVAL OF APPLICATION FOR FUNDING UNDER THE OES MATCHING GRANT PROGRAM

WHEREAS, on (date), the (city/township/borough/county) of (name of municipality/county) established the (local environmental agency) pursuant to the authority of (citation); and

WHEREAS, the (local environmental agency) has applied for a matching grant from the New Jersey Department of Environmental Protection (Department), Office of Environmental Services (OES) Matching Grants Program established pursuant to N.J.S.A. 13:1H-1 et seq. for funding in connection with (description of project), total cost of the project being \$ _____; and

WHEREAS, the Department has reviewed the application submitted by the (local environmental agency) and has found it to be in conformance with the scope and intent of the OES Matching Grants Program and has approved the (local environmental agency's) request for funding in the amount of \$ _____; and

WHEREAS, in order to obtain such a grant, it is necessary that the (local environmental agency) enter into an agreement with the Department and use such grant funds in accordance with applicable rules and statutes; and

WHEREAS, in order to obtain such a grant, it is necessary that the (city/township/borough/county) of (name of municipality or county) certify that matching funds in the amount of \$ _____ will be provided by the (city/township/borough/county).

NOW, THEREFORE, BE IT RESOLVED by the (mayor/executive officer) and the Council of the (city/township/borough/county) of (name of municipality or county), county of _____, and the State of New Jersey, as follows:

1. That (title of officers) is hereby authorized to execute a grant agreement and any amendments to the grant agreement for the (local environmental agency) on behalf of the (local environmental agency) and the (city/township/borough/county) of (name of municipality or county) with the New Jersey Department of Environmental Protection, Office of Environmental Services under Project Number _____ providing a grant in the amount of \$ _____ to the (local environmental agency) of the (city/township/borough/county) of (name of municipality or county) for the (description of project).

2. That upon execution of the above grant agreement the (city/township/borough/county) of (name of municipality or county) will provide the (local environmental agency) with matching funds, not to exceed \$ _____, consisting of \$ _____ cash and \$ _____ in-kind contributions.

3. That the (local environmental agency) and the (city/township/borough/county) of (name of municipality or county) agree to comply with the provisions contained within the OES Matching Grants Program Rules and all other applicable rules and statutes.

4. That this Resolution shall take effect immediately.

Introduced and passed _____, 19 ____.

_____ Aye

_____ Nay

_____ Abstentions

Approved as to form:

Approved:

Municipal/County Attorney

Mayor/Executive Officer

CERTIFICATION

I, (name of clerk), Clerk of the (city/township/borough/county) of (name of municipality or county), County of _____, State of New Jersey, do hereby certify that the foregoing is a true copy of a Resolution adopted by the (mayor/executive officer) of the (city/township/borough/county) of (name of municipality or county) at a meeting held on the _____ day of _____, 19 ____.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the (city/township/borough/county) of (name of municipality or county) this day of _____, 19 ____.

(Name and Title of Clerk)

Please disregard second references to "County of _____" if this is a county project.

Please disregard references within the fifth "WHEREAS" paragraph and Resolution Number 2 to matching funds requirements if matching funds are to be provided by a nonprofit organization. If matching funds are to be provided by a nonprofit organization, attach a corporate resolution from the nonprofit sponsor certifying that matching funds have been committed to this project.

(a)

DIVISION OF WATER RESOURCES

Bureau of Marine Water Classification and Analysis Soft Clam and Hard Clam Depuration

Adopted Amendments: N.J.A.C. 7:12-1 and 9

Adopted Repeal: N.J.A.C. 7:17

Proposed: January 16, 1990 at 22 N.J.R. 97(a).

Adopted: October 15, 1990, by Judith A. Yaskin, Commissioner,
Department of Environmental Protection

Filed: October 16, 1990 as R.1990 d.548, 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. 13:1D-9 and 58:24-1 et seq.

DEP Docket Number: 060-89-12.

Effective Date: November 19, 1990.

Expiration Date: April 11, 1993.

Summary of Public Comments and Agency Responses:

A public hearing on the proposal was held at the Monmouth County Public Health Center in Freehold on February 2, 1990. A public meeting was held in conjunction with the Atlantic Coast Shellfish Council meeting on February 5, 1990 at Little Egg Harbor Township courtroom. Comments were received at the public hearing. No comments were received at the public meeting. Written comments were received from commenters prior to the close of the comment period on March 17, 1990.

The public hearing was conducted as a joint hearing on the proposals of both the Department of Health (see proposal at 22 N.J.R. 109(a) and adoption elsewhere in this issue of the New Jersey Register) and Department of Environmental Protection. Comments were reviewed and addressed by the appropriate State agency.

General Comments:

COMMENT: Depuration program responsibilities should be transferred to the Department of Agriculture.

RESPONSE: The depuration program is currently under the regulatory authority of the Department of Health and the Department of Environmental Protection. A transfer of the depuration program to the Department of Agriculture would require legislative action, which is beyond the scope of these proposed rules.

COMMENT: Industry representatives should be on the Shellfish Resource Recovery Steering Committee (SRRSC).

RESPONSE: The Department believes that there is an adequate mechanism for industry involvement on the Steering Committee through the Marine Fisheries and Shellfisheries Councils. The SRRSC is an informal non-rule making group comprised of members of the Division of Fish, Game and Wildlife and the Division of Water Resources in the Department of Environmental Protection and the Division of Consumer Health Services in the Department of Health. The SRRSC has met with and will continue to meet with industry representatives on an as needed basis.

COMMENT: Wet storage of shellfish should be allowed. It would eliminate any problem with harvesting beyond the plant's daily capacity.

RESPONSE: Current Department of Health rules allow for wet storage as defined in Part II of the National Shellfish Sanitation Program Manual of Operation (NSSP). Under the NSSP, wet storage is for the temporary storage of approved shellfish, for de-sanding and/or improving palatability. Wet storage is not designed or intended to increase safety of the shellfish. Additionally, current DEP leasing rules at N.J.A.C. 7:25-24 with the approval of both the Marine Fisheries and Shellfish Councils do not allow for the leasing of beds in waters classified as other than Approved and/or Seasonally Approved. Because of NSSP restrictions, the Department cannot consider the wet storage of shellfish harvested from Special Restricted waters as an available alternative.

COMMENT: The definition of depuration plant should be revised to eliminate the phrase "bacteriologically and virally acceptable", and replace it with "microbiologically acceptable."

RESPONSE: The Department is in agreement with the comment. Therefore, the definition will be revised to be in concert with the Department of Health rules.

COMMENT: The proposed rules are written to cover the operation of the plant by a private operator. Two other modes should be addressed: 1. depuration on a "fee for service" basis and 2. operation by a public or quasi-public entity.

RESPONSE: The rules do not preclude these types of operations.

COMMENT: Clam harvesters should be permitted to sell their catch (or part of their catch) either to the depuration plant and/or the relay program on the same harvest day.

RESPONSE: The Departments of Environmental Protection (DEP) and Health (DOH) have determined that this suggestion would provide flexibility for the harvesters and could be structured so that the public health protection controls will not be compromised. Therefore, the Department of Environmental Protection will modify this provision at N.J.A.C. 7:12-9.7(a)8iii and 10, and 9.8, to allow this practice.

COMMENT: Include eastern oyster and blue mussel as species which can be depurated.

RESPONSE: The proposed rules are specific to hard and soft shell clams because there is a historically documented resource. Upon a formal request, after documentation that there is an adequate resource, an oyster and/or blue mussel pilot depuration rule may be developed.

COMMENT: Establish a procedure whereby shellfish from out-of-State and from unclassified waters in New Jersey can be processed.

RESPONSE: The Department has concern over the introduction of non-native species because of harmful organisms which might be transported and introduced into the waters of the State. Therefore, the rules will continue to address only those shellfish from New Jersey waters designated for depuration. Unclassified waters cannot be used as a source of shellfish as per Part I of the NSSP Manual of Operations.

COMMENT: A comment was received regarding the definition of "depuration process" suggesting that certain component parts should be further differentiated with an additional definition, that is, "depuration program".

RESPONSE: The Department agrees that the definition of "depuration process" as proposed does not clearly define the term and has modified the definition to remove the reference to transportation. The Department believes that this modification makes a new definition for "depuration program" unnecessary.

COMMENT: In N.J.A.C. 7:12-9.1(k)1, the word "hailed" should be changed to a more precise term, like boarded.

RESPONSE: The term "hailed" is precisely the word needed to accomplish the intent of this section. "Hailed" is a very common term used in many State and Federal regulations and its definition is clearly understood. When a clammer is engaged in illegal clamming activities he places these clams in a container that can be very easily discarded. Upon being approached by an enforcement officer the illegal product is thrown overboard in an attempt to avoid detection. Currently as an officer approaches within hearing distance of a clammer, the clammer is "hailed" and instructed not to dump or discard anything and to prepare to be boarded. To substitute the word "boarded" for the word "hailed" would afford the illegal clammer extra time to discard evidence of his ill-gotten gain, thereby defeating the purpose of this specific section.

COMMENT: At N.J.A.C. 7:12-9.1(m), the timetables should not be based on "Trenton time".

RESPONSE: The Department attempts to regulate all parts of the State in a similar manner and to keep regulations as easy to understand as possible. Since 1900, it has been the common practice to have one set of time tables, sunrise/sunset charts, for the entire State. The uniform time tables are available to the public at many locations throughout the State. New Jersey is a very narrow State; the sunrise/sunset difference from East, the Atlantic Ocean, to West, the Delaware River, is only three minutes. To have different time charts could confuse the issue.

COMMENT: At N.J.A.C. 7:12-9.2(f)1 through 3, all of the licenses should be consolidated into one license, not four or more permits. The permits/licenses should be available at one place.

RESPONSE: The Department deems the licensing requirements to be separate and distinct. Each has its appropriate purpose. Special permits can be issued by mail. Commercial clamming licenses are available for renewal locally. Department of Health licenses and certification applications are available through the mail.

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COMMENT: At N.J.A.C. 7:12-9.2(h), "the DOH" (sic DEP) should not be able to limit, restrict or terminate a program unless some type of management program has been done and a public hearing held as to any findings. There should be some apparatus of appealing any such determination if that power exists, and there should be standards that must be applied.

RESPONSE: The depuration program is a management program. The objective of all of the shellfish resource recovery programs is to provide for the optimal utilization of the shellfish stocks while perpetuating the fishery. The shellfish stocks supporting the depuration and relay programs have been managed since 1983. The Department conducted a shellfish inventory prior to the initiation of the relay and depuration programs to provide the basic information on stock size. Since this time the Department has continuously monitored harvest records. In addition, periodic resource assessments have been conducted to further evaluate the status of the shellfish resources supporting these programs. As part of the management of the shellfish resources, the harvest areas are routinely changed because of seasonal weather conditions and/or a decrease in harvest rates. The authority and procedure to change harvest areas is described at N.J.A.C. 7:12-9.7(a)3. As part of this determination, the participants play an active role in selection of harvest sites. To require a public hearing for appeals each time a change of area is required would greatly hinder the flexibility of the program and this would be a major inconvenience to the participants as well as detrimental to the shellfish resources. The proposed provision existed in the former clam depuration regulations and is essential to provide for the effective management of shellfish resources and to maintain a degree of flexibility for the program participants.

COMMENT: At N.J.A.C. 7:12-9.7(a)8ii, the wording should be amended to reflect that notification of location of harvesters should be made to the local enforcement office, not the Nacote Creek office. Duplicate notification to a marine enforcement office should be eliminated as this is an additional hardship on the operator.

RESPONSE: The Marine Enforcement Office located at Nacote Creek is the only DEP Marine Enforcement Office located in the State and thus the only one requiring such notification. Notification to this office is currently required for the hard and soft clam depuration plants and has been for the past four years.

COMMENT: N.J.A.C. 7:12-9.7(a)8iii and iv should be amended to remove any reference to "landing times" or "specified landing times". Unlike the clam relay system, clambers go out at different times, travel different distances to beds, and work different tides under sometimes differing conditions. To have everyone show up at the same time, would create confusion and be unworkable. To assign times would also not be practical. What happens if someone is early or late?

RESPONSE: Required landing times were in place in the hard clam depuration program for two years prior to its closure, and have been employed in the hard clam relay program for the last five years. The Department believes that these requirements have not placed undue hardships on the participants in these programs. Specified landing times play an important part in controlling the program and assuring that all shellfish harvested from Condemned water reach their proper destinations. The rules are considered flexible in that they provide for more than one landing time per day to accommodate tide changes. Landing times will not prohibit harvesters from docking their boats at the depuration plant at anytime during the day nor require anyone to remain on the water during poor weather. Shellfish will be offloaded only during the designated landing times. The Department believes that the designated landing times are an essential component to the operation of the program and does not intend to change this provision.

COMMENT: The Department received several comments regarding its recordkeeping requirements: (1) N.J.A.C. 7:12-9.7(a)8v should be amended to omit the filing of the total number of clams a harvester harvests. This information is not necessary to the State in that the total daily totals are reported by the operator. It is an invasion of the privacy of the individual harvester; (2) The requirement of filing duplicate forms with separate agencies is burdensome. One central agency should be the information gatherer; (3) Recordkeeping requirements on harvesters are not necessary.

RESPONSE: The information provided by having a record of "the number of clams" is used both for enforcement and management purposes. This requirement ensures accountability and when dealing with a potentially contaminated product, it is essential that proper controls exist to protect public health. From a resource management standpoint, the two most important considerations are the resource base (size) and

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the removal (harvest) from that resource base. The shellfish population estimates are determined through the shellfish inventory programs conducted by the Department of Environmental Protection. The clams harvested represent that part of the resource removed from the population. The Department has determined that this information (number of clams) is vital to both the enforcement and management aspects of the depuration program.

The adopted rules specify that harvester receipts be completed in triplicate. However, carbonless paper is utilized and the harvester must complete the form only once a day. A similar reporting form is used in both the clam relay and surf clam programs and the shellfishermen have not experienced any significant problems concerning the completion of these forms. The Department has determined that this provision is necessary to ensure compliance with the program. Therefore, the Department will retain these requirements.

COMMENT: At N.J.A.C. 7:12-9.7(a)10, omit reference to "serially numbered" containers.

RESPONSE: The Departments of Environmental Protection and Health believe this to be a necessary control to insure accountability, which is the foundation of this revised program.

COMMENT: At N.J.A.C. 7:12-9.7(a)11, the requirement of taking alternate routes or employing alternate methods of transporting shellfish should not require "written permission". This is totally unworkable. Oral permission has been workable in the past and is the only viable method. How is the written permission to be delivered? What about adverse weather conditions when the written permission carrier can't get through? What happens if the "designated messenger" is not available?

RESPONSE: The intent of the paragraph is to have in writing an alternate route or alternate method of transporting shellfish that has been established in advance and approved by DEP and can be initiated through a call to the specified enforcement agency. Under the proposed DOH rules, N.J.A.C. 8:13-2.23(b), the use of a facsimile machine will be necessary for the transmission of certain records. This would therefore seem to be the most practical means for conveyance of the required documents.

COMMENT: N.J.A.C. 7:12-9.7(c). Clamming should be from Monday through Sunday. This would permit the clammer to work on Sundays for weather reasons where they may be unable to work during the week. This is especially true in the winter months.

Restaurants and other businesses are open on Sunday, especially during the height of the season. Local board of health employees work Sundays.

RESPONSE: The rules are written to cover the operation of a depuration facility anywhere in the State. The Department will add to the permits, where appropriate, the wording "except as may be authorized under N.J.S.A. 50:2-11". Final determination, as to whether harvest on Sunday will be allowed under the exception for Monmouth County, will be determined based on current enforcement and administrative capabilities of the Departments of Environmental Protection and Health.

Shellfish harvested under the depuration program on Sunday, would not be able to be sold to the public until at least Tuesday. Shellfish harvested on Thursday can be sold to "restaurants open on Sunday".

COMMENT: At N.J.A.C. 7:12-9.7(d)2, the "number of containers" requirements should be omitted from the reporting. Notification should be made to the local enforcement office and not to Nacote Creek, unless that is the local office.

RESPONSE: The Department has deemed it a necessary accountability requirement to report the number of containers issued to each harvester. Nacote Creek is the designated office for enforcement of these rules.

COMMENT: The implementation of a video surveillance system—even if one could be designed to be cost effective—would only widen this psychological separation between the State and depurators. In person supervision/surveillance would be more effective, in both short term and long term gain, than will video surveillance.

RESPONSE: The purpose of the video surveillance system is to provide the regulatory officials of this Department and Department of Health with daily observations of activities that are critical in the depuration process and to prevent the depuration process from being circumvented. The Department feels that this video surveillance is a cost effective means to provide daily surveillance, as funding for licensed sanitarians to provide these services is not available. Both the Federal Food and Drug Administration (FDA) and this Department have felt that daily surveillance by regulatory officials is imperative. The video surveillance system was a recommendation from the shellfish industry in the pre-proposal phase of this regulation development.

COMMENT: "Depuration works".

RESPONSE: The Department agrees that scientific evidence supports the concept that shellfish can be microbiologically cleansed in the depuration process.

COMMENT: Depuration offers the consumer the safest product from a health standpoint.

RESPONSE: Depuration can offer the consumer a wholesome product. However, whether or not it "offers the consumer the safest product from a health standpoint" is a function of the reliability of the participants and the mechanics of the system.

COMMENT: The "numerous regulatory infractions associated with the industry . . . in the recent past" referred to in the preamble of both the DEP and DOH rules were as much the result of a bias against the depuration industry by those entrusted with its supervision and enforcement, as they were a result of individuals in the industry willfully breaking the rules.

RESPONSE: This comment is simply untrue. It has been well documented that numerous regulatory infractions within the recent past were capable of creating circumstances with negative public health implications.

COMMENT: The Department received several comments relating to the perceived cost effectiveness of the depuration program as well as to the perceived degree of difficulty which participants would encounter in complying with the program: (1) For any regulations to be workable, they must be cost-effective to the operator; (2) Accountability should not be measured in terms of economic hardship and impossibility of compliance with the regulations. Such factors will discourage compliance with the program; (3) The more reasonable the regulations and those persons enforcing them, the greater the chance of compliance by those regulated; (4) The Social Impact Statement and Economic Impact Statement should reflect a negative impact because the rules are not cost effective and will prevent a viable depuration program's existence; (5) The program will result in lower availability of shellfish to the consumer because the program will not be economically viable unless operators are government subsidized; (6) The prosperity of the shellfish harvest and food preparation industries will not increase if the rules make it impossible for a facility to survive economically; (7) More rules do not mean better enforcement.

RESPONSE: The Department recognizes that cost effectiveness and ease of compliance are important aspects to the overall operation of the depuration program. However, the Department has the function of providing a safe, wholesome product to the consuming public as its foremost priority. The Department believes that requiring accountability on the part of program participants is the most effective way of assuring that the public will receive a safe, wholesome product. The Department also believes that its method of guaranteeing such accountability is the best, most workable, cost-effective method suggested to date.

The Department believes that both these rules and its enforcement of them will be reasonable and that they will neither be cost-prohibitive to the successful operation of depuration facilities nor be impossible to comply with on the part of program participants.

COMMENT: In order to avoid opportunities of prosecutorial and/or enforcement abuse, areas of vagueness should be removed from the rules.

RESPONSE: The proposed rules provide the necessary detail. The Department has attempted to remove as much vagueness from the new rules as possible.

COMMENT: If there is no depuration, the consumer will be forced to accept a food product from the relay system or from out-of-State suppliers. In consuming a product from out-of-State suppliers, the public's interest is put at risk since the Federal standards do not approach the stringency of State standards for depuration.

RESPONSE: This comment is misleading in that the Department believes that there is no greater risk from relay or out-of-State suppliers as there is from depuration. Furthermore, the Federal standards and the State of New Jersey standards for depuration are exactly the same. The commenter has provided no scientific evidence to support this claim.

COMMENT: "Environmental Impact" preamble: A management resource study should be done in order to determine the numbers of soft shell clams and hard shell clams there are in the affected waters. Updated studies on water quality over the past three years should also be done, by an independent laboratory.

RESPONSE: Refer to comments made previously regarding the subject of a "management resource study." In particular, see response associated with the comment referring to N.J.A.C. 7:12-9.7(a)8v. The NJDEP col-

lects shellfish growing water samples from all of the estuaries in northern Monmouth County on a yearly basis and has done so for more than 10 years now. Therefore, updated water quality from the NJDEP standpoint is a continuous process. Water quality tests by an independent laboratory on these same waters represent a duplication of effort and would result in increased costs, should industry decide to fund such a study.

COMMENT: Both Maine and Massachusetts currently accept the MFC test in lieu of the MPN test. With appropriate verification data, the Department of Agriculture requests that the MFC test be included as an alternative standard for the New Jersey regulations. The advantage of the MFC test is shorter processing time. Depuration has been shown to actually reduce the shelf life of shellfish and the additional time savings can be critical in marketing product.

RESPONSE: The State of New Jersey uses the Elevated Temperature Coliform Procedure (ETCP). This methodology, like the Membrane Fecal Coliform Test (MFC) is a 24 hour bacteriological test that uses a pour plate technique. The proposed rules erroneously list the bacteriological results as MPN (most probable number)—and will be changed to reflect the proper nomenclature "colonies/100 grams".

Summary of Changes Made in Response to Public Comment:

N.J.A.C. 7:12-1.2 Definitions

The depuration plant definition was revised to be the same as the definition in the Department of Health rules and the NSSP, Manual of Operations.

The definition of depuration process has been changed for clarity.

A new definition was added, defining "depuration unit."

The Shellfish Resource Recovery Steering Committee definition was revised to more accurately reflect the Committee's duties.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:12-9.1(e) was specifically clarified to include the revocation of permits for convictions of a shellfish violations.

N.J.A.C. 7:12-9.7(d)8 was revised to reduce the report submission time from month's end to week's end. The Department has required the weekly submission in an effort to obtain more accurate reports. In order to reduce the burden of this requirement, the Department has deleted the reporting requirements previously proposed at N.J.A.C. 7:12-9.7(d)8iv and v. N.J.A.C. 7:12-9.7(d)8vi, recodified as subparagraph (d)8iv, has been revised to reflect the change from monthly to weekly.

At N.J.A.C. 7:12-9.7(a)11, for clarity, provision is made for the inclusion of alternative harvest and transportation methods within the written SOP plan for depuration facilities. Such information would already be required in the SOP plan, which covers all critical control activities, under the general provisions of Department of Health rules at N.J.A.C. 8:13.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***:

7:12-1.2 Definitions

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

"Bureau" means the Bureau of Marine Water Classification and Analysis in the Division of Water Resources.

"Depuration or controlled purification" means the process that uses a controlled aquatic environment to reduce the levels of bacteria and viruses in live shellfish.

"Depuration plant" means a premise or establishment in which clams obtained from waters officially sanctioned and classified by the Department of Environmental Protection as Special Restricted or Seasonal Special Restricted are subject to a process of controlled purification with the proper controls approved by the Department ***of Health*** which will render the depurated clams alive, and ***[bacteriologically and virally]*** ***microbiologically*** acceptable within the meaning of State statutes and regulations.

"Depuration process" means the procedure ***and equipment employed*** by which shellfish are harvested from waters sanctioned and classified by the Department of Environmental Protection as Special Restricted or Seasonal Special Restricted and are ***[transported to]*** ***treated at*** a depuration plant for controlled purification.

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***"Depuration unit" is a tank or series of tanks supplied by a single process water system.*

"Designated enforcement unit(s)" means the Marine Enforcement Unit in the Division of Fish, Game and Wildlife, Marine Bureau in the Division of State Police, the Bureau of Marine Water Classification and Analysis in the Division of Water Resources.

"Division" means the Division of Water Resources in the Department of Environmental Protection.

"Hard clams" mean the species *Mercenaria mercenaria*.

"Harvester allocation tag" means the tag that is to be affixed to each container of shellfish at the time the container is allocated by the depuration plant operator to the individual clammer. The use, specifications and information requirements shall be in compliance with Department of Health rules at N.J.A.C. 8:13-2.24.

"Interstate Shellfish Sanitation Conference" or "ISSC" means the formal conference that establishes guidelines and procedures of the National Shellfish Sanitation Program (NSSP) for the sanitary control of the harvesting, processing and distribution of shellfish. Membership consists of Federal, State and local regulatory agencies responsible for shellfish sanitation, the shellfish industry and the academic community.

"Marina means any structure (docks, piers, bulkheads, floating docks, etc.) that supports five or more boats, built on or near the water, which is utilized for docking, storing or otherwise mooring vessels and usually but not necessarily provides services to vessels such as repairing, fueling, security or other related activities.

"Monitoring system" means a video surveillance system which shall be remotely monitored via telephone lines in designated State offices. The surveillance system shall be so located as to monitor all critical control activities. The system must be approved by the SRRSC.

***"Prohibited areas" means certain Condemned areas meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC).

***"Seasonal Special Restricted Area" means certain Condemned waters meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC) during a portion of the year. The areas so designated will automatically, by operation of regulations according to the schedule in N.J.A.C. 7:12-5.1, be available for use under the special permit programs sanctioned by the Department.

"Shellfish" means all edible species of oysters, clams or mussels, either shucked or in the shell that are fresh or fresh frozen and whole or in part.

"Shellfish Resource Recovery Steering Committee" or "SRRSC" means a committee of representatives from the Department of Environmental Protection and the Department of Health who have the regulatory responsibilities for *[depuration]* *resource recovery* programs.

"Soft clams" means the species *Mya arenaria*.

7:12-9.1 General provisions; all programs

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

(e) Conviction of a shellfish violation as provided in N.J.S.A. 58:24-1 et seq., N.J.S.A. 24:2-1 et seq. and N.J.S.A. 50:2-1 et seq. shall be adequate cause for the suspension*, **revocation***, and denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvesting, possession, and/or processing of shellfish from the waters of the State.

(f)-(j) (No change.)

(k) It shall be unlawful for any person issued a special permit or license, or any person on board a vessel to which a permit or license has been issued, under the provisions of N.J.S.A. 58:24-1 et seq. and 50:2-1 et seq. to:

1. Throw or dump into the water or otherwise dispose of the contents of any pail, bag, basket, or any matter whatsoever after being hailed by any member of the designated enforcement unit(s), before the authorized officer has inspected the same; or

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2. Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search of the vessel by any member of the designated enforcement unit(s).

(l) The operator of any vessel and all others onboard issued a special permit or license shall immediately comply with all lawful instructions issued by any member of the designated enforcement unit(s) to facilitate safe boarding and inspection of the vessel, its gear, and catch for the purpose of enforcing this chapter.

(m) The hours listed in this subchapter are Eastern Standard Time (EST) or Eastern Daylight Time (EDT) at date and are based on Trenton Time. Time tables for Trenton Time are published in the annual Summary of Game Regulations issued by the New Jersey Division of Fish, Game and Wildlife. Trenton Time shall be the Statewide official time.

7:12-9.2 General provisions; hard and soft clam depuration only

(a) Any person(s) wishing to construct and/or operate a soft or hard clam depuration plant shall comply with the Hard and Soft Shell Clam Depuration requirements set forth at N.J.A.C. 8:13-2.4.

(b) Any person(s) wishing to construct and/or operate a soft or hard clam depuration plant shall be required to submit a detailed plan to the SRRSC outlining the means of transportation and the distance to the depuration plant from the landing site(s). The overland transportation system and site selection must be approved by the SRRSC and the designated enforcement unit(s). The criteria to be considered include, but are not limited to:

1. Security;
2. Pilferage prevention;
3. Travel time, for the purpose of increasing effective enforcement; and
4. Prevention of environmental stress and contamination of shellfish.

(c) If an overland transportation plan is approved, the SRRSC, in conjunction with the designated enforcement unit(s), will issue written approval containing specified guidelines which shall be followed. Violation of the conditions of this permit shall subject the holder to prosecution under the appropriate statutes and rules. The need for such enforcement shall be determined solely by the SRRSC and designated enforcement unit(s).

(d) In addition to compliance with N.J.A.C. 8:13-2.4 and (b) above, any person(s) wishing to operate a soft and/or hard clam depuration plant shall obtain the following:

1. Provisional certification to operate a soft and/or hard clam depuration plant issued by the New Jersey State Department of Health pursuant to N.J.A.C. 8:13-2.1 and a food/cosmetic license as required by N.J.S.A. 24:15-13;

2. Depuration plant possession permit No. 8b entitled "Special Permit For A Certified Depuration or Controlled Purification Facility To Possess Soft Clams (*Mya arenaria*) From Special Restricted And Seasonal Special Restricted Waters For Further Processing" issued by the Department's Bureau of Marine Water Classification and Analysis; and

3. Depuration plant possession permit No. 10 entitled "Special Permit For A Certified Depuration or Controlled Purification Facility To Possess Hard Clams (*Mercenaria mercenaria*) From Special Restricted And Seasonal Special Restricted Waters For Further Processing" issued by the Department's Bureau of Marine Water Classification and Analysis.

(e) All special permits are non-transferable and shall be valid only for the person named on such permit and only for the location stated on such permit.

(f) The following documents are required for soft and/or hard clam harvesters participating in the depuration program:

1. A valid commercial shellfish harvesting license to be issued by the Department's Division of Fish, Game and Wildlife pursuant to N.J.S.A. 50:2-1; and

2. Depuration Harvester Permit No. 4 entitled "Special Permit To Harvest Soft Clams (*Mya arenaria*) From Special Restricted And Seasonal Special Restricted Waters For Further Processing At A State Permitted And Certified Depuration or Controlled Purification Facility" issued by the Department's Bureau of Marine Water Classification and Analysis; *and*/or,

3. Depuration Harvester Permit No. 9 entitled "Special Permit To Harvest Hard Clams (*Mercenaria mercenaria*) From Specified Special Restricted And Seasonal Special Restricted Waters of New Jersey For Further Processing At A State Permitted Depuration or Controlled Purification Facility" issued by the Bureau of Marine Water Classification and Analysis.

(g) A person shall not receive a depuration harvester permit unless the depuration plan owner/operator has been issued a valid provisional or permanent shellfish certification by the New Jersey State Department of Health pursuant to N.J.A.C. 8:13-2.1.

(h) At such time as it may become necessary in the event of excessive depletion or threat thereof to the shellfish stocks, the Department may limit the harvest of soft and hard clams below total plant capacity, limit the total harvest of any harvester, restrict the harvest from specific clamming areas or terminate the program in its entirety.

Recodify existing N.J.A.C. 7:12-9.2 through 9.5 as 9.3 through 9.6 (No change in text.)

7:12-9.7 Soft clam and hard clam depuration programs

(a) The purpose of harvesters permit numbers 4 and 9 (Soft Clam Depuration Harvester's and Hard Clam Depuration Harvester's Permit, respectively) is to allow soft and hard clams to be harvested from Special Restricted and Seasonal Special Restricted Areas and ultimately marketed after processing through a State permitted and certified depuration or controlled purification facility. Permit numbers 4 and 9 shall be valid only under the following specific conditions:

1. Only soft clams (*Mya arenaria*) and hard clams (*Mercenaria mercenaria*) shall be harvested under harvester permit numbers 4 and 9 respectively.

2. Area(s) of harvest are limited to those specified on the charts attached to each permit or amended charts sent by the Bureau to the current mailing address of the permittee on record at the Bureau's Leeds Point office. These areas specified for harvest may consist of Special Restricted and Seasonal Special Restricted waters as classified by the Department. All harvesters transferring clams to a depuration or controlled purification plant shall at all times work within the designated areas.

3. The harvester permit shall be valid for the period set forth on the face of the permit and shall allow for harvesting only in the waters specified on the charts attached to the permit (as amended where applicable) and as further restricted on a day-to-day basis by the designated enforcement unit(s).

4. The harvester shall possess a valid commercial shellfish harvesting license issued by the Department's Division of Fish, Game and Wildlife pursuant to N.J.S.A. 50:2-1.

5. The harvester shall have the harvester permit in his possession while operating in the specified waters.

6. Vessels used by special permit holders shall be marked with signs having a daylight fluorescent orange background with legible black lettering (minimum six inches in height) giving the permittee's first initial and last name and special permit number on both sides (amidships) of the permittee's harvest vessel, while participating in all phases of the program.

7. The harvester shall also display on his vessel a color coded pennant assigned by the Department to the depuration plant which he is working for. This pennant shall be at least eight feet above the waterline and displayed during all phases of the program. This pennant shall meet the minimum dimensions as follows: 30 inches in length by 12 inches in height at its widest edge.

8. Harvesters shall report in person each day, prior to any harvest activities, to the depuration plant, to advise the owner/operator of their intentions to work that day and obtain the specific number of approved harvest containers.

i. The owner/operator of the depuration plant shall issue each harvester a specific number of Department of Health approved containers based on the plant capacity. A stamped/validated waterproof serially numbered harvester-allocation tag approved by the State Department of Health shall be issued by the plant and affixed to each harvest container in the plant as part of the daily harvest allocation.

No other containers or bags may be possessed in or on the harvest vessels during any phase of the program.

ii. The owner/operator of the depuration plant shall notify the Marine Enforcement Office of the Department's Division of Fish, Game and Wildlife by telephone in order to provide the list of all harvesters' names, the areas they will be harvesting and number of containers issued each harvester. Notification shall be made to the Nacote Creek Office each day by 8:30 A.M., or prior to any harvesting activities, whichever earlier. Any subsequent harvest activity shall be also reported to the Marine Enforcement Office prior to that harvest activity commencing.

iii. Shellfish shall be transported directly from the harvest area to the designated ***depuration*** landing site(s) by the most direct route without making any stops or landings along the way. Each participant shall land his entire day's catch at the designated ***depuration*** landing site(s) and at the time(s) specified by the designated enforcement unit. ***A participant may sell and/or purchase part of his daily catch to a person who holds a valid relay permit only at the designated relay landing site and at the designated relay landing time.***

iv. Should an emergency arise or adverse weather conditions exist, the harvest vessels may dock at the depuration facility when necessary, except that off loading of shellfish shall not be initiated until the specified landing times.

v. Upon landing at the designated ***depuration*** landing site(s) the harvester shall complete a State provided receipt in triplicate containing at least the following information: harvester name, date, harvest area, total number of containers and total number of clams. Receipts shall be date and time stamped upon receipt of shellfish by the plant owner/operator into the depuration plant. The plant owner/operator shall retain two copies of the receipt form, one for forwarding on a monthly basis to the Marine Enforcement Office of the Department's Division of Fish, Game and Wildlife, Nacote Creek Office. The harvester shall retain one copy of the receipt for his records. ***All unused containers will be accounted for and so noted on the receipt.***

vi. Once off-loading of the shellfish to the depuration plant commences, the containers of shellfish shall immediately be moved into the plant and the attached Harvester Allocation Tag shall be dated and time stamped for a second time upon receipt by the plant on that harvest day.

9. Harvesting by methods not permitted pursuant to any State laws and rules are prohibited.

10. All soft and hard clams harvested under this permit shall be landed at the depuration plant for further processing at the designated landing times ***except those hard clams sold to a relayer***. All other species of shellfish shall not be removed from the harvest site but shall be immediately deposited at the location from which they were harvested. Only Department of Health specified and approved serially numbered containers shall be used for the harvesting, transportation, and receiving of clams at the depuration plant. All reasonable measures shall be taken to assure that the containers of clams received at the plant are filled to capacity.

11. Under adverse weather conditions (for example, bay and river icing), as determined by the designated enforcement unit(s), alternative methods of harvest and transportation of clams may be developed jointly by the harvester and depuration industry and the Departments of Environmental Protection and Health for as long as the adverse weather conditions continue. Under no circumstances shall any shellfish be harvested or transported using such alternate methods without first having obtained ***[express]* *expressed*** written permission from the designated enforcement unit(s). ***These alternative methods, once approved, will become part of the SOP, required under Department of Health rules at N.J.A.C. 8:13-2.5.***

12. Violations of these permit conditions shall subject the violator to prosecution under N.J.S.A. 58:24-1 et seq. and any other applicable statute or rule and may result in immediate permit suspension or revocation. In the event of a suspension or revocation of the shellfish certificate issued by the Department of Health pursuant to N.J.A.C. 8:13-2.1, all permits issued under this subchapter will no longer be valid for the plant(s) that no longer holds a valid shellfish certificate.

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13. Any change of permittee's home or mailing address shall be reported by the permittee in writing to the Bureau's Leeds Point office within one week of the change.

(b) The permittee harvesting from the specified area(s) shall be subject to all State laws and rules applicable to the harvest of oysters, clams or mussels from Approved waters.

(c) The harvesting of soft and hard clams from the specified area(s) shall be permitted Monday through Saturday of each week between the hours of sunrise and one hour before sunset. Depending on the location of the depuration plant, the harvesting may be further restricted by designated landing times established by the Department.

(d) The purpose of permit numbers 8b and 10 (Depuration Plant Permit To Possess Soft Clams and Hard Clams, respectively) is to allow a depuration or controlled purification facility to possess soft and hard clams harvested from Special Restricted and Seasonal Special Restricted waters for further processing. This permit also completes the control link between the initial or harvest phase of the depuration or controlled purification program at (a) above and the processing phase, which is regulated by the New Jersey Department of Health. Permit numbers 8b and 10 shall be valid only under the following specific conditions:

1. Only soft clams (*Mya arenaria*) and/or hard clams (*Mercenaria mercenaria*) shall be possessed under their respective permits.

2. The owner/operator shall notify the Marine Enforcement Office of the Department's Division of Fish, Game and Wildlife by telephone in order to provide the names of the designated harvesters names, the area(s) to be worked and the number of containers issued to each harvester. Notification shall be made to the Nacote Creek Office on each harvest day by 8:30 A.M. or prior to any harvest activities. Any additions or changes to the initial notification must also be reported to the Marine Enforcement Office prior to any additions or changes to the harvesters working.

3. The depuration plant permit shall be valid for the period set forth on the face of the permit and shall apply only to the waters specified on the charts attached to the permit (as amended where applicable) and as further restricted on a day to day basis by the designated enforcement unit(s).

4. The harvester from which the shellfish are purchased shall possess a valid New Jersey Commercial Shellfish Harvesting License issued by the Department's Division of Fish, Game and Wildlife pursuant to N.J.S.A. 50:2-1 and a valid Permit No. 4 for soft clam depuration or No. 9 for hard clam depuration issued by the Bureau.

5. The permittee shall comply with all laws including rules promulgated by the Department and other agencies of the State of New Jersey.

6. Purchases of clams from the specified Special Restricted Waters shall be subject to all State laws including applicable to the purchaser of oysters, clams or mussels from approved areas.

7. All records of purchases, including the harvesters names, address, date, quantity of purchase, harvest site and all harvester allocation tags and harvester depuration receipts shall be maintained at the plant for a period of not less than one year and shall be available for inspection by any authorized agent of the State.

8. The plant operator shall provide *[monthly]* ***weekly*** reports to the Department's Division of Fish, Game and Wildlife. Reporting forms and charts of the designated harvest area(s) shall be provided by the Division of Fish, Game and Wildlife. Such reports shall be submitted within five working days of *[month's end]* ***the week's end (Saturday)*** and shall contain the following information for each day:

- i. The area(s) worked;
- ii. The total number of men working each area;
- iii. The total number of clams harvested from each area(s);
- *[iv. The total number of clams depurated;
- v. The total number of clams culled after depuration; and]*
- *[vi.]* ***iv.*** One copy of each harvester's daily receipt for the *[month]* ***week*** shall be attached to the *[monthly]* ***weekly*** report.

9. This permit and this subchapter do not supersede current laws, regulations and rules promulgated by other agencies of the State of New Jersey.

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10. Upon completion of the day's harvesting, all clams shall be off-loaded at the depuration plant for storage and/or processing. Only Department of Health specified and approved serially numbered containers shall be used for the harvesting, transportation, and receiving of clams at the depuration plant.

11. All containers shall have attached to them a serially numbered harvester allocation tag which has been validated by the plant stamp prior to harvest showing the time and date. This shall again be stamped at the completion of harvest and landing by the plant showing the time, date, depuration harvester's permit number and number of clams in that container. These tags shall remain attached to specified serially numbered containers through the depuration process.

12. Once the depuration and bacteriological approvals are complete, all harvester allocation tags shall be removed from the specified serially numbered containers and maintained on file at the plant for one year.

13. All such tags and records shall be available for inspection by any authorized agent of the State.

14. Violation of these permit conditions shall subject the holder to prosecution under N.J.S.A. 58:24-1 et seq. and any other applicable statute and may result in immediate permit suspension or revocation. In the event of a suspension or revocation of the shellfish certificate issued by the Department of Health pursuant to N.J.A.C. 8:13-2.1, permits issued under this subchapter regulations will no longer be valid for the plant(s) that no longer holds a valid shellfish certificate.

15. Should overland transportation be utilized on a regular basis for the movement of soft or hard clams from State waters to the depuration plant site, the operational plan for such a movement shall be approved by the SRRSC.

***[7:12-9.7]* *7:12-9.8* Relay program**

(a) (No change.)

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3. Those rules must be read together with the Shellfisheries rules which appear at N.J.A.C. 7:25-15.1.

1.-14. (No change.)

15. Shellfish taken from the designated relay section shall be bagged by the participant, three-quarter bushel to the bag, in bags available to the participant from the *[department]* ***Department***. These bags will be provided, at cost, to the participant through the Leeds Point office of this bureau. No unmarked bags will be allowed in the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvester's name and/or buyer's name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the *[department]* ***Department***. The vehicles will be sealed by the Department, or an agent designated by the *[department]* ***Department***, at the harvest landing site and opened by the *[department]* ***Department*** or a designated agent at the off-loading site. The enforcement unit may specify the route to be taken from the harvest landing site to the planting off-loading site. ***Shellfish purchased from a holder of a valid Hard clam depuration permit (Number 9) shall be handled under the same conditions.***

Recodify existing N.J.A.C. 7:12-9.8 through 9.10 as 9.9 through 9.11 (No change in text.)

7:12-9.13 (No change in text.)

(a)

**DIVISION OF SOLID WASTE MANAGEMENT
DIVISION OF HAZARDOUS WASTE MANAGEMENT
BOARD OF PUBLIC UTILITIES**

Readoption with Amendment: N.J.A.C. 7:26

Proposed: September 17, 1990 at 22 N.J.R. 2882(a).

Adopted: October 24, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection, and, as to N.J.A.C. 7:26-6 only, the Board of Public Utilities, Scott Weiner, President.

Filed: October 25, 1990 as R.1990 d.578, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:E-1 et seq., N.J.S.A. 13:1B-3, N.J.S.A. 13:10-9 and N.J.S.A. 48:13A-1 et seq.

DEP Docket Number: 027-90-08.

Effective Date: October 25, 1990, readoption;
November 19, 1990, amendment

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("Department") and Board of Public Utilities ("Board") are readopting chapter 26 of the New Jersey Administrative Code which was proposed on September 17, 1990 at 22 N.J.R. 2882(a). The authorization of the Board to readopt extends only to subchapter 6 of chapter 26, Interdistrict and Intradistrict Solid Waste Flow Rules. Subchapter 6 is the only subchapter which involves the Board's jurisdiction. Legal notice of opportunity to comment on the proposed readoption was published in the New Jersey Register on September 17, 1990 as well as in the Bergen Record, Star Ledger, Courier-Post, Asbury Park Press, Burlington County Times, Bridgewater Courier News, Hudson Dispatch, North Jersey Herald News, Home News, Vineland Times Journal, Elizabeth Daily Journal and the Trenton Times on September 17, 1990. The period for the receipt of written comments commenced on September 17, 1990 and closed on October 17, 1990. There was no public hearing on the proposal. Written comments were received from three persons.

Based upon one of the written comments received during the comment period, the Department was made aware of a typographical error in N.J.A.C. 7:26-2A.6(g)15 which causes the regulation to require re-evaluation of landfill design when bedrock is within 200 feet of the bottom liner instead of within 20 feet, as is the intent of the regulation. The Department has therefore corrected this typographical error in the adoption.

The written comments and agency's responses are summarized below:

COMMENT: A commenter noted that a proposed rule at N.J.A.C. 7:26-2.4 was to require that interagency comments be submitted to the Division of Solid Waste Management ("Division") within 90 days of receipt by the Division but that this rule was deleted on adoption and should be reinstated. The commenter stated that a response time frame would assure the timely review and action on a permit application. These provisions would assist the regulated community to better anticipate construction schedules.

RESPONSE: The proposal of N.J.A.C. 7:26-2.4 (see 18 N.J.R. 883(a)) had required that interagency comments on permit applications be submitted to the Division within 90 days of receipt of the application by the agency. The 90 day time limit was not included in the adoption of the rule (see 19 N.J.R. 928 (c)) because the Department determined that the criteria of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., ("Act") were sufficient to provide timely review of permit applications, and established adequate means for the Division to provide the applicant with permit review scheduling information. The Act requires that the Department reject a permit application or grant tentative approval within six months of receiving a complete application. In addition, a pre-application meeting is required with the applicant in which the Department describes the permit review process and timeframes in detail. The applicant is appraised at each phase of the application review of the overall application review timeframes for a decision and the response time that each agency has. The six month statutory limit and the scheduling information provided in the pre-application meeting is sufficient for an applicant to make adjustments to its anticipated schedules.

COMMENT: A commenter stated that it is unrealistic to consider actual leachate flow at real time events during the design state of a landfill unless an existing cell can be monitored. The commenter suggested the use of a predictive computer program such as the HELP model to realize this task.

RESPONSE: This provision requires that the leachate collection system be designed as specified in N.J.A.C. 7:26-2A.7(d). Specifically, N.J.A.C. 7:26-2A.7(d)2iii requires that the leachate collection system be designed utilizing two different modeling techniques approved by the Department, and N.J.A.C. 7:26-2A.7(d)2iv requires five-years of real time data or 100 percent of the infiltration rate. The statement in N.J.A.C. 7:26-2A.6(d)2 refers to the actual flow generated by the modelling events. Therefore, predictive models are not only permissible, but are required by the rules.

COMMENT: A commenter stated that the requirement in N.J.A.C. 7:26-2A.6(g)15 that landfill design be re-evaluated when bedrock is within 200 feet of the bottom of the liner is a typographical error since N.J.A.C. 7:26-2A(h)1xv requires a 20 foot separation.

RESPONSE: The Department agrees that this paragraph contains a typographical error and has made this change in the adoption.

COMMENT: A commenter stated that cap stripping of seams on geomembrane liners as required by N.J.A.C. 7:26-2A.7(a) and 7:26-2A.7(c)4xi(3) is unnecessary in most cases. The only time cap strips should be required is when a seam fails to perform to standards.

RESPONSE: While the commenter's suggestion may be a sound technical revision to the existing requirements, no technical information was submitted to support this position. At such time as technical information is received that supports the statement, the Department will consider an amendment to this standard. The commenter may submit such information to the Department and request a rule change using the vehicle of a rulemaking petition in accordance with N.J.S.A. 52:14B-4(f) and N.J.A.C. 7:1-1. It should be noted that N.J.A.C. 7:26-2A.7(c)4xi(3) allows the use of equivalent or better systems in the field seaming of geomembranes based on the manufacturer's recommendations.

COMMENT: A commenter stated that the requirement in N.J.A.C. 7:26-2A.7(c)2xi which requires leachate compatibility testing on clay liner materials is unreasonable since this represents added cost on tests that may not be representative of actual landfill conditions.

RESPONSE: N.J.A.C. 7:26-2A.7(c)ix allows the demonstration of leachate compatibility to be performed with actual field data. However, in the absence of field data, it is reasonable to require that the applicant demonstrate the chemical and physical resistance of the clay material to solid waste and leachate prior to construction, given the inability to retrofill the liner after landfilling operations commence, and given the high cost of remediation. The technical data and rationale supporting this requirement is set out in the Basis and Background Document which accompanied the original rule proposal (see 18 N.J.R. 883(a)).

COMMENT: A comment was received regarding N.J.A.C. 7:26-2A.7(c)2xi(1) which stated that the Department should not require air lancing of HDPE geomembrane landfill liners.

RESPONSE: N.J.A.C. 7:26-2A.7(c)2xi(1) allows for the use of an equivalent device instead of an air lance. Therefore, air lancing is not required where an applicant proposes an equivalent device such as a vacuum box.

COMMENT: A commenter requested that N.J.A.C. 7:26-2A.7(c)4xiii be revised to allow a landfill trench to be designed with an equivalent pullout resistance as approved by the Department, rather than with the currently required trench depth of 12 to 16 inches with the liner laid on three sides of the trench.

RESPONSE: No technical information or alternative designs were submitted by the commenter for the Department to evaluate this requested revision. At such time as technical information or alternative designs are made available, the Department will consider proposing a revision to this provision. The Department recommends that the commenter submit any technical data it has to support its request as part of a rulemaking petition in accordance with N.J.S.A. 52:14B-4(f) and N.J.A.C. 7:1-1.

COMMENT: A commenter stated that the requirement to perform relative density or compaction tests at 50 foot intervals on a drainage layer already in-place was inappropriate. The commenter suggested that this test be replaced with an in-place density test.

RESPONSE: N.J.A.C. 7:26-2A.7(d)2vii(2) requires a relative density test or a compaction test and not both. The requirement to perform a relative density or compaction test on the in-place drainage soil is an appropriate test as described in the technical Basis and Background

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Document for this rule (see 18 N.J.R. 883(a)). No technical information was submitted to support the commenter's statement as to the inappropriateness of the relative density or compaction test or on the appropriateness of the in-place density test in this provision. At such time as this information becomes available, the Department will consider an amendment to this provision. The Department recommends that the commenter submit this information as part of a rulemaking petition in accordance with N.J.S.A. 52:14B-4(f) and N.J.A.C. 7:1-1.

COMMENT: A commenter suggested that N.J.A.C. 7:26-2A.7(d)3vi be revised to allow the Department to approve main leachate collection pipes smaller than eight inches as part of a landfill leachate collection system. The commenter stated that six inch diameter pipes have sufficient flow capacity for most landfill and are water jet flushing.

RESPONSE: At the time of adopting N.J.A.C. 7:26-2A.7(d)3vi, as described in the technical Basis and Background Document for that rule (see 18 N.J.R. 883(a)), the Department confirmed with industry representatives in the area of pipe cleaning that the eight inch diameter pipe was the limit of efficiency of this technology. If this technology has advanced to allow for efficient maintenance of six-inch pipes the Department would consider an amendment to this provision. However, no technical information was submitted by the commenter in this regard. At such time as information in this area becomes available, the Department will consider an amendment to the provision. The Department recommends that the commenter submit such technical information via a rulemaking petition as referenced in several responses above.

COMMENT: A commenter stated that the provisions of N.J.A.C. 7:26-2A.7(f) are too restrictive. Specifically, the commenter noted that the "state-of-the-art" for designing landfill gas collection systems is changing and therefore, it is unreasonable to specify the minimum number of wells installed as part of the system. The commenter stated that the gas collection systems should be designed on a site specific basis.

RESPONSE: The provision at N.J.A.C. 7:26-2A.7(f)10 requests the modeling of the gas flow or transport at a landfill in order to properly size the gas collection and venting system based on site specific conditions. The specification of the number of wells, spacing of wells, and depth of wells are general recommendations which should be confirmed with site-specific data and modeling. The technical data and rationale supporting this regulation are described in the technical Basis and Background Document for this rule (see 18 N.J.R. 883(a)).

COMMENT: A commenter stated that reference to both a landfill gas collection system and venting system in N.J.A.C. 7:26-2A.7(f)1 is inconsistent. The gas collection system may serve the purpose of either a passive or active venting of gas or collection system for energy recovery or gas control.

RESPONSE: The requirements of N.J.A.C. 7:26-2A.7(f)1 apply to a combined gas collection and venting system and not to a separate collection system and a separate venting system. The gas collection and venting system may be utilized for the entire life of the landfill as a passive system if no gas migration occurs at the facility. However, at such time as the limits in N.J.A.C. 7:26-2A.7(f) are exceeded an active system must be installed. With the passive system, the facility has the option to recover the gas. However, in the active mode the system must be designated to recover the gas or energy.

COMMENT: A commenter stated that N.J.A.C. 7:26-2A.7(f)3 should not make it mandatory to implement an active gas collection and venting system at all times when the 25 percent explosive limit is exceeded. The commenter stated that a passive venting system can be utilized in some instances.

RESPONSE: In light of the numerous past history of landfill gas migration cases, fires and explosions, N.J.A.C. 7:26-2A.7(f)3 is needed in order to reasonably ensure prevention of this problem as described in the technical Basis and Background Document for this rule (see 18 N.J.R. 883(a)). N.J.A.C. 7:26-2A.9(f) allows for the use of a passive system until such time as the limits are exceeded.

COMMENT: A commenter noted that N.J.A.C. 7:26-2A.7(g)10ii and 7:26-2A.8(b)11 are in conflict in that N.J.A.C. 7:26-2A.7(g)10ii requires run-off from the active area of the landfill to be diverted to the leachate treatment system while N.J.A.C. 7:26-2A.8(b)11 requires run-off from the areas of intermediate cover to be diverted to the surface water drainage system.

RESPONSE: These two provisions are not in conflict since N.J.A.C. 7:26-2A.7(g)10ii requires all run-off from the active landfilled areas to be diverted to the leachate treatment system while N.J.A.C. 7:26-2A.8(b)11 requires that run-off from the areas of intermediate cover be diverted to the surface drainage system. The former provision applies

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to the active working face where landfilling is actually taking place, while the latter provision applies to intermediate areas which are not being actively filled, although these intermediate areas may be filled at a future point.

COMMENT: One commenter recommended that the Department revise the rules for manifest discrepancies at N.J.A.C. 7:26-12.4(a)17i. This subparagraph currently requires that facilities file a manifest discrepancy report for variations in weight greater than one percent for bulk shipments of waste or any variation in piece count for shipments of waste in containers. Bulk loads typically contain between 1,000 and 5,000 gallons which would weigh roughly between 8,000 and 40,000 pounds, not including the weight of the tractor or tank. For a shipment of 1,000 gallons a manifest discrepancy report would have to be filed if there were a difference of as little as 80 pounds. Even state-of-the-art truck scales have a tolerance of one-half of one percent, and the difference even between two properly calibrated state-of-the-art scales can be one percent. The Federal regulations require facilities to report only discrepancies of greater than 10 percent in weight. Often, generators will visually estimate the amount of waste in a shipment rather than actually weighing the truck. This frequently leads to discrepancies. The Department should amend N.J.A.C. 7:26-12.4(a)17i to conform to the federal regulation at 40 C.F.R. 264.72(a)(1). This will reduce the burden of unnecessary manifest discrepancy reporting for hazardous waste facilities by eliminating the requirement to report discrepancies that are due to factors other than a real discrepancy in the amount of waste shipped.

RESPONSE: The Department agrees that discrepancies of one percent can usually be accounted for by differences in scales, weight of fuel consumed in transportation of the waste, and erroneous generator estimates of the amount of waste in the shipment. Although the manifest discrepancies amendment is not addressed in this adoption, it is currently under development and will be proposed in a separate rulemaking.

COMMENT: New Jersey regulations severely limit the kinds of changes to permits that may be considered minor modifications. Any change which is not a minor modification is subject to the extensive permit modification requirements at N.J.A.C. 7:26-12.6. The United States Environmental Protection Agency (EPA) had previously had in place a similar system for modifying permits, but in September of 1990, EPA adopted a new system of permit modification. This system employs a three-tiered approach and establishes different requirements for different classes of permit modifications. In amending its regulations, EPA stated that relaxing the requirements for some permit modifications would improve the handling and treatment of hazardous waste and reduce threats to human health and the environment since the original, restrictive modification regulations could delay or discourage facility changes that would lead to improved management of hazardous wastes. The Department should adopt EPA's system of permit modification which would enable facilities and the Department to save money on needless paperwork and allow them to spend it on improving environmental performance.

RESPONSE: The Department agrees with the comments. Although the permit modifications amendments are not addressed in this adoption, they are currently under development and will be proposed in a separate rulemaking.

COMMENT: One commenter submitted extensive comments showing suggested revisions to the current hazardous waste rules. The following is a list of those suggested amendments: amend the definition of "by-product to delete the sentence, "[t]he term does not include a 'co-product' as defined herein."; delete the definition of "co-product"; amend the definition of "designated facility" to delete "... or a waste reuse facility under N.J.A.C. 7:26-9.1(c)13..."; amend the definition of "scrap metal" to exclude the list of materials not covered by the definition; amend the definition of "spent material" to replace the phrase "... being processed, reprocessed or reclaimed." with "... processing."; and deleting the definition of "waste reuse facility."

In addition, the commenter suggested deleting the definition of solid waste at N.J.A.C. 7:26-1.6 and replacing it with language that parallels the Federal language at 40 C.F.R. 261.2.

The commenter also suggested deleting the standards for waste reuse facilities at N.J.A.C. 7:26-9.1(c)13 and 12.1(b)10.

RESPONSE: The Department was not able to discern the commenter's intent from the comments submitted. Although the commenter submitted detailed amendments to the text of the current rules, including replacement language, an explanation or justification for the amendments was not provided. The purpose or the goals of any of the suggested amendments was not articulated. Since some of the suggested amendments, most

notably the amendments to the definition of solid waste, would affect the very foundation of the hazardous waste regulatory program in this State, careful analyses of the effects of such amendments is required, and none was provided. Amending the State's definition of solid waste would essentially impact the entire hazardous waste management program in this State. Therefore, the Department is not prepared to amend the current definition of solid waste without substantial discussion as to the purposes, goals, and justification for amending the definition of solid waste. As noted above, the commenter has provided no analysis in this regard other than to infer that the Department conform its definition of solid waste to the federal counterpart. When the Department adopted the current definition of solid waste, it considered the Federal definition (see 19 N.J.R. 2426, December 21, 1987).

In addition, some of the commenter's amendments would delete language that is present in the Federal regulations. Under the terms of its authorization from EPA, the State is required to maintain a regulatory program which is at least as stringent as the one promulgated by EPA. The following suggested amendments would have deleted language which is identical to that in the Federal regulations: 1) deletion of the definition of "co-product", and 2) deletion of the description of materials excluded from the definition of "scrap metal". The definition of "co-product" is treated as part of the federal definition of "by-product" at 40 C.F.R. 261.1(b)(3), in the State rules the term is explained somewhat more fully and clearly, but is essentially the same as the Federal counterpart. The State's definition of "scrap metal" is identical to EPA's definition of "scrap metal" at 40 C.F.R. 261.10. The Department does not intend to amend any language which is currently equivalent to the Federal program, especially if the amendment would make, or appear to make, the State's program less stringent than the Federal program; therefore, these suggested amendments are denied.

The suggestion to delete the waste reuse provisions at N.J.A.C. 7:26-1.4, 9.1(c) and 12.1(b) seem to be one of the effects of amending the State's definition of solid waste to conform to the Federal counterpart. Since the State does not intend to amend the definition of solid waste at this time and since no justification for deleting these provisions was provided by the commenter, these suggested amendments are denied.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:26.

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

7:26-2A.6 Sanitary landfill environmental performance standards (a)-(f) (No change.)

(g) All sanitary landfills regulated pursuant to N.J.A.C. 7:26-2A.1(c) shall be designed and constructed, in accordance with (h) below, to protect environmentally sensitive areas including, but not limited to, the following:

1.-14. (No change.)

15. Areas where fractured bedrock is or will be within 20*[0]* feet from the bottom of the liner; and

16. (No change.)

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

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Certification of Radon Testers and Mitigators

Adopted New Rules: N.J.A.C. 7:28-27

Proposed: November 6, 1989 at 21 N.J.R. 3369(a).

Adopted: October 15, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection

Filed: October 19, 1990 as R.1990 d. 559, with substantive and technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4).

Authority: N.J.S.A. 13:1B-3, N.J.S.A. 13:1D-9, N.J.S.A. 26:2D-1 et seq., and particularly, 26:2D-70 et seq.

DEP Docket Number: 046-89-10.

Effective Date: November 19, 1990.

Operative Date: January 13, 1991.

Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:

The proposed regulation was published in the November 6, 1989 issue of the New Jersey Register. The comment period closed on January 6, 1990. The total comment period was 60 days during which time 69 written comments were received. A public hearing was held at the State of New Jersey Auditorium at the New Jersey State Museum in Trenton, New Jersey on December 12, 1989. The public hearing was well attended, with 24 persons offering oral comments.

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COMMENT: A commenter recommended and requested an extension of 30 days in the comment period which would provide adequate time to review and comment on these complex regulations. One individual made this comment.

RESPONSE: The comment period for these rules was set at 60 days which is twice as long as minimally required. A 60-day period was chosen to allow the public/industry ample time to review the rules. Approximately 550 copies of the rules were mailed the week of November 6, 1989 to interested and affected parties. In addition, a public meeting was held on December 12, 1989. The Department believes these efforts made the rules readily available to large numbers of affected persons in a timely manner and that the comment period was adequate. Therefore, the request for extension of the comment period on N.J.A.C. 7:28-27 was denied.

COMMENT: Several general comments were submitted which questioned the need for a regulatory program for radon testers and mitigators, including:

1) the voluntary program should continue;

2) these rules should not be implemented;

3) why, when the State enjoys an efficient and simple testing and mitigation system, does the Department insist on undermining and complicating it with these rules;

4) there is no need to expand on the maze of paperwork and requirements already in place under the voluntary and United States Environmental Protection Agency programs;

5) no evidence has been presented to show that a need exists for a regulatory program beyond the voluntary program and the self-improvement programs of the industry;

6) concern with the quality of work being conducted is not sufficient reason to establish an expanded bureaucratic structure which would greatly increase cost;

7) fraud in the radon business, although commented on, has never been documented;

8) there is no evidence that lack of confidence in the quality of measurements or mitigations has had a significant contribution on the public's failure to test or mitigate;

9) there are no new guidelines for radon measurements and none of the needed construction standards;

10) private sector versus State confirmatory test results have agreed 83 percent of the time; this is unlikely to improve as a result of adopting the proposed rules.

RESPONSE: The voluntary radon program was not an original part of the baseline radon program but was instituted after the passage of P.L. 1986, c.83 to prepare businesses for mandatory certification and to provide an oversight on the quality of measurement and mitigation activities until a mandatory program was in effect. N.J.S.A. 26:2D-70 et seq. mandates the Department to establish a program for the certification of persons who test for the presence of radon gas and radon progeny in buildings. This statute not only mandates the Department to establish a certification program but also gives it the ability to enforce it, specifically N.J.S.A. 26:2D-77. These rules go beyond the scope of any of the Federal programs by establishing standards and certifying persons providing radon services to the residents of New Jersey. In this area, there is no Federal guidance.

COMMENT: A number of comments of a general nature were submitted regarding the social impact of these rules, including:

1) The Department has not demonstrated a need for a certification program;

2) the Department has not performed a cost benefit analysis of the proposed rules;

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3) these rules do not protect the public from unscrupulous testing and mitigation businesses;

4) these rules do not provide for provisions to investigate businesses that choose not to be certified;

5) the proposed rules do not adequately weigh the impact on the public health due to increased testing and mitigation cost and the reduction in available services;

6) these rules do not protect the public from poor quality over-the-counter testing devices;

7) these rules do not recognize the importance of testing in the workplace;

8) what prompt steps can the Department take to protect the public health if reports of radon measurements are to be kept confidential;

9) these rules will restrict entry into the business.

RESPONSE: The authority for the Department to develop these rules is granted in N.J.S.A. 26:2D-70 et seq. The rules will protect the public from receiving inadequate radon related services by providing the Department with the ability to investigate and, if warranted, remove unscrupulous businesses and/or persons from continuing to offer radon services in this State. This includes services offered relative to testing and mitigation of the workplace. Uncertified businesses and/or persons who continue to offer radon services after 90 days from the establishment date of the rules are in violation of N.J.A.C. 7:28-27.3(a) and are guilty of a crime of the third degree as described in N.J.A.C. 7:28-27.26. The Department recognizes that requirements of these rules may cause certain businesses to cease offering radon services in the State. However, the public will benefit from these rules because they will require that radon businesses meet basic standards and allow them to compete on an equal basis. The increase in costs to the consumer are far outweighed by the enhanced performance of the industry. The Department believes that confidentiality is essential for increased public activity in dealing with the radon problem. As a recipient of radon test data, the Department is able to make evaluations and determine if certain areas are at increased risk of elevated radon levels. If such "clusters" are identified, the Department will notify affected individuals.

COMMENT: Several comments were submitted regarding the program staffing and cost for the certification program, including:

1) how can the Department justify \$7,000 for rent to the Central Motor Pool;

2) since there is already staff or the voluntary program, why are nine new staff needed;

3) further justification for the number and level of titles requested for the certification program should be provided;

4) of the six titles listed, which will be responsible for performing inspections, audits, teaching courses, training, enforcement activities, data entry, data management, reviewing applications, setting up and monitoring the reporting system and program monitoring;

5) the estimated budget is inflated.

RESPONSE: This program estimates that it will need the use of two vehicles on a yearly basis to conduct facility and site inspections and to investigate complaints. The recently revised yearly rental cost for a vehicle from central motor pool is approximately \$2,500 per vehicle per year and will reduce the total cost for vehicles from \$7,000 to \$5,000.

Currently, approximately two man years is dedicated to the voluntary program. This program was not an original part of the baseline radon program but was instituted after the passage of P.L. 1986, c.83 to prepare businesses for mandatory certification and to provide an oversight on the quality of measurement and mitigation activities until a mandatory program was in effect. These two man years will be returned to the baseline program to enable us to ensure that the public is fully informed about the risk to radon exposure and to augment the Department's efforts to identify and encourage new ways to mitigate the risk.

The staffing needs and costs for this certification program have been very carefully reviewed. On completion of this review it was decided to eliminate and change some of the titles originally presented in the economic impact section of the regulation. These changes were possible due to the Department's ability to streamline or computerize many of the tasks associated with the program. The following are the list of titles which will comprise the certification program:

Research Scientist I

Research Scientist II

Radiation Physicist III

Principal Clerk Typist

Data Entry Machine Operator.

The estimated salaries for these specific titles is \$145,000. The fringe benefits and indirect costs for these salaries are \$40,092 and \$60,525,

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respectively. It is estimated that it will require approximately 2.71 of these persons to manage, oversee, and enforce the measurement businesses and individuals in the program. It is estimated that it will require approximately 2.29 of these persons to manage, oversee, and enforce the mitigation businesses and individuals in the program. The data entry machine operator will enter data into the computers. The principal clerk typist will handle general secretarial needs of the program. The research scientist I will be supervisor of the program. All three professional titles will be involved in the various activities of the program; specific assignments will be made based on the qualifications of specific personnel that join the program.

The estimated budget presented in the economic impact statement was based on the best estimate of the personnel and supplies needed to staff a quality and enforceable program. As discussed above, and in subsequent responses, these costs have been carefully reviewed during the response period and revised where possible.

COMMENT: The staffing proposed for these rules could not possibly review the reports, inspect the facilities, examine the mitigation work performed and initiate the legal action necessary to enforce the proposed rules. The proposed rules will not eliminate unscrupulous individuals because they lack the enforcement power but they will drive ethical professionals out of the business because of the volume and absurdity of the requirements.

RESPONSE: The Department, through comparisons to other programs and estimates of materials to be received in this program, has determined that proposed staffing levels will be sufficient to carry out the oversight and enforcement activities required by these rules. While unscrupulous businesses might not be totally eliminated, their numbers will certainly be reduced. These rules strive to put all radon businesses on equal footing. The additional paperwork requirements will more than be offset by the enhanced competitive position of those businesses providing dependable and good quality radon services.

COMMENT: Several persons commenting disagreed with the economic and regulatory flexibility statements stating that these rules will not adversely affect small businesses and their competitive position since most of the radon industry is comprised of small businesses. It was argued that these statements did not show a full appreciation for the conditions under which radon enterprises operate, since most radon businesses are two or three man operations, operated out of individual homes. It was also argued that there will be a loss of needed service outlets, particularly in the smaller operations which offer personalized service because the Department is out of touch with the industry and the financial realities of the businesses. Also, since small businesses would need to employ certified people, the cost to comply with these rules would greatly exceed the Department's prediction of "a few hundred dollars for a small business". It was also thought that the Department had failed to take into account the increased 'nuisance' cost to the businesses including the cost of record keeping, forms, inspections and physical exams.

RESPONSE: The regulatory flexibility statement of these rules clearly recognizes that the majority of businesses to be affected by these rules are small businesses. In recognition of this fact, the Department chose to collect program administration and activity fees after the business has accrued revenues from its business activities rather than to require payment of the fee at the beginning of a business year. Since all businesses, regardless of size, will be required to pay progressive fees, the Department believes that the fees will not adversely affect the small business's competitive position.

Since all radon businesses will be subject to compliance with these rules, all businesses will be required to employ certified individuals. Some operator/owners of small radon businesses will qualify as certified individuals, therefore costs to comply with rules for these individuals will most likely be a few hundred dollars. The Department acknowledges that there are costs associated with the business activities such as record keeping and inspections, of this program; however, the Department feels that these costs are minimal when balanced with the need to protect the public from unnecessary exposure from radon and radon decay products. It should be noted that these rules do not require medical exams.

COMMENT: The provision that franchised businesses be treated as separate businesses is unreasonable, especially since branch offices are permitted to function under the corporate certification and the only difference between a franchised business and branch office is the underlying financial structure.

RESPONSE: Purchase of a franchise does establish an independently owned and operated business. In its most basic form, the franchise agreement allows the franchise to use the corporate name and logos. The management of the franchise is responsible for daily operations and

quality of product, not the corporation from which the franchise was bought. Therefore, the Department sees no reason to change this requirement.

COMMENT: Why do water companies not have to report results and pay fees for radon water tests?

RESPONSE: These rules do not address the issue of sampling and/or testing for radon in water. The subject is addressed, including fees for providing the service, in N.J.A.C. 7:18.

COMMENT: If a business chooses not to apply for certification once the program becomes mandatory, will they be permitted to complete contracts for either testing or mitigation which they started prior to January 1, 1990?

RESPONSE: Beginning 90 days after the establishment of the program, as required by N.J.S.A. 26:2D-72, no person may conduct radon measurement and/or mitigation activities or safeguard against the presence of radon without being certified pursuant to this subchapter unless exempted by N.J.A.C. 7:28-27.31 or temporarily certified under N.J.A.C. 7:28-27.35. Therefore, unless certified, all radon measurement and mitigation activities must cease regardless of when contracts were entered into.

COMMENT: In reference to the statement that "... mitigation devices that reduce only radon progeny levels will not be certified under this chapter", devices that effectively and economically reduce a building occupant's risk from radon progeny should be considered individually on their own merits rather than by being excluded on a defacto basis. In general, the certification criteria for all mitigation devices should be clearly detailed and should provide opportunity for new technologies.

RESPONSE: The Department acknowledges that radon progeny are responsible for the health effects due to radon exposure. However, the Department takes the position that if radon gas is removed, the progeny are also effectively eliminated, thus reducing the risk of developing lung cancer. Both the United States Environmental Protection Agency and the Department have endorsed radon gas removal or preventing radon gas entry as the most logical means of thoroughly reducing radon progeny in buildings. Presently, there are no devices that effectively remove radon progeny from air throughout a building. Therefore, the Department has taken the position that citizens need protection from mitigators wishing to install devices which reduce only radon progeny. Should such a device be developed in the future, the Department may take steps to amend these rules at that time.

COMMENT: Will the Department eventually approve the application of someone who has failed the exam several times?

RESPONSE: No matter what the category, specialist or technician, measurement or mitigation when a person meets the requirements for certification, they will be certified.

COMMENT: The mitigation and measurement specialist should be a resident of New Jersey. The Department may have trouble inspecting the books of a consulting specialist that is located in California or England.

RESPONSE: Although it is the responsibility of the specialist to oversee the technical aspects of the business activities, it is the business's responsibility to maintain records. The Department sees no compelling reason to require a specialist to reside within the State.

COMMENT: Where do health and environmental offices who offer canisters for sale fall in these rules and can these offices have customers sign release forms so the office can also receive the results?

RESPONSE: N.J.A.C. 7:28-27.31(a)4 exempts those persons who test or mitigate as a public service without remuneration. To qualify for this exemption, the health or environmental office needs to send a letter to the Department outlining the public service which it is offering. The Department will review these letters and respond in writing.

Addressing the matter of health and environmental offices receiving copies of the radon results, the Department believes that building owners are not (and the Department believes owners should be informed that they are not) required to share information concerning radon levels in their structure with the health or environmental office. If the owner is willing, in writing, to share the results with the health or environmental office, it does not violate these rules.

COMMENT: There are no reporting requirements for outlets which sell over-the-counter devices.

RESPONSE: If the outlet is exempt from these rules pursuant to N.J.A.C. 7:28-27.31, then it must be working with a certified radon measurement business. It is the responsibility of the certified business to submit reports to the Department. If the outlet is not working with a certified radon measurement business then it is not eligible for exemption under these rules and must be certified and fulfill all requirements of these rules including reporting requirements.

COMMENT: The Department should consider recognizing work experience, for all categories, from other States. A program could be established similar to programs for other titles, like medical technologist. In lieu of six months work experience in New Jersey, courses could be developed with lab hours that teach proper procedures and allow for a supervised apprenticeship for a few months.

RESPONSE: Recognizing measurement/mitigation/technical work experience accrued in other States would be allowed only if reciprocal agreements with New Jersey are in place. The following changes to the rules are made to express this fact: 1) N.J.A.C. 7:28-27.12(a)1 and N.J.A.C. 7:28-27.13(a)2, "... one half year of technical work experience within the State or in a reciprocal agreement state performing ..."; 2) N.J.A.C. 7:28-27.15(a)2 and N.J.A.C. 7:28-27.16(a)3, "... at least six months of mitigation work experience within the State or in a reciprocal agreement state performing and/or ..." and 3) N.J.A.C. 7:28-27.18(a)2 and N.J.A.C. 7:28-27.19(a)3, "... at least one half year of technical mitigation work experience within the State or a reciprocal agreement state installing ...". Persons lacking experience within the State can still become certified via provisional certification. Presently, no reciprocal agreements exist with any other state.

COMMENT: What protective measures have been built into the system to prevent the following situation: a temporary measurement business who employs only provisional specialists and technicians is hired to test a residence and faulty measurements are taken which lead to hiring of a temporary mitigation business who employs only provisional specialists and technicians which install an unnecessary or ineffective mitigation system. The provisional staff then end up losing their status because they failed the exam or did not accrue the required work experience and the temporary businesses are revoked.

RESPONSE: Temporary certification is granted only to those radon mitigation and radon measurement businesses previously approved, by January 1, 1990, by the Department to participate in its voluntary program and who submit a complete application package within 90 days of the effective date of these rules. Within the following year, the Department will review this application and determine whether or not the business should be granted full certification. During the temporary period the business must abide by the requirements of these rules.

COMMENT: Does a laboratory that sells devices to other companies and that also conducts a phone/mail service have to be certified under both rules, N.J.A.C. 7:28-27 and N.J.A.C. 7:18; this seems to submit the laboratory to dual regulation?

RESPONSE: A laboratory which sells devices to certified radon measurement businesses and only analyzes the devices for such businesses is only regulated as a laboratory, under N.J.A.C. 7:18, and only subject to laboratory fees. A laboratory which sells devices directly to the public via a phone/mail service is also regulated as a radon measurement business, under N.J.A.C. 7:28-27.6 and is subject to the fees of N.J.A.C. 7:28-27.30. For the activity fees outlined in N.J.A.C. 7:28-27.30, the laboratory is only subject to this fee for those devices it sells directly to the public. This does not subject the laboratory to dual regulation as N.J.A.C. 7:18 does not address sampling protocols or other business functions associated when working directly with the public.

COMMENT: Some general comments were submitted which referred to United States Environmental Protection Agency (USEPA) secondary testing businesses, including:

- 1) if retail outlets are exempt from these rules then so should USEPA designated secondary testing businesses;
- 2) that the requirement for a radiological safety plan should be a joint item between the USEPA designated primary and secondary testing business if the secondary business only performs screening tests;
- 3) temporary certification should address USEPA secondary businesses currently listed on the voluntary list;
- 4) that the requirement for measurement specialist and technician should not apply to USEPA secondary businesses;
- 5) that items N.J.A.C. 7:28-27.21(a)2 and 4 should not apply to USEPA secondary businesses;
- 6) that special provisions should be made in the rules to address USEPA secondary businesses;
- 7) Section N.J.A.C. 7:28-27.25 needs to be written to address USEPA secondary businesses;
- 8) a category needs to be added which recognizes USEPA secondary testing businesses who work with a qualified primary testing laboratory.

RESPONSE: The USEPA's secondary testing business status is a part of the Radon Measurement Proficiency (RMP) program. These rules go beyond the scope of the RMP program by establishing standards and

certifying persons providing radon services to residents of New Jersey. The Department believes that anyone who samples for or analyzes for radon/radon progeny should be regulated to ensure that the public receives good quality, reliable measurements on which to base actions concerning their health and welfare. Where applicable, these rules do make delineations between businesses which utilize portable and non-portable measurement equipment, for example, N.J.A.C. 7:28-27.6(a)9i. and ii.

COMMENT: These rules are a duplication of United States Environmental Protection programs like the Radon Measurement Program, the Radon Contractor Proficiency Program and Exam which should obviously be incorporated into State certification programs. Adoption of these programs would facilitate the implementation of a much needed standard certification program.

RESPONSE: These rules allow for the incorporation of radon programs initiated by the United States Environmental Protection Agency. However, these rules go beyond the scope of any of the Federal programs by establishing standards and certifying persons providing radon services to the residents of New Jersey. In this area, there is no Federal guidance; therefore, the Department disagrees that these rules are a duplication of Federal programs because no such certification process for the groups covered by these rules exists at the Federal level.

COMMENT: The Federal government created funding through the United States Environmental Protection Agency (USEPA) to assist states in the training and certification of radon professionals; where is the money?

RESPONSE: If the funds which are referred to in this question are those appropriated through the Indoor Radon Abatement Act (IRAA), the IRAA provided funds for technical assistance to the states and for the formation of regional training centers. This money was appropriated to the USEPA to carry out these tasks.

COMMENT: Certification programs need to be standardized so national businesses can efficiently operate a computerized data reporting program to all states.

RESPONSE: The intent of these rules is to establish a certification program within the State of New Jersey. The Department understands and appreciates this expressed concern but finds that this concern is outside the present scope of these rules.

COMMENT: There should be a grandfather clause for individuals who have already completed State approved courses and businesses who are currently in the Department's voluntary program.

RESPONSE: The intent of these rules is to establish standards and assure that all persons offering radon related services meet these standards. The Department disagrees that persons doing business prior to the implementation of these rules should be automatically grandfathered and certified. The Department has provided a process whereby persons currently providing radon services in the State may continue their activities through the temporary and provisional certification status until they either receive approval or denial of a full certification.

COMMENT: Charcoal canisters should be exempt from these rules and they should be allowed for pre- and post-mitigation testing and diagnostics without certification.

RESPONSE: The Department disagrees with this comment. All radon testing devices handled by professionals must be deployed, retrieved and analyzed properly so that the data collected is reliable. Requiring persons utilizing these devices to adhere to certain basic standards will result in high quality, reliable data on which the public can confidently make decisions regarding their exposure to radon and the appropriate steps they need to take to reduce their exposure.

COMMENT: It seems that these rules will only serve to drive businesses away from the State and into the arms of foreign state businesses who do a large scale mail order business and who will not fall under these rules. How do you collect fees and reports from these people? Forcing the business to unregulated out-of-State businesses will lower the quality of service.

RESPONSE: These rules require that any person who wishes to perform radon testing or mitigation in New Jersey be certified. A mail order business who does business directly with the citizens of New Jersey is required to be certified under these rules.

COMMENT: The Department should take the lead and publish specific protocols for homeowner testing and clear, specific procedures and minimum equipment specifications for real estate transactions; referring to vague Federal protocols will only add confusion.

RESPONSE: The intent of these rules is to establish a certification program to increase the likelihood that residents of New Jersey receive competent and reliable services from the radon industry. The types of protocol development identified in the comment, while valid, cannot be addressed in these rules. The Department is continuously working to develop specific protocols and improve techniques in all areas of radon measurement and mitigation.

COMMENT: The mortgage industry is driving the radon testing and mitigation markets and requiring that results be below four pCi/l in order to sell a home or get a mortgage. We need help to stop these practices.

RESPONSE: The intent of these rules is to establish a certification program to increase the likelihood that residents of New Jersey receive competent and reliable services from radon vendors. The concerns expressed in this comment are outside the scope of these rules.

COMMENT: If the State believes that radon is a serious health threat then it should promote and encourage a healthy private industry to make available the necessary services. Forcing the industry to pay for the regulatory program presupposes a healthy industry driven by a profit motive; however, the industry is not healthy.

RESPONSE: N.J.S.A. 26:2D-75 directs the Department to establish a fee schedule to cover the costs of the certification program. This requirement was part of the law (P.L. 1986, c.83) which the New Jersey legislature passed in order to establish the certification program.

COMMENT: The health risk due to radon exposure is over-exaggerated. Smoking is the culprit causing lung cancer. The risk from radon exposure has turned into an emotional rather than factual issue. The radon issue seems to be based on conjecture, speculation, and guesswork rather than substantiated facts.

RESPONSE: Radon is an important health risk as documented by a number of reputable studies. The intent of these rules is to establish a certification program to increase the likelihood that residents of New Jersey receive competent and reliable services from radon vendors. The concerns expressed in this comment are outside the scope of these rules.

N.J.A.C. 7:28-27.2 Definitions

COMMENT: The definition of scope of employment is unintelligible.

RESPONSE: Anything a professional does to accomplish a job for which he or she is certified or to further the interest of an employer are considered the scope of employment.

COMMENT: The activities of the certified measurement technician should be more clearly defined as they are very similar to the activities of the certified measurement specialist.

RESPONSE: The Department believes that a substantial level of delineation in these categories already exists in the rules. The activities which the certified radon measurement technician are allowed to perform are a subset of those for which the certified radon measurement specialist is allowed to perform, namely to perform radon and radon progeny measurements. In addition to these activities, the certified radon measurement specialist is also responsible for other activities as outlined in other sections of these rules, for example N.J.A.C. 7:28-27.5, 27.33 and 27.34.

COMMENT: None of the definitions beginning with certified differentiate between full and temporary/provisional certification. The public needs to know the difference in certification status or provisional exceptions should not be allowed. The public will not be protected if businesses and individuals are allowed to operate without "full" certification.

RESPONSE: The temporary certification provision applies only to businesses which were on the Department's voluntary mitigation/measurement lists as of January 1, 1990. Temporary certification allows these businesses to continue work until the Department has the opportunity to review their new application under the mandatory program. The temporary certification lasts no more than one year. The Department sees no reason to differentiate in this area.

Provisional certification allows qualified persons to work in the radon field while waiting for the required test to be offered or the minimum working experience requirement to be met. Because these individuals have met the majority of the basic requirements for full certification, the Department finds there is no basis for differentiation. Persons failing to perform in a satisfactory manner will have their provisional status rescinded, therefore, the public will be adequately protected.

COMMENT: The Department's definition and use of the term effective(ness) does not seem to acknowledge that not all radon levels can be reduced below four pCi/l and that some clients may not be willing to pay to reduce levels below four pCi/l. Also, the use of four picocuries per liter as the criterion for effective(ness) is absurd, overreaching, flawed and violating common sense legislative authority, Federal and State precedent and exceeding current levels of technology.

RESPONSE: It is understood by the Department that unusual situations might arise which preclude the ability to reduce radon levels to below the four pCi/l level. However, numerous scientific studies have shown that properly designed systems will reduce radon levels to below four pCi/l in a large majority of cases and that four pCi/l is a realistic goal. The Department will take unusual situations into account in determining if a suspension and/or revocation is warranted in any particular case. The Department will examine mitigation effectiveness in two parts, first, in the lowest livable area and second, in the lowest living area and will base effectiveness on industry standards within the State.

When clients are unwilling to pay to mitigate to below four pCi/l, written documentation indicating the steps taken to reduce levels and the satisfaction of the client with the radon levels achieved and signed by both the client and the mitigator can be submitted to the Department. Failure to attain the defined level of effectiveness in these situations will not be counted on the mitigators effectiveness profile.

N.J.A.C. 7:28-27.3 General provisions

COMMENT: It may be difficult for certified businesses to comply with the requirement that they report changes in certified personnel 30 days prior to their use, especially given the common use of 14 days notice of quitting a job.

RESPONSE: The Department agrees with this point. Therefore, the Department will amend N.J.A.C. 7:28-27.3(f) to read, "... or mitigation techniques 30 days prior to their use by the certified business. The certified business shall also report to the Department, in writing, changes in certified personnel 14 days prior to their use."

COMMENT: The Department does not derive statutory authority from N.J.A.C. 7:18; this is an improper reference.

RESPONSE: Reference to N.J.A.C. 7:18 in N.J.A.C. 7:28-27.3(h) does not imply derivation of authority. N.J.S.A. 26:2D-70 et seq. required the Department to establish a certification program for persons who test and mitigate for radon and radon progeny. Since the Department had an existing laboratory and safe drinking water certification program, it was decided to place the radon regulations governing these activities under the Regulations Governing Laboratory Certification and Standards of Performance, N.J.A.C. 7:18. For radon, N.J.A.C. 7:18 and N.J.A.C. 7:28 are companion rules and as such are cross referenced in both rules.

COMMENT: Does N.J.A.C. 7:28-27.3(h) apply to a person who tests his own house?

RESPONSE: As stated in N.J.A.C. 7:28-27.31, those persons testing or mitigating buildings which they own are exempt from certification and the requirements of these rules.

N.J.A.C. 7:28-27.4 Signatories

COMMENT: What does 'penalty of law' mean?

RESPONSE: N.J.S.A. 26:2D-77 states that any person who violates the provisions of the act, namely N.J.S.A. 26:2D-72, 73, and 74, or any rule or regulation adopted pursuant thereto, will be guilty of a crime of the third degree. If the information given in an application is found to be untrue, inaccurate, or incomplete, the signatory can be found guilty of a crime of the third degree.

N.J.A.C. 7:28-27.5 Certification requirements for radon measurement business

COMMENT: The review, approval, and verification of reports by the certified measurement specialist pursuant to N.J.A.C. 7:28-27.5(a)1 should be limited to those reports submitted to the Department under N.J.A.C. 7:28-27.28; otherwise, if certified measurement specialist must review, approve, and verify all reports sent to homeowners, this would negate the use of a certified measurement specialist as a consultant.

RESPONSE: The intent of the requirement in N.J.A.C. 7:28-27.5(a)1 is that the certified radon measurement specialist review, approve, and verify all reports that are required in N.J.A.C. 7:28-27.28. To clarify this point, the following change will be made to N.J.A.C. 7:28-27.5(a)1, "... and verification of the reports required in N.J.A.C. 7:28-27.28."

COMMENT: The requirement that the certified measurement business must replace the certified measurement technician who has passed the authorized proficiency test within 45 days of the loss of services of the current proficient certified measurement technician is of concern given the current lack of availability of proficiency tests. One possible solution might be to identify the technician who will take the next test.

RESPONSE: The Department understands this concern. The New Jersey Radon Measurement Proficiency program which the Department is trying to establish would require participating chambers to offer proficiency testing at least four times a year to a particular party. However,

to accommodate for this situation the following addition is made to N.J.A.C. 7:28-27.5(i)1, "i. In the case where no proficiency testing is available through an authorized proficiency program within the 45-day period, the certified radon measurement business shall be subject to the requirements of N.J.A.C. 7:28-27.6(a)9iii, iv, and v."

COMMENT: Regarding N.J.A.C. 7:28-27.5(b), the term testing needs to be clarified; does this mean deployment and retrieval of a device; does this mean these activities can only be conducted by a certified measurement specialist or technician or by other people on the business' staff under the direction of the technician.

RESPONSE: In these rules, the term testing is interpreted broadly and includes all related radon measurement activities including but not limited to deployment, operation, and/or retrieval of devices. Accordingly, N.J.A.C. 7:28-27.5(b) requires that all tests be performed either by a certified radon measurement specialist or certified radon measurement technician.

COMMENT: A certified measurement and/or mitigation specialist employed by the business should be available to the Department at the business location during working hours and should be located within commuting distance of New Jersey.

RESPONSE: The Department does not understand the reasoning for this requirement and sees no compelling reason to require a specialist to reside within commuting distance of New Jersey.

COMMENT: If a business places charcoal canisters which they purchase from a certified laboratory and the laboratory sends the results directly to the customer, the business placing the canister should be exempt from certification.

RESPONSE: The certification process enables the Department to regulate a business to ensure that all sampling and analysis requirements are being adhered to and gives the Department legal authority to require the business to follow standard guidelines. The Department will be unable to determine if only certified persons are placing devices or that only certified laboratories are being utilized unless sampling businesses are monitored through certification. The Department finds no compelling reason to exempt businesses which only place devices from the certification process.

N.J.A.C. 7:28-27.6 Application requirements for a radon measurement business

COMMENT: A specific outline for an alternate Environmental Protection Agency (USEPA) proficiency program which is conducted on a more regular basis than USEPA's is needed.

RESPONSE: Such an outline and program are provided for in these rules, see N.J.A.C. 7:28-27.2, "authorized proficiency program". The Department has proceeded to identify radon chambers interested in participating in the New Jersey Radon Measurement Proficiency Program.

COMMENT: The requirement for two calibrations to meet provisional measurement business status when proficiency testing is not available is contrary to established United States Environmental Protection Agency (USEPA) protocol and an unnecessary expense.

RESPONSE: The situation described above is only invoked if the applicant has been unable to participate in an authorized proficiency program and pass a proficiency test. The Department believes participation in a proficiency program is the most desirable solution to this requirement and, as described in the previous response, the Department has taken steps to identify an alternate measurement proficiency program to try to ensure availability of proficiency testing. Barring this solution, the Department has decided that businesses can become certified on a provisional basis by showing proof of two calibrations. This requirement is contrary to established USEPA protocols but the matter here is not protocol but rather certification and the Department believes that this is not an unreasonable requirement on which to base provisional certification and that it does not place an undue financial burden on the business.

COMMENT: Regarding N.J.A.C. 7:28-27.6(a)9i and ii, which category is applicable to the electret ion chamber?

RESPONSE: In order to provide further clarification on which measurement devices fall into which categories, the following amendments are made to: 1) N.J.A.C. 7:28-27.6(a)9i, "... who have devices such as charcoal canisters, alpha track detectors, charcoal liquid scintillation, radon progeny integrating sampling units, and pump carbon radon grab samples or other devices analyzed by certified radon laboratories ...", and 2) N.J.A.C. 7:28-27.6(a)9ii, "... portable instrumentation such as continuous working level monitors, continuous radon monitors, electret ion chambers, evacuated scintillation cells, pump-collapsible bag devices, flask grab samples, and radon progeny grab samples shall participate in an ...".

ADOPTIONS

COMMENT: Proficiency tests do little to evaluate contractor proficiency on devices with factory set calibrations. Many radon measurement product manufacturers already offer calibration services for their products on a regular basis. The manufacturers role as factory calibrator should substitute for a proficiency test if the manufacturer can prove successful participation in an authorized proficiency program.

RESPONSE: The Department disagrees with this point. Although radon measurement product manufacturers offer calibration services there is no arrangement which requires that the purchaser use this service. The proficiency test acts as insurance that each machine and operator are checked on at least a yearly basis.

N.J.A.C. 7:28-27.7 Certification requirements for a radon mitigation business

COMMENT: Several comments were submitted regarding the requirement that certified mitigation businesses obtain all necessary permits, including:

- 1) getting permits will increase cost and timeframes, especially sensitive issues in real estate transactions;
- 2) this item does not seem to fall in the category of a certification requirement;
- 3) knows of no building codes in the State that deal with radon mitigation;
- 4) will guidance be provided on how to find the permitting people and what kind of permit(s) might be applicable if this requirement is incorporated;
- 5) how will these permitting officials be able to inspect the job if they know nothing about radon mitigation.

RESPONSE: Construction related permits are not a new requirement imposed by these rules. Securing permits undoubtedly increases the cost of mitigation installations; however, this should have a minor financial impact in a majority of mitigation installations. The Department discussed the point of time to secure a permit with persons at the New Jersey Department of Community Affairs (DCA). It is their belief that if the local construction authority requires permits for this type of work that it would take one to three days to secure the permit and that, in some instances, the permit can be secured by mail. The Department does not believe that this is an unreasonable time delay. N.J.A.C. 5:23-2.14 requires that permits be secured to, "... construct, enlarge, alter or demolish a structure, or change the occupancy of a building or structure requiring greater strength, exitway or sanitary provisions or to change to a different use group, or to install or alter any equipment for which provision is made or the installation of which is regulated by the regulations ...". This rule does not stipulate whose responsibility it is to secure the permit, for example, the contractor or the structure owner. N.J.A.C. 7:28-27.7(b) stipulates that in the case of radon mitigation work, it is the certified radon mitigation business's responsibility to secure any needed permits. It is the responsibility of the certified radon mitigation business to contact the municipal construction official where the structure to be mitigated is located to find out whether or not permits are needed for radon mitigation work. As a part of their continuing education program for local construction officials and as an introduction to N.J.A.C. 5:23-10, the DCA will be training these officials on radon and radon mitigation in retrofit situations as well as in new construction.

COMMENT: Unless 'as appropriate' has a very broad meaning, the requirement that the certified mitigation specialist conduct a visual inspection/diagnostics is overkill, may negate a small businesses' ability to retain a specialist as a consultant, and is something that should be performed by the mitigation technician. The direct services of the mitigation specialist should only be mandated in situations where an initial system's performance has failed.

RESPONSE: "As appropriate" means that the mitigation specialist performs the visual and/or diagnostic inspections he or she deems necessary to obtain the data he or she believes is necessary to help him or her determine the appropriate mitigation system to be installed in the building. The intent behind this requirement is to encourage the collection of sufficient, quality data, prior to mitigation system installation, to aid the mitigation specialist in selecting and designing the correct mitigation system for the situation on the first attempt. The Department does not understand the rationale for this requirement negating the ability to retain a consultant. N.J.A.C. 7:28-27.7(a) and (d) describe visual inspections and diagnostic tests performed by radon mitigation specialists. There is nothing in either of these two subsections which would negate or even limit a firm's option of retaining a radon mitigation specialist as a consultant.

ENVIRONMENTAL PROTECTION

ant. No compelling testimony was presented on why the mitigation technician was qualified to conduct these activities; therefore, the Department will make no changes to this requirement.

COMMENT: Several comments were submitted regarding the testing of radon levels in buildings before and after mitigation work is performed, including:

- 1) test results conducted within one year of mitigation work should suffice as pre-mitigation test;
- 2) pre-mitigation testing is unnecessary since the owner would have already secured testing;
- 3) by requiring mitigators to conduct pre-mitigation test you are forcing them to reestablish the fact that there is a problem;
- 4) only post-mitigation testing should be required;
- 5) as this section is written it will 'wreak havoc' on the manner in which mitigations are performed for real estate transactions;
- 6) post-mitigation test should be performed by an agent not associated with the certified mitigation specialist;
- 7) would the mitigation business have to hire extra staff to place canisters or would they have to have a certified measurement specialist or technician to do the testing;
- 8) why is the mitigation business not allowed to conduct its own pre- and post-mitigation testing under its mitigation business license;
- 9) the customer can determine the effectiveness of a mitigation job by doing pre- and post-mitigation test. If the work is performed incorrectly, unlike asbestos, it does not create a public hazard.

RESPONSE: Effectiveness is a criterion for certification renewal and suspension/revocation decisions. Therefore, pre- and post-mitigation testing must be comparable in type, duration, location, and time for an effectiveness evaluation to be made. For example, the Department would not find a follow-up charcoal canister test conducted in the basement in February to be a suitable pre-mitigation test for a mitigation that is conducted in August because seasonal variations might play a strong role in radon levels. This requirement does not negate the use of former measurements as pre-mitigation test, as long as the pre- and post-test are of comparable type, duration, location, and time. In the above example the homeowner could have secured a follow-up test in February; if the mitigation had also taken place in February then the follow-up test could also qualify as a pre-mitigation test.

The Department sees no reason why this requirement will negatively impact radon mitigations performed for real estate transactions. If mitigation is necessary, the pre- and post-testing requirement will consume very little additional time. The Department feels that the requirements of this regulation will enable it to determine whether any conflict of interest issues might have influenced the test results. As required in N.J.A.C. 7:28-27.7(f), all before and after mitigation work shall be performed by a certified measurement business. No compelling testimony was presented to effect a change in this requirement.

COMMENT: Several comments were submitted regarding the initial demonstration of effectiveness of mitigation systems, including:

- 1) the requirement is vague;
- 2) if the method is identified by the United States Environmental Protection Agency (USEPA), will the Department provide de facto recognition;
- 3) on what criteria are mitigation systems and materials to be evaluated by the Department;
- 4) will the Department provide a list of approved systems and materials;
- 5) this section will not allow mitigators to try different things when they have a difficult to mitigate house;
- 6) how does a new system or material become recognized by the Department.

RESPONSE: The intent of this requirement is for the mitigation businesses to reference recognized methods. This can be accomplished by referencing USEPA documents, papers from the literature or by the businesses submitting data they have collected on a particular mitigation system/method. The Department sees the currently recognized mitigation methods to be general in nature, that is, sub-slab ventilation, with a variety of acceptable variants, for example, combination sub-slab/block wall ventilation. Within a general category, the business should describe the variants it employs.

The Department believes that these rules do allow mitigation businesses to try and to develop new techniques via the exemptions in N.J.A.C. 7:28-27.31(a)4.

In order for new systems, methods, or materials to be recognized, a description of the system, method, or material must be provided to the

Department along with data which proves that the system, method, or material has been effective in reducing levels.

COMMENT: Although it is a good idea to provide clients with general information about a possible mitigation system installation, given the state of the art of radon mitigation, the system contemplated may be different from the final operating system. Therefore, either the Department should develop a generic brochure with this information and distribute it to the public or the certified mitigation business should provide detailed operating and maintenance instructions at the completion of the job.

RESPONSE: The Department finds this comment has merit. The intent of N.J.A.C. 7:28-27.7(h) was to make sure that the certified radon mitigation business discussed with the client the positives and negatives of any appropriate mitigation systems that might be installed in a structure. The Department still believes that these issues need to be discussed with the client, prior to installation, but agrees that specifics on operation and maintenance of the system finally installed can be discussed with the client after installation. Therefore, N.J.A.C. 7:28-27.7(h) is revised to read, "The certified radon mitigation business, prior to commencing any work, shall provide the client, in writing, a description of any adverse effects produced by operation of the mitigation system including a discussion of the possible types of energy costs to be incurred in operating the system. Immediately upon completion of the installation of the mitigation system, the certified radon mitigation business shall provide the client, in writing, instructions on the operation and maintenance of the system."

N.J.A.C. 7:28-27.9 Certification requirements for radon measurement specialists

COMMENT: Are advanced degrees in natural science or engineering applicable to the degree requirements for measurement specialist?

RESPONSE: Since graduate level degrees from accredited institutions presume a Bachelor's degree, they are intended to satisfy the education requirement in N.J.A.C. 7:28-27.9(a)1.

COMMENT: In section N.J.A.C. 7:28-27.9(a)1, how does an engineering degree have greater pertinence than a social science or humanities degree?

RESPONSE: The Department has reviewed engineering, social science and humanities curricula from several institutions. Engineering courses often include laboratories which involve the use of electronic measuring devices and the interpretation of data from these devices. Also, engineering courses require extensive technical report writing and technical data analysis. Reviews of social science and humanities curricula revealed only minimal exposure to what are traditionally referred to as the "hard" sciences. This educational experience does not satisfactorily train individuals to conduct environmental monitoring. The Department finds that due to the technical nature of radon measurement work, the social sciences and humanities are not relevant degrees for the purpose of complying with N.J.A.C. 7:28-27.9(a)1.

COMMENT: Would a master's degree in health services be an acceptable degree?

RESPONSE: There are many major fields of study offered by universities and colleges which quite often can not be evaluated merely by name. Such is the case with 'health services'. If this degree requires course work which is substantially equivalent to those degrees listed in N.J.A.C. 7:28-27.9(a)1, then it would satisfy the requirements of this subchapter. However, if the degree is primarily administrative in content, it would fail to qualify in this instance.

COMMENT: "Natural science", as used in N.J.A.C. 7:28-27.9(a)1, leaves room for wide interpretation.

RESPONSE: The Department finds this comment has merit. Therefore, N.J.A.C. 7:28-27.9(a)1 is amended to read, "... accredited institution in biological sciences, chemistry, physics, geology, or other natural science ...".

COMMENT: A certified health physicist and certified industrial hygienist with either a comprehensive practice or radiation aspects background should satisfy all the requirements for a measurement specialist.

RESPONSE: The American Board of Industrial Hygiene requirements for certification as an industrial hygienist are as follows:

1. Four year college degree in biology, chemistry, physics or other related field such as environmental science.
2. One year of professional experience in industrial hygiene to receive Industrial Hygienist in Training certification.
3. Five years professional experience in industrial hygiene to be fully certified as an industrial hygienist.

4. Both certifications require successful completion of a qualifying examination.

While these requirements are extensive, there is no indication that by virtue of being certified in these areas a person has gained extensive knowledge of radon and the various measurement techniques. Therefore, persons certified as industrial hygienists shall comply with the provisions of N.J.A.C. 7:28-27.9 prior to becoming certified as a radon measurement specialist. Any radon or radiation experience that the certified industrial hygienist has gained in their career will count towards fulfilling the requirements of N.J.A.C. 7:28-27.9 and N.J.A.C. 7:28-27.10.

The American Board of Health Physicists lists the following requirements for certification:

1. A minimum of a bachelor's degree from an accredited institution in physical science, engineering, or in a biological science with a minor in physical science or engineering. In lieu of the minor in physical science or engineering, twenty college level credits in physical sciences, engineering, or mathematics. In lieu of the bachelor's degree, sixty credits of college level work in physical or biological science, engineering, or mathematics, of which twenty credits shall be physical science, engineering, or mathematics.

2. Six years of professional experience in health physics, three of which shall be in applied health physics.

3. Graduate level degrees may be substituted for up to two years of experience.

4. Successful completion of a two part examination.

While these requirements are extensive, there is no indication by virtue of being certified in these areas a person has gained extensive knowledge of radon and the various measurement techniques. Therefore, Certified Health Physicists are not exempt from the training, examination, and radon measurement experience requirements of N.J.A.C. 7:28-27.9 and 27.10. To accommodate a person certified through the non bachelor's degree option above, N.J.A.C. 7:28-27.9(a)1i is added upon adoption and states, "Persons currently certified in the United States as a Certified Health Physicist are considered to have met the degree requirements and radiation experience of this section."

COMMENT: The Department has failed to demonstrate that a degree has anything to do with a candidate's ability to perform measurements at the specialists level. The education requirements are arbitrary, too strict and excessive. There needs to be an equivalent radiation work experience category for persons who have received extensive radiation training through the service or nuclear power plant programs.

RESPONSE: The Department believes that education in relevant disciplines will enhance an individual's ability to perform as a measurement specialist because these disciplines often include laboratory classes which involve the use of technical measurement devices and the interpretation of data from these devices. These curricula also require basic understanding of physical principles and extensive technical report writing and data analysis. These are skills which will aid the measurement specialist in meeting his responsibilities which exceed merely performing measurements and include data analysis, technical report generation, equipment maintenance, and running quality assurance and worker radiological safety programs.

However, the comment regarding equivalency between education and certain radiation work experience may have merit. Therefore, the Department has decided to adopt the education requirement, and the one year radiation experience requirement, add definition to the types of radiation work experience deemed appropriate for the one year requirement, and make a future proposal on a work requirement that would substitute for the Bachelor's degree. Thus, N.J.A.C. 7:28-27.9(a)2 is deleted and N.J.A.C. 7:28-27.9(a)1ii is added, stating, "Radiation work experience shall include documentable experience in two or more of the following areas: (1) Establishment and/or evaluation of a radiation protection program; (2) Design and/or the evaluation of the design of the radiation protection aspects of a facility; (3) Design and implementation of a radiation protection training course or program; (4) Development of an experimental and/or measurement program designed to answer questions related to radiation protection; (5) Evaluation of measurement data; (6) analysis and solution of radiation protection problems; and (7) Preparation, interpretation and implementation of recommendations and regulations." ... N.J.A.C. 7:28-27.9(a)3-5 are recodified 2-4.

COMMENT: There should be latitude built into the qualification description for measurement specialist so that specific individuals could be certified based on special education or work experience not currently specified in the rule.

ADOPTIONS

RESPONSE: The Department believes that while sufficient latitude exists in the rule to adequately address varying educational and experience backgrounds of potential candidates while concurrently ensuring that only qualified persons are certified as radon measurement specialists, there may be merit in this comment. The Department will take actions to amend this rule, in the future, in this regard.

COMMENT: The requirement of N.J.A.C. 7:28-27.9 discriminates against the individual that may have the aptitude and abilities to perform the required services but not the specific background.

RESPONSE: The Department finds that the rule requirements are broad enough to include all persons who are truly qualified and be certified as radon measurement specialists.

COMMENT: The degreed individuals required in N.J.A.C. 7:28-27.9(a)1 may have no experience with the physical and mechanical factors that influence radon concentrations in homes. Ideally, a construction mechanic in ventilation or with a building science or general contracting background would be more appropriate.

RESPONSE: A degree does not by itself qualify an individual to become certified as a radon measurement specialist. There are additional/alternate requirements of radiation work experience and six months of measurement work experience to qualify as a measurement specialist.

Ventilation or building science construction mechanics, or general contractors may have suitable credentials to act as mitigation specialists, however, their experience and training would likely be inadequate for radon measurement specialists.

COMMENT: Someone who qualifies as a laboratory supervisor under N.J.A.C. 7:18 should automatically be certified as a measurement specialist without further testing or fees.

RESPONSE: The supervisor requirements which deal with radiological laboratories are found under N.J.A.C. 7:18-2.7(d)6 and are as follows:

1. A bachelor's degree from an accredited institution in chemistry, radiochemistry, radioisotope technology, biology, physics, engineering, or other applied science, and
2. Subsequent to graduation, at least five years laboratory training or experience in any of the above, two of which shall be in low-level radiation measurements and radiochemical procedures being considered for certification; and
3. Demonstrate competency in the operation of radiological equipment and radiological procedures during an inspection by a representative of the Department.

Persons working in this capacity would likely fulfill the requirements of N.J.A.C. 7:28-27.9 except possibly for subsection (a)3. The Department disagrees that these individuals should be granted certification without fulfilling the testing requirements of N.J.A.C. 7:28-27.9(a)4 or attending training courses required in N.J.A.C. 7:28-27.9(a)3. Only after receiving radon related instruction and passing an examination can the Department be reasonably sure these individuals are qualified to conduct all types of radon measurements. The fee requirements cover the costs associated with reviewing applications and administering the examinations. Therefore, the Department finds no compelling reason to exempt these individuals from the payment of these fees.

COMMENT: Drop educational requirements and radiation work experience and require specific training in the type of measurement device used and passing an examination.

RESPONSE: It is highly improbable that a person who lacks relevant education and/or radiation experience will be able to provide radon measurement services in a professional manner. The duties of a radon measurement specialist extend beyond the mere measurement activity and device placement. Measurement strategy, quality assurance, data interpretation and client recommendations are but a few of the responsibilities of a radon measurement specialist. Persons described in the comment may qualify as radon measurement technicians in N.J.A.C. 7:28-27.12.

COMMENT: Several comments were submitted regarding the radiation work experience outlined in N.J.A.C. 7:28-27.9(a)2i-iv, including:

- 1) this requirement is unclear, particularly when used in conjunction with lecture, briefings and seminars which are pedagogical pursuits, not work, in the generally accepted definition of that word;
- 2) you should require three years of radiation work experience;
- 3) asking a business to employ someone with general radiological training seems overly broad and an unnecessary expense for a business focusing specifically on radon.

RESPONSE: The Department agrees that the radiation requirement, as written, is unclear. Clarification of radiation work experience has been provided in a previous response.

ENVIRONMENTAL PROTECTION

The person commenting failed to submit compelling testimony which would clearly outline why three years of radiation work experience is required for certification, therefore the Department sees no reason to change this requirement.

Due to the nature of the issue under discussion, namely a radioactive, colorless, odorless gas, the Department believes that a specialist needs more than a general scientific and analytical background, as provided for through the educational requirements for a measurement specialist. The Department believes that this individual needs to be familiar specifically with radiation equipment and analysis, biology, and protection.

COMMENT: Several comments were submitted regarding the requirement for measurement work experience for a measurement specialist, including:

- 1) should allow accumulation of required six months experience to coincide with 12 month provisional certification;
- 2) this requirement is excessive, with proper training an individual should begin testing as a specialist immediately;
- 3) how does one get work experience if the individual cannot get certified;
- 4) is previous work experience essential or does it only serve to bar large numbers of contractors who have technical experience with ventilation systems from entering the radon industry;
- 5) should require one year measurement work experience along with three references from individuals in the radon measurement field to verify years of service and duties performed.

RESPONSE: The Department believes that there are certain unique aspects of radon work that warrant the completion of six months work experience prior to full certification. At the same time, it does not wish to restrict entry of new persons into the field. Therefore, N.J.A.C. 7:28-27.11(b) allows for the accumulation of the required six months of measurement work experience while under provisional certification. No compelling testimony was presented which would clearly outline why a year of measurement work experience should be required for certification; therefore, the Department disagrees with this point. The Department will check applications and verify experience claims prior to issuance of certification.

COMMENT: Several comments were submitted regarding training requirements for measurement specialist, including:

- 1) training should be focused on radon rather than radiation with at least 40 hours instruction in measurement equipment and protocols, health effects, quality control procedures, theory of radon entry into buildings, mitigation, and worker health protection plan, and any test given should be based on the above curriculum;
- 2) there is no demonstrable need for this requirement given the requirements of N.J.A.C. 7:28-27.9(a)1, 2, and 3;
- 3) completion of a State approved course should be sufficient to certify a measurement specialist;
- 4) if you can pass an exam then N.J.A.C. 7:28-27.9(a) 1, 2, and 4 are moot. Only experience adds to demonstrated ability of applicant to perform as specialist.

RESPONSE: The requirements of N.J.A.C. 7:28-27.9(a)4 already specify that although the course material covers radiation, the emphasis of the course will be on radon. Based on review of previously conducted courses and materials, the Department sees no reason to require more than 24 hours of training for the radon measurement specialist category.

The Department believes that before a person can provide services to the public, N.J.A.C. 7:28-27.9(a)3, that he or she must receive specific training on radon. Issues such as the basics about radon, the types of measurement devices, the health affects due to exposure from radon and radon specific measurement protocols may not be covered in the requirements of N.J.A.C. 7:28-27.9(a)1 or 2.

The Department disagrees the course or exam alone are sufficient requirements for a measurement specialist. The educational and radiation experience provide the individual with a basic understanding of scientific measurement practice, analytical procedures, data generation, and basic radiation knowledge. The training course requirement provides the radon specific information which is necessary to more fully prepare an individual to work in the radon measurement field.

COMMENT: Regarding N.J.A.C. 7:28-27.9(a)3, why is this the only location that specifies accumulation of measurement work experience within the State or a reciprocal agreement state? Since there are no reciprocal states and likely will not be for some time, depending on how this is interpreted, a Pennsylvania company would not have any qualified time.

RESPONSE: The phrase, 'or reciprocal agreement state' was left out by mistake in N.J.A.C. 7:28-27.12(a)1, 27.13(a)2, 27.15(a)2, 27.16(a)3, 27.18(a)2, and 27.19(a)3. These sections will be revised to include the 'or reciprocal agreement state' phrase.

COMMENT: Measurement specialists should be certified for specific devices.

RESPONSE: The Department disagrees with this point. The training available to the industry is not device specific, but rather of a general nature to acquaint the specialist with a variety of devices, how to use them, and how to interpret the data from them. Measurement businesses are however certified for specific devices.

COMMENT: The certification process should be designed so that a principal or management individual in a business can become the certified radon measurement specialist.

RESPONSE: The requirements of these rules do not prohibit the certified radon measurement specialist from being the principal or management individual in a business. The Department believes that the requirements for radon measurement specialist are necessary to ensure that measurement results are reliable, that measurement equipment is properly maintained and that quality assurance/control of the sampling/measurement process is maintained.

N.J.A.C. 7:28-27.10 Application requirements for radon measurement specialists

COMMENT: Proof, as utilized in N.J.A.C. 7:28-27.10, should be carefully defined, thereby reducing bureaucratic latitude.

RESPONSE: Proof as used in N.J.A.C. 7:28-27.10(a)2 is defined. For N.J.A.C. 7:28-27.10(a)3 and 4, proof means reasonable evidence supporting past experience, radiation work or measurement work claims. This evidence should include, but is not limited to, the name of the company worked for, a contact point at the company, the length and kind of experience, and responsibilities of the position. For N.J.A.C. 7:28-27.10(a)5 and 6, proof means a copy of the letter or certificate of successful completion of the Department approved course or exam.

These definitions of proof can also be applied, where appropriate, to N.J.A.C. 7:28-27.13, 27.16, and 27.19.

N.J.A.C. 7:28-27.12 Certification requirements for radon measurement technicians

COMMENT: Several comments were submitted regarding the work experience for a measurement technician, including:

- 1) should require one year work experience and that work experience should be verified by three references within the radon measurement field;
- 2) this section should be eliminated. The protocols and instruments are clear and simple to use. After proper training and passing an exam, a technician should be able to perform as a specialist without six months experience;
- 3) latitude should be built into the qualification descriptions so that specific individuals could be certified based on special education or work experience not currently specified in the rules;
- 4) is previous work experience essential or does it only serve to bar large numbers of contractors who have technical experience with ventilation systems from entering the radon industry? How does one get work experience if the individual cannot get certified?

RESPONSE: The Department has determined that persons meeting the requirements of N.J.A.C. 7:28-27.12 have sufficient knowledge and experience to provide radon measurement services of satisfactory quality. Proof of experience is required in N.J.A.C. 7:28-27.13 and will be verified by the Department prior to issuance of certification.

The Department disagrees with the second point. After filing an application and other required information and passing a course and exam, the technician can start to work immediately and accumulate the necessary technical measurement work experience as a provisional candidate while under the supervision of a specialist. The Department finds that the additional educational requirements, work experience and training for a person to become a measurement specialist are necessary to ensure worker safety, correct operation of equipment, quality assurance and control of the data collected and correct interpretation of the data.

As written, N.J.A.C. 7:28-27.12 contains no educational requirements for the radon measurement technician category. The technical measurement work experience required can be accumulated under the provisional title after the applicant has completed the other certification requirements.

A person does not have to have the required technical work experience to apply for certification. If a person has no technical work experience,

he or she can be certified via the provisional process outlined in N.J.A.C. 7:28-27.14(b).

COMMENT: Several comments were submitted regarding the educational requirements for a measurement technician, including:

1) remove the educational requirements for the people actually placing the canister. That person does not need to know it all, only the sampling procedures;

2) a degree does not reflect, increase, nor guarantee the level of competency of aptitude or any person. In lieu of a degree those persons should show more years of firsthand experience in the measurement field, related education/continuing education, and proof of participation in a proficiency program.

RESPONSE: N.J.A.C. 7:28-27.12 contains no educational requirements for the category of radon measurement technician.

COMMENT: Several comments were submitted regarding the training requirements for a measurement technician, including:

- 1) this is an unnecessary training requirement.
- 2) this requirement should be waived for certified industrial hygienist.

RESPONSE: The Department believes that before a person can provide services to the public that he or she must receive specific training on radon. Issues such as the basics about radon, the health effects due to exposure from radon and the types of measurement devices and how to use them, and radon specific measurement protocols are not covered in the other requirements of N.J.A.C. 7:28-27.12.

COMMENT: The technician should assume a stronger and more pervasive role with ongoing measurement activities.

RESPONSE: The primary duties of the technician are to perform radon and radon progeny measurements, as outlined in the definition of a certified radon measurement technician in N.J.A.C. 7:28-27.2.

N.J.A.C. 28:27.15 Certification requirements for radon mitigation specialists

COMMENT: Why are science, electrical and chemical engineering, and industrial hygiene degrees not included in relevant college education for mitigation specialist? How will the Department handle the fact that different schools have different names for similar curricula? Also, will advanced degrees in relevant college education categories be acceptable?

RESPONSE: Radon mitigation involves the implementation of engineering and construction principles. Courses in the general sciences rarely provide students with in-depth knowledge of these disciplines. Therefore, general science and industrial hygiene degrees will not be considered relevant education for this section. However, this comment has merit in the areas of electrical and chemical engineering. Engineering curricula, regardless of specialty, include general engineering principles and require students to master basic concepts. Therefore, N.J.A.C. 7:28-27.15(a)1i will be revised to read, "Relevant college education means an undergraduate or graduate curriculum in architecture or engineering." The Department believes that sufficient latitude has now been added, by specifying engineering rather than a particular discipline in engineering, to accommodate the names which different schools use when conferring degrees.

COMMENT: Certified Industrial Hygienists and licensed Professional Engineers should satisfy education/experience, training and examination requirements for mitigation specialists.

RESPONSE: According to the American Board of Industrial Hygiene, requirements for certification as an industrial hygienist are as follows:

1. Four year college degree in biology, chemistry, physics or other related field such as environmental science.
2. One year of professional experience in industrial hygiene to receive Industrial Hygienist in Training certification.
3. Five years professional experience in industrial hygiene to be fully certified as an Industrial Hygienist.
4. Both certifications require successful completion of a qualifying examination.

While these requirements are extensive, there is no indication that by virtue of being certified in these areas a person has the educational background or training to conduct successful radon mitigations. Therefore, persons certified as Industrial Hygienists are not exempt from the education, experience, training and examination requirements of N.J.A.C. 7:28-27.15 and 27.16 for the purpose of becoming certified as a radon mitigation specialist.

According to the Board of Professional Engineers and Land Surveyors, the requirements for being licensed as a Professional Engineer are as follows:

1. A four year engineering degree, four years of engineering experience and successful completion of a 16 hour N.C.E.E. examination,

ADOPTIONS

OR

2. Four year Board approved science degree (engineering related), six years of engineering experience and successful completion of the 16 hour N.C.E.E. examination,

OR

3. Four year Board approved degree, 15 years of engineering experience and successful completion of the N.C.E.E. examination.

While these requirements are extensive, there is no indication that by virtue of being licensed as Professional Engineer a person has the knowledge to develop successful radon mitigation systems. Therefore, persons licensed as a Professional Engineer are not exempt from the experience, training and examination requirements of N.J.A.C. 7:28-27.15 and 27.16. To accommodate persons licensed through option number 3 above, N.J.A.C. 7:28-27.15(a)1 will be revised to read, "... or work experience. Persons currently licensed in New Jersey as Professional Engineers are considered to have met the five years of relevant college education and work experience requirements of this section."

COMMENT: Mitigation specialist education requirements are unnecessary and not related to the workplace.

RESPONSE: The education requirements allow persons with relevant college preparation but limited experience to enter the field. Education is an alternate route and not the sole requirement of this rule. The Department finds no compelling reason to eliminate this option from the proposed rule.

COMMENT: Degrees in Heating, Ventilation, and Air Conditioning (HVAC) and a variety of two year degrees would be suitable to count for mitigation specialist. HVAC does not seem like a relevant work experience unless you install air to air exchangers. Does HVAC work experience alone satisfy education/experience requirements?

RESPONSE: Education in HVAC at accredited colleges does contain courses on basic engineering and construction principles and is applicable to the relevant education requirements of N.J.A.C. 7:28-27.15. Credit for education in these areas will be given on a semester equals six months basis. Twelve credits equals one semester. Persons with applicable education credits must accumulate additional relevant work experience to equal the five year total required for certification eligibility. N.J.A.C. 7:28-27.15(a)1i is revised to read, "... architecture, engineering, or HVAC studies".

The Department believes that HVAC experience provides a person with a background in basic construction principles and the effects and pressure balancing of air usage systems in structures. The Department believes that these are applicable experience areas for radon mitigation work. Five years of HVAC work experience alone does satisfy the education/experience requirements of this section.

COMMENT: Radon mitigation or radiation work experience should be added to relevant work experience. Mitigation work experience should be given more weight than education.

RESPONSE: The relevant work experience requirement of N.J.A.C. 7:28-27.15(a)1ii is required to ensure that candidates for certification have had sufficient exposure to the building trades to enable them to become intimately familiar with standard building practices. The Department does not believe that radiation experience meets this goal. However, the Department believes that persons having five years radon mitigation work experience satisfy the work experience of N.J.A.C. 7:28-27.15(a)1ii. Therefore, this subparagraph will be amended to read, "... or design and installation of radon mitigation systems."

The Department disagrees that mitigation work experience should be given more weight than education in N.J.A.C. 7:28-27.15(a). The combination of education and experience will likely result in persons capable of performing consistently effective radon mitigations. An understanding of basic engineering principles may also result in more innovative approaches to mitigation design and installation. The Department finds no compelling reason to make changes in this area of the rule.

COMMENT: Is previous mitigation work experience essential or does it only serve to bar large numbers of contractors who have technical experience with ventilation systems from entering the radon industry?

RESPONSE: The Department finds that mitigation work experience is essential for the effective installation of radon mitigation systems. Contractors who meet the requirements of N.J.A.C. 7:28-27.15(a)1, 3, and 4 can satisfy the mitigation experience requirements of N.J.A.C. 7:28-27.15(a)2 and N.J.A.C. 7:28-27.16(a)3 by serving in a provisional capacity pursuant to N.J.A.C. 7:28-27.17(b). The work experience requirements are not intended to preclude any qualified group from entering the radon field and the Department is confident it has taken precautions to ensure that no qualified group is excluded from participation.

ENVIRONMENTAL PROTECTION

COMMENT: Total education/experience for mitigation specialist should be: 1) seven years and experience should be verified by three sources, and 2) a bachelor's degree and one year of relevant work experience.

RESPONSE: The five year education/experience requirement is consistent with many certification programs. Persons meeting the criteria in this rule should have sufficient tools to design and install effective mitigation systems. The Department will check applications and verify experience claims prior to issuance of certification.

COMMENT: Certification of mitigation specialist should be tied to five years work experience only and the passing of the United States Environmental Protection Agency's Radon Contractor Proficiency Program.

RESPONSE: The Department finds that the education/experience requirements of N.J.A.C. 7:28-27.15(a) are adequate and need no modification. The Department also finds that it is imperative that persons gain a minimum of six months radon mitigation experience to become certified as a radon mitigation specialist. General work experience/education and the passing of an examination are, by themselves, insufficient in determining the qualifications of a person to do radon mitigation work.

COMMENT: Latitude should be built into qualification descriptions so specific individuals can become certified mitigation specialists based on special education or work experience not currently specified in the rule.

RESPONSE: Adequate latitude exists in the rules to qualify persons who have specific skills within the major areas identified. Should, in the future, additional education/experience need inclusion, the Department will take steps to amend this section of the rules. Presently, the Department feels it has adequately addressed this issue and finds no compelling reason to make modifications at this time.

COMMENT: How does one get mitigation work experience if the individual cannot get certification?

RESPONSE: Persons meeting certain requirements of N.J.A.C. 7:28-27.15 and 27.16 may qualify for provisional certification under N.J.A.C. 7:28-27.17. Provisional certification will allow persons to gain the necessary mitigation work experience for certification.

COMMENT: Does relevant work experience have to be real, an activity paid for, or can it be experience gained through a hobby?

RESPONSE: Relevant work experience must be professional experience. This means that a person has been monetarily compensated for the activity. This is consistent with other certification and professional programs.

COMMENT: An individual who only designs mitigation systems or only performs mitigation diagnostics should be considered separately from a mitigation specialist.

RESPONSE: The Department disagrees with this point. The ability to design a properly functioning radon mitigation system and performing and interpreting mitigation diagnostics requires a basic understanding of radon dynamics, construction practices, and engineering principles. No compelling testimony was offered to support a change in this position.

COMMENT: Individuals being certified as mitigation specialist should be required to have at least one year mitigation work experience and that should include installing systems and the mitigation work experience should be verified by three references.

RESPONSE: The Department has determined that persons meeting the requirements of N.J.A.C. 7:28-27.15 have sufficient knowledge and experience to provide radon mitigation services of satisfactory quality. Proof of experience is required in N.J.A.C. 7:28-27.16 and will be verified by the Department prior to issuance of certification.

COMMENT: Training requirements for an applicant for mitigation specialist and technician are unnecessary.

RESPONSE: The Department disagrees with this comment. While other education and/or work experience may provide an individual with a basic understanding of general construction/engineering principles, radon specific instruction is necessary to more fully prepare an individual to work in the radon mitigation field. The training requirements of these rules are not overly burdensome and will not cause undue hardship to applicants.

COMMENT: Will the final rules adopt the United States Environmental Protection Agency Radon Contractor Proficiency (RCP) training course?

RESPONSE: As stated in N.J.A.C. 7:28-27.15, necessary training requirements can be satisfied by taking a Department approved course. The Department is proceeding to review available courses and determine whether or not they satisfy the requirements of these rules. If the course

does satisfy the requirement(s) of these rules, the categories (for example radon measurement specialist, radon mitigation technician, etc.) which it is applicable to will be identified and action will be taken to officially approve the course. Although the RCP course has not been completely reviewed, it would appear to only be applicable to the mitigation categories.

N.J.A.C. 7:28-27.18 Certification requirements for radon mitigation technicians

COMMENT: Regarding the requirements for mitigation technician, N.J.A.C. 7:28-27.18, the following comments were submitted:

1) the requirement should be six months building trades experience and two years mitigation work experience;

2) it should be three years building trades experience and one year technical mitigation work experience and the experiences should be verified by three references;

3) latitude should be built into qualification descriptions so specific individuals can be certified based on special education or work experience not currently specified in the rule;

4) is previous work experience essential or does it only serve to bar large numbers of contractors who have technical experience with ventilation systems from entering the radon industry;

5) how does one get work experience if the individual cannot get certified.

RESPONSE: The Department believes the work experience and technical mitigation work experience in N.J.A.C. 7:28-27.18 are sufficient to ensure that radon mitigation technicians have adequate experience and are adequately trained. The Department will check applications and verify experience claims prior to issuance of certification. The Department agrees that additional latitude can be accommodated for in the work experience category for the radon mitigation technician so the qualification categories are more in line with the acceptable work experience of the radon mitigation specialist. Therefore, N.J.A.C. 7:28-27.18(a)1 will be revised to read, "... in the building or construction trades, including the heating, ventilation, and air conditioning trade;". The Department wishes to note that there are no formal educational requirements for the radon mitigation technician. Persons lacking the needed technical mitigation work experience can satisfy this requirement via the provisional certification process in N.J.A.C. 7:28-27.20.

N.J.A.C. 28-27.21 Recordkeeping requirements for a certified radon measurement business or a certified radon mitigation business

COMMENT: Three years should be an adequate time period to keep records specified in N.J.A.C. 7:28-27.21(a) and (b).

RESPONSE: The Department believes that five years is more appropriate because it is consistent with the Department's holding of records, under the statute, and may be necessary for enforcement purposes.

COMMENT: Requiring that the certified mitigation business maintain copies of mitigation contracts is acceptable; however, mitigations are often performed after the owner has already vacated the premises and delegated mitigation activity to a real estate agent; therefore, the contract would not be signed by the owner and would violate the requirements of N.J.A.C. 7:28-27.21(b)5.

RESPONSE: The Department has reviewed this point and found that it has merit. To address instances where the owner is unavailable to sign a mitigation contract, N.J.A.C. 7:28-27.21(b)5 is revised and will read "... signed by the owner of the building mitigated or his or her agent to act on behalf of the owner of the building mitigated."

N.J.A.C. 7:28-27.22 Renewal of certification

COMMENT: By associating the definition of effective(ness) with four pCi/l, the Department reinforces the false faith that mitigating to four pCi/l makes a residence safe; the action level should be lowered to two pCi/l.

RESPONSE: Although some data indicate significant health risks due to chronic exposure to radon at levels below four pCi/l, current mitigation techniques may not be cost effective in reducing levels to below this value in all situations. The Department sees no reason to redefine effectiveness to levels below four pCi/l.

COMMENT: The certification period should be for two years.

RESPONSE: Annual certification affords the Department the ability to reevaluate each certified person on a regular basis. Reevaluating certification at yearly intervals will likely enable the Department to correct problem situations before their impact is widespread. Therefore, the one year certification period is appropriate.

COMMENT: Requiring that renewal certification applications contain all information required in the initial certification application is unnecessary; the renewal certification application should only contain information which has changed since the previous application.

RESPONSE: Each renewal application will be evaluated on its own merits and contents. Therefore, complete applications must be submitted for each renewal. Because the majority of the information in the renewal application has been previously assembled, the Department feels the impact on the applicant is negligible. Also, because business representatives are certifying that all information provided is true and accurate, the entire application must be submitted to reduce confusion over what the applicant is actually certifying.

COMMENT: Several comments were submitted regarding continuing education requirements for certified persons including:

1) that the requirements were too stringent;

2) that the required number of hours were excessive and should be eight for the certified specialist and four for the certified technician;

3) that provisions need to be incorporated for the case where there are no or insufficient Department offered or approved courses available;

4) that most certification programs requiring continuing education units grant credit for attending professional meetings where research and status reports are given.

RESPONSE: The Department has reviewed the continuing education requirements for this program and examined the requirement for other programs and agrees that the necessary course content can be covered in less time. Therefore, N.J.A.C. 7:28-27.22(c) is revised to read, "1. Eight hours for maintaining . . .", "2. Four hours for maintaining . . .", "3. Eight hours for maintaining . . .", and "4. Four hours for maintaining . . .". The Department finds no compelling reason why these number of hours will not be available; therefore, no amendments will be made to address this concern.

The Department does agree that language changes can be made to accommodate the crediting of less formal continuing education units. Therefore, N.J.A.C. 7:28-27.22(c) is amended to read, "... shall accumulate continuing education credits consisting of lectures offered or approved by the Department . . .". The Department will periodically publish a list of approved continuing education lectures. The list will outline how many hours the lecture will count for and to which categories it is applicable.

COMMENT: The requirement that a certified measurement business participate and pass one proficiency test a year should be required of a primary testing lab if the secondary testing business uses passive devices.

RESPONSE: This situation is already accounted for in N.J.A.C. 7:28-27.6(a)9i.

COMMENT: Are program and test the same in N.J.A.C. 7:28-27.22(d) and N.J.A.C. 7:28-27.22(d)2?

RESPONSE: Authorized Proficiency Program and Proficiency Test are defined in N.J.A.C. 7:28-27.2 and are not the same. The distinction is made to accommodate for the situation which recently arose in round six of the United States Environmental Protection Agency's Radon Measurement Proficiency Program where not all businesses participating in the program could be 'actively' tested in the round due to demand for the service. The Department is proceeding to identify alternate programs and tests to ensure the availability of yearly proficiency testing.

N.J.A.C. 7:28-27.23 Reciprocity

COMMENT: What states are reciprocal agreement states and, if a business is accepted into New Jersey's certification program through reciprocity, why is there a need for a certification, course, and/or exam fee?

RESPONSE: New Jersey cannot proceed to identify reciprocal agreement states until these rules are final; therefore, presently, New Jersey has no reciprocal agreements with any state. In the reciprocal agreement situation, certification fees will still be required because the Department must initiate the paperwork necessary to track the activities of the person to be certified. It is unlikely that other state exams will cover specific material on New Jersey radon conditions, laws, and regulations; therefore, it will most likely be necessary for an applicant to take the New Jersey radon exam. If the course requirements and content of a reciprocal agreement state are found to be equivalent to the requirements of these rules, it will not be necessary for the applicant to take an additional initial course and, therefore, the candidate will not pay the course fee.

N.J.A.C. 7:28-27.24 Inspections

COMMENT: I work out of my home which is located in Pennsylvania; will the Department really come to inspect my 'facility'? Also, I am a

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sole proprietor/employee, how will the Department inspect a locked "office"? Any inspection conducted in a residence-based business should be limited to inspecting only those areas used for business purposes.

RESPONSE: The Department will conduct business facility inspections at the business location identified in N.J.A.C. 7:28-27.6(a)1 and 27.8(a)1. The language in N.J.A.C. 7:28-27.24 does not preclude the Department from making inspections. The primary purpose of a facility inspection is to ascertain compliance or non-compliance of the business with the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., N.J.A.C. 7:28-27, any certification, or any other agreement or order issued or entered into pursuant thereto. The Department shall examine such equipment, records, or parts of a facility deemed necessary to determine this compliance or non-compliance.

COMMENT: No certified business should be responsible for deploying and returning Departmental devices.

RESPONSE: The Department believes that this technique is the most reliable technique to use to assess radon sampling/measurement equipment. The Department believes that this standard practice is appropriate.

COMMENT: What is considered an inspection; is a business site inspection the same as a job site inspection or a test procedure inspection?

RESPONSE: All of the above are types of inspections and the Department's rights associated with inspections are outlined in N.J.A.C. 7:28-27.24.

COMMENT: It seems that by referencing N.J.S.A. 26:2D-1 in N.J.A.C. 7:28-27.24(a), the Department had recommended that radon be categorized with radioactive waste firms, radiation waste, and x-ray equipment. This categorization may greatly effect a business' ability to secure insurance coverage. Many insurance companies currently insure radon businesses as they do plumbing contractors resulting in annual premiums of \$12,000. This new categorization may cause businesses to be reclassified along with a hefty increase in premiums (approximately \$250,000 a year).

RESPONSE: This reference comes from the legislation which requires the Department to establish the certification program. Public Law 1986, chapter 83, which became N.J.S.A. 26:2D-70 et seq., was written as a supplement to P.L. 1958, c. 116 which became N.J.S.A. 26:2D-1 et seq.

COMMENT: Several comments were submitted regarding N.J.A.C. 7:28-27.24 including:

- 1) that the inspection should be shown in writing 10 days prior to the inspection;
- 2) all inspections should be announced with 48 hours notice given and should be conducted during business hours;
- 3) non-scheduled inspections may cause economic loss if company must make equipment, otherwise used in the field, available without notice;
- 4) provisions which allow for unannounced inspections at any business location may lend itself to abuse and may be discriminatory;
- 5) business inspections should be limited to twice a year;
- 6) this entire section should be deleted; it is intrusive and seemingly unconstitutional, especially when placing the burden of the cost of the inspection on the business and seems excessive given the low technology nature of the business;
- 7) to make any building available to inspection, especially in the case of real estate transactions, may deter testing due to lack of confidentiality afforded the customer;
- 8) cannot guarantee access to homes owned by customers;
- 9) the absolute right of the inspector to enter any facility should be limited to inspection purposes;
- 10) inspections should be limited to ensuring that proper records are being kept;
- 11) should the Department be allowed to inspect at any time where proprietary research and development occurs.

RESPONSE: The Department believes that the law allows for inspections, announced or unannounced, and which can occur at any time. Facility inspection, which will occur at the business location, will normally be scheduled in advance and may include a notification on what materials to have available for inspection purposes. Facility inspections will normally take one half to one full day to conduct and will normally not be scheduled more frequently than annually. This type of inspection is the one for which a separate fee is charged as outlined in N.J.A.C. 7:28-27.30, Schedule A. Field or site inspections can occur at any location where a test or mitigation will be, is, or was performed or installed. Except for the ongoing test or mitigation, the business will most likely not be required to be in attendance for the inspection. Inspections, facility or field, will occur as often as the Department deems necessary to ascertain

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whether the business is in compliance with the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., N.J.A.C. 7:28-27, any certification, or any other agreement or order issued or entered into pursuant thereto.

The Department does not understand the argument associated with inspection of real estate transaction sites due to lack of confidentiality. N.J.S.A. 26:2D-73 allows the Department access to radon level information. The Department understands that the business cannot guarantee access to a specific site. However, the business cannot take any actions that would interfere with the Department gaining access to the site.

As previously stated, the purpose of an inspection is to ascertain compliance or non-compliance of the business with the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., N.J.A.C. 7:28-27, any certification, or any other agreement or order issued or entered into pursuant thereto. The Department shall examine such equipment, records, or parts of a facility deemed necessary to determine this compliance or non-compliance. Certainly a large part of a facility inspection will be inspection of records. Research and development are not activities of concern under N.J.A.C. 7:28-27 and therefore will not be inspected. The Department highly recommends that these activities be kept in an area separate from records or equipment that the business normally uses in its daily operation.

N.J.A.C. 7:28-27.25 Denial, suspension, or revocation of a certification

COMMENT: Several comments were submitted regarding paragraphs (b)12 and (g)4 of N.J.A.C. 7:28-27.25, including:

- 1) what constitutes a faulty measurement;
- 2) there should be a fault standard;
- 3) these items should be deleted; no one should be penalized for defective equipment.

RESPONSE: A faulty measurement is a measurement which results from misoperation of an instrument, if an instrument is not in proper working order, or if a person deliberately records a false reading. The Department believes that it is the business' responsibility to maintain equipment in proper operating order, including maintenance of calibration. In the case of mitigation businesses, the Department believes that all equipment used in a mitigation installation should be in proper working order when installed and should remain so during any manufacturers or radon businesses warranty period. Therefore, the Department sees no reason to change these requirements.

COMMENT: Amendments to the New Jersey Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (Act), should not cause suspension or revocation of a certification, but rather allow for an orderly implementation of the new requirement(s).

RESPONSE: Any amendments resulting from changes to the Act will incorporate sufficient time periods in which the amendments can be implemented.

COMMENT: Suspensions and revocations should not be immediate; there should be an opportunity to remedy the problem or a notice period in which to respond to the violation, unless the suspension or revocation is needed to protect the public health and safety.

RESPONSE: Suspensions and revocations are subject to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules of the forum in which relief is sought.

COMMENT: Is there a limit to the number of times an applicant can apply for provisional certification after revocation periods have been completed?

RESPONSE: No, there is no limit to the number of times an applicant can apply for certification.

COMMENT: Paragraph (b)16 of N.J.A.C. 7:28-27.25 should be deleted because the inspection itself is intrusive and seemingly unconstitutional.

RESPONSE: Other Department programs, such as N.J.A.C. 7:18, include such provisions for inspections. The Department believes that the law allows for such inspections and, therefore, the Department sees no reason to revise this item.

COMMENT: Suspensions for not paying fees, using faulty equipment, not reducing radon levels below four pCi/l and not adhering to a safety plan are unreasonable.

RESPONSE: The Department believes that these are reasonable requirements for this certification program.

COMMENT: Consistently, as used in N.J.A.C. 7:28-27.25(b)13 and (b)13i, needs to be defined.

RESPONSE: Consistently will be given its normal everyday definition.

COMMENT: Paragraph (b)11 in N.J.A.C. 7:28-27.25 is overly broad and nonspecific; the terms 'false' and 'misleading claims' needs to be defined.

RESPONSE: False and misleading mean not true. For example, if a mitigator claimed that he or she could install a mitigation system which would remove all radon from a structure forever, this would be considered a false claim.

COMMENT: The term 'endangers the public health', as used in N.J.A.C. 7:28-27.25(g)7, needs to be more concretely defined.

RESPONSE: "Endanger the public health" means to place in danger, or cause harm or loss to one or more members of the public. The Department does not believe that under the law this term is too vague.

COMMENT: Paragraph (j)1 of N.J.A.C. 7:28-27.25 seems unjust and may fall under double jeopardy if a business is both a measurement and mitigation business.

RESPONSE: Double jeopardy is a criminal term, not applicable here. However, the Department has carefully reviewed the intent of the comment, but has decided to retain the original language. This is based on the close relationship between radon measurement and mitigation work and the attendant risk to the public if either is done poorly. The Department has great difficulty in permitting a person who has performed unacceptably in one area to continue to perform in the other.

COMMENT: Several comments were submitted regarding paragraphs (b)9, (b)10, and (g)5 of N.J.A.C. 7:28-27.25, including:

1) this seems to preclude the possibility of research and development with side-by-side validation studies;

2) what about diagnostic test, devices in crawl spaces, sump holes or uncapped block walls, performed by a testing company for a mitigation business who is trying to determine mitigation strategy; there are no diagnostic protocols;

3) reword items to say 'offers or performs screening or follow-up testing not in conformance with protocols';

4) the terms 'offers' and 'performs' are not well defined.

RESPONSE: It is not the intent of the Department to preclude research and development or diagnostic testing by highlighting these infractions of the rules. The Department feels that side-by-side studies are acceptable as long as a valid, authorized measurement procedure is used in conjunction with the new device being tested. The Department recognizes that there are no diagnostic protocols. This does not preclude certified persons from performing and reporting such measurements. Examples of infractions of the sections referred to above are: 1) if a business offers or performs a test for which it is not certified to do so, for example, it is only certified to perform charcoal canister test and perform an electretion chamber test or 2) it performs a diagnostic test in the **sump hole** located in a basement and reports to the owner that the **basement** has xxx pCi/l. Certified persons must clearly identify the purpose of the test to the recipient, that is, screening, follow-up, diagnostic. The Department believes that the terms 'offer' and 'perform' are adequately defined.

COMMENT: Several comments were submitted regarding paragraph (b)7 of N.J.A.C. 7:28-27.25, including:

1) the term 'scare tactics' needs to be defined;

2) do the new Ad Council advertisements qualify as scare tactics or do they redefine permissible;

3) instead of regulating publicity material, the Department should require businesses to utilize published and documented USEPA and Department statistical information.

RESPONSE: The Department agrees that these terms are difficult to define. Therefore, N.J.A.C. 7:28-27.25(b)7 will not be adopted. Paragraphs 8 to 17 of N.J.A.C. 7:28-27.25(b) are recodified as (b) 7 to 16.

COMMENT: Upon request, will the Department release information to the public about businesses, specialists, and technicians that have had certification revocations, suspensions or failed written exams?

RESPONSE: Yes, this information is public information.

COMMENT: Paragraph (d)1 of N.J.A.C. 7:28-27.25 is vague; the violation and penalty associated with it should be clearly stated.

RESPONSE: Since this is a new program, the Department does not believe it can provide a comprehensive violation/penalty list at this time.

N.J.A.C. 7:28-27.26 Criminal penalties

COMMENT: Several comments were submitted concerning the section on criminal penalties, N.J.A.C. 7:28-27.26, including:

1) how long do you go to jail for a crime of the third degree;

2) such penalties may be appropriate in regulation of public health services such as the licensing of physicians or other direct health care providers; however, such treatment of radon measurements and remediations is not appropriate;

3) while there may be long-term health effects from radon exposure, there are no immediate effects which can produce significant problems

as a result of inaccuracy of a measurement or malfeasance of a laboratory, tester, or mitigator;

4) please consider penalties for those who purposefully prejudice a test or report false results.

RESPONSE: According to N.J.S.A. 2C:43-7, in the case of a crime of the third degree, a term shall be fixed by the court between five and 10 years. N.J.A.C. 7:28-27 does not establish the penalty associated with violation of these rules. The penalty was established in the law, namely N.J.S.A. 26:2D-77. The Department disagrees that inaccuracy and malfeasance does not produce significant problems. Should a person remain in a structure with elevated levels of radon for an extended period of time, 10 to 30 years, his or her risk of developing lung cancer greatly increases. If radon was measured in this structure, not recorded accurately and therefore the person did not take action to reduce the radon levels, the person may be faced with loss of additional years of life due to development of lung cancer. The prejudicing of test results or false reporting of results are addressed in N.J.A.C. 7:28-27.25.

N.J.A.C. 7:28-27.27 Request for adjudicatory hearing

COMMENT: The section entitled "Request for adjudicatory hearing" should be changed to 'Appeals'; hearings should be mandated on appeal and a stay of suspension, refusal to certify, denial, or revocation should be invoked until the hearing is completed.

RESPONSE: Adjudicatory hearings will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

N.J.A.C. 7:28-27.28 Reporting requirements

COMMENT: Several comments were submitted regarding N.J.A.C. 7:28-27.28, Reporting requirements, including:

1) clarify language in N.J.A.C. 7:28-27.28(a) so report submitted by the fifteenth is for data collected between the first and last day of the previous month;

2) certified businesses should be required to submit data only every three or four months;

3) does the Department want the certified business to differentiate between residential, commercial and industrial properties;

4) reports should be segregated by tests performed by homeowners and others to those performed by certified persons;

5) reports should be segregated by fully certified businesses and temporary/provisional businesses;

6) only the data currently collected under the voluntary program should be submitted;

7) any changes in data submittal from the voluntary program will require a change in business software;

8) this requirement should be simplified for a business which only samples and sends devices to a laboratory for analysis by having the laboratory submit these reports to the Department.

RESPONSE: To clarify the reporting timelines required in N.J.A.C. 7:28-27.28(a), the subsection is revised to read, "... by the first day of each month the results of all radon and radon progeny measurements performed during the second previous month." For example, May test results would be due July 1.

Concerning frequency of reporting requirements, N.J.S.A. 26:2D-74 requires that, "A person certified pursuant to section 1 or 2 of this act to provide testing or mitigation services shall, within 30 days of the provision of these services, disclose to the ...". The Department has satisfied this mandate by requiring monthly reporting. The Department agrees that it would be beneficial to keep track of whether or not a building is a residential or non-residential building and whether or not sampling was performed by the building owner or a certified radon professional. Therefore, N.J.A.C. 7:28-27.28(a) is revised to read, "8. The type of building the test was performed in: residential or non-residential. 9. Who performed the sampling: building owner or certified radon professional." In addition, N.J.A.C. 7:28-27.28(e)1 is amended to read, "... work was performed and the type of building that was mitigated, either residential or non-residential;"

The Department recognizes that small changes in business software will be necessary to accommodate the additional reporting requirements. The Department believes the additional information is necessary to monitor the activities of the certified businesses and believes that the additional information requirement places no significant burden on the business.

COMMENT: Several comments were submitted regarding the requirement that the name and address of the owner and resident of building tested or mitigated be reported to the Department. These comments included:

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- 1) how do you report a name for property owned by a corporation or nontenant;
- 2) should only have to report either the owner or residents name;
- 3) reporting of a name is not necessary;
- 4) reporting of personal data will discourage homeowners from testing through certified businesses or encourage false reporting of identification data and seems to be a violation of Constitutional rights;
- 5) homeowners will test with over-the-counter devices instead of with professionals in real estate transactions if this information is required;
- 6) I will inform clients that test results will be sent to the Department and I am sure that several people will choose not to test rather than have the Department know their results;
- 7) as a homeowner, I would like to know why testers must report results to the State;
- 8) it is a misjustice to report an owner's phone number.

RESPONSE: N.J.S.A. 26:2D-74 stipulates that persons certified to provide testing or mitigation services, pursuant to N.J.S.A. 26:2D-70 or 26:2D-71, disclose to the Department of Environmental Protection the address or location of the building, the name of the owner of the building where the services were provided and the results of any tests performed. The report submitted to the Department shall include the name of the building owner, corporate or individual, and the resident/tenant as appropriate. The report should not include the owner's phone number. This information is necessary to facilitate the tracking of the radon measurement and/or mitigation activities at a site when questions arise. The Department does not agree that reporting of this information will lead to increased self testing by homeowners in real estate transactions because home purchasers will likely require that a third person test for radon prior to completion of the sale.

COMMENT: The requirement that block and lot numbers of buildings tested or mitigated should be deleted. Either the address and zipcode should be sufficient or locations should be plotted on blue line prints of 1986 photoquads along with unique identifier numbers.

RESPONSE: The Department agrees that reporting of the address and zipcode are sufficient to identify the location of radon data. Therefore, N.J.A.C. 7:28-27.28(a)2 will not be adopted; N.J.A.C. 7:28-27.28(a)3 to 10 are recodified as (a)2 to 9.

COMMENT: Regarding N.J.A.C. 7:28-27.28(a)3, what does condition mean?

RESPONSE: Conditions include, but are not limited to, readily observable factors, such as, length of time the building was closed prior to testing, whether closed house conditions were observed during the test, and whether the building being tested is occupied or vacant.

COMMENT: Reporting whether or not the test is for a real estate transaction should be included in the reporting requirements.

RESPONSE: The Department agrees that it would be beneficial to keep track of whether or not a test is for real estate purposes. Therefore, N.J.A.C. 7:28-27.28(a) is amended to read, "10. Whether the test was conducted as part of a real estate transaction."

COMMENT: Wording in N.J.A.C. 7:28-27.28(b) and N.J.A.C. 7:28-27.28(b)1 should be changed to allow for reporting of radon test results to potential buyers who contract for the service in a real estate transaction as outlined in N.J.S.A. 26:2D-73. Also, the homeowner should be made aware, via the required statement in N.J.A.C. 7:28-27.28(b), that they can give the results to anyone they wish and that they must report any radon test results conducted prior to entering into a contract of sale to the prospective buyer. In the case of real estate transactions, wording should also be added to accommodate disclosure of results by the tester to the legal designee of the seller and/or buyer.

RESPONSE: In order to clarify the intent of N.J.S.A. 26:2D-73 within N.J.A.C. 7:28-27.28(b), the subsection is revised to read, "... N.J.S.A. 26:2D-73 requires that no certified person disclose to any individual, except the Department of Environmental Protection or the Department of Health, the address or owner of a nonpublic building that the person has tested or treated for the presence of radon gas and/or radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. In the case of a prospective sale of a building which has been tested for radon gas and radon progeny, the seller shall provide the buyer, at the time the contract of sale is entered into, with a copy of the results of that test and evidence of any subsequent mitigation or treatment, and any prospective buyer who contracts for the testing shall have the right to receive the results of that test. ..." N.J.A.C. 7:28-27.28(b)1 is revised to read, "... owner of the building tested, the Department, or, in the case of a prospective sale, the buyer who contracts for the testing."

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COMMENT: Subsections (b) and (d) of N.J.A.C. 7:28-27.28 are unnecessary and in conflict and redundant with N.J.A.C. 7:18-5.8(d)1.

RESPONSE: The Department agrees with this point. Changes will be made to N.J.A.C. 7:18-5.8(d)1 to make it consistent with N.J.A.C. 7:28-27.

COMMENT: Several comments were submitted regarding subsection (c) of N.J.A.C. 7:28-27.28, including:

- 1) that the requirement should be deleted because in some real estate transactions the client is in transit;
- 2) that there is no scientific agreement on test methods;
- 3) that these type of publications are usually outdated.

RESPONSE: To address instances where the client is unavailable to receive the publication, N.J.A.C. 7:28-27.28(c) will be revised to read, "... shall provide to each client or his or her agent a copy ...". The publication in question is a guidance document for the general public and does not debate the merits nor offer specific suggestions on which methods to employ but rather gives general information on the measurement methods available. The Department will update the document as new methods and guidance on results develop.

COMMENT: Regarding N.J.A.C. 7:28-27.28(e)5, will the owner of a building have access to the inspection report or findings?

RESPONSE: Upon request, the owner of a building which has been inspected to assess a certified person's compliance with N.J.A.C. 7:28-27, will be sent a copy of the portions of the report applicable to the functioning of his or her mitigation system.

COMMENT: As required in N.J.A.C. 7:28-27.28(e)4, submitting copies of permits is report overkill.

RESPONSE: The Department has reviewed this point and decided that requiring the companies to maintain copies of permits for installation in their records, as required in N.J.A.C. 7:28-27.21(b)1, is sufficient. Therefore, N.J.A.C. 7:28-27.28(e)4 will not be adopted; N.J.A.C. 7:28-27.28(e)5 becomes (e)4.

COMMENT: The requirement in N.J.A.C. 7:28-27.28(f) that the mitigation business address the energy cost incurred in operating the system should be deleted as it exceeds the ability of most specialists to calculate and would have little meaning to most homeowners.

RESPONSE: The Department agrees with this point. It was not the intent of the Department for each person to calculate the energy cost incurred in operating a mitigation system, but rather that persons use the best available data presented in the literature to secure these numbers. However, after re-reviewing the literature, the Department has decided that the data presented in the literature is not adequate enough to warrant use by the regulated community. However, the Department feels that it is important that the client realize that he or she may not only face higher energy costs from mechanical equipment, such as a fan in a sub-slab system or an air to heat exchanger, but, depending on the type of system installed, he or she may face higher heating and cooling cost as well. Therefore, N.J.A.C. 7:28-27.28(f) is revised to read, "This statement shall include a discussion of the possible types of energy costs incurred in operating the system."

COMMENT: Do I have to submit reports on people who buy my mail order devices in other states?

RESPONSE: Sale of devices to persons in other states are not regulated by these rules and do not have to be reported to the Department.

N.J.A.C. 7:28-27.30 Fees

COMMENT: The fees outlined in N.J.A.C. 7:28-27.30 are too high, arbitrary, prejudice against the small businesses, and would result in fewer businesses and less competition. A number of individuals made these and related comments. It was argued that the fees would result in an increasing cost of 35 to 200 percent to the consumer and that because of this increase fewer number of residents would test or mitigate or do so without the benefit of a certified individual. Also, that mitigations will be unaffordable to those not selling homes and an excessive expense for those residents forced to mitigate in order to sell their homes. It was also argued that the fees could lead to black market testing and/or mitigating by non-credentialed, unqualified individuals, and may cause some businesses to postpone jobs at the end of half year periods to avoid paying higher activity fees. In addition, it would force small home inspection businesses out of the radon market, thereby leaving large, but not necessarily better, inspection businesses a larger part of the home inspection market because they can offer radon testing.

Several alternate fee schedules were proposed, including:

- 1) a per device or per mitigation fee;

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2) a \$200.00 per year tester program fee with a \$2.00 per test activity fee and a \$1,500 per year mitigation program fee with a \$120.00 per mitigation fee;

3) a fee based on percentage of sales, for example, one to two percent;

4) a flat licensing fee of \$400.00 for each category of testing and remediation with no other fees;

5) get additional funding from one cent per square foot tax on new construction.

RESPONSE: As discussed more fully later in this Summary, the fees outlined in N.J.A.C. 7:28-27 are based on the estimated number of businesses and individuals that will participate in the program, the number of measurements and mitigations conducted on a yearly basis, and the personnel and other program costs needed to staff this level of effort. The legislation which mandated the establishment of this program, N.J.S.A. 26:2D-70 and -71, also mandated the Department to, "... establish a fee schedule to cover the costs of the certification programs ...", N.J.S.A. 26:2D-75. The Department believes it has made reasonable assumptions in estimating the personnel and other program costs necessary to run and enforce such a program. However, the Department was sensitive to comments that the fees were high and has reviewed its program with an eye toward increasing efficiency and reducing costs wherever possible. The resulting changes in program costs achieved are illustrated in the following Table:

Estimated Program Costs—Draft and Final Rule

	Proposed Rule	Final Rule
Measurement Services		
—Salaries	\$157,966	\$78,590
—Benefits and Indirect Costs	\$98,540	\$70,033
—Program Costs	\$46,584	\$31,200
Mitigation Services		
—Salaries	\$61,013	\$66,410
—Benefits and Indirect Costs	\$38,321	\$58,584
—Program Costs	\$18,116	\$29,000
Combined Program (Measurement plus Mitigation)		
—Salaries	\$218,979	\$145,000
—Benefits and Indirect Costs	\$136,862	\$128,617
—Program Costs	\$64,700	\$60,200
Total Program Cost	\$420,541	\$333,817

As can be seen from the Table, reductions in measurement-related program costs were achieved primarily through personnel reductions. This was accomplished mainly through gains in data automation. Electronic transfer of monthly data reports will reduce the amount of time entering data. In addition, data review time will be reduced since a computer program will identify unusual results, calculate the number of reported duplicates and blanks and make sure they are the right percentages, and perform other screening tasks.

Reductions in mitigation-related program costs did not result from this review. However, as explained later in this Summary, the program fee is distributed across the expected number of mitigation firms and the activity fees are dependent on the number of expected mitigations to be performed. Based on additional sources of information, the Department revised both its estimate of the number of mitigation firms and mitigations performed per year upward. Therefore, both the mitigation program fee and activity fee were decreased.

Consequently, program and activity fee reductions have been achieved for both measurement and mitigation businesses, but for different reasons. Therefore, such reductions are not necessarily proportional.

COMMENT: Several comments were submitted regarding Schedule B of N.J.A.C. 7:28-27.30, including:

1) how will the Department determine the number of devices employed;

2) in determining number of devices, does a continuous radon monitor count as one or is it how many times you use it;

3) how will duplicates and blanks be counted in the device total;

4) if you count each charcoal canister as a device it might inhibit good testing practice to keep activity fee down.

RESPONSE: The number of devices employed is equivalent to the number of charcoal canisters or electret ion chambers used or each time a continuous radon monitor or working level monitor is used. Measurements made to fulfill blank and duplicate requirements of the quality assurance/quality control (QA/QC) plan must be reported to the Department as such and will not be counted in the number of devices employed

up to the number established in the QA/QC plan. For example, for charcoal canisters 10 percent of the canisters a month should be duplicates and five percent should be blanks. If a person employs 400 devices in a month, they will be allowed 40 duplicates and 20 blanks for the month. Persons who violate established protocol in conducting measurement activities in order to avoid increased fees will be subject to the penalties of N.J.A.C. 7:28-27.

COMMENT: How were the activity fees in Schedule B and C determined? The Department should have to show the relationship between the fees charged and the amount of work to administer the program.

RESPONSE: Estimates on the resources, personnel and supplies needed to carry out the various tasks, application review, training, exams, data management, enforcement and facility inspection of the certification program were made. These estimates were done separately for mitigation and measurement activities. These estimates were based on the number of businesses and individuals which would participate in the program. The number of businesses and individuals were estimated from the voluntary program. The application, training, exam and facility inspection fees cover part of these expenses. The remaining expenses of the program were categorized as either business based or level of activity based. Business based expenses include continued availability of training courses and exams and overview of monthly reports. These are services which must be regularly offered or performed regardless of the number of tests or mitigations which a business performs. Business based expenses are equally distributed to all businesses, regardless of size or volume of business, via the program fee. Therefore, the program fee was derived by dividing the remaining business-based program expense by the number of anticipated businesses.

Level of activity based expenses include data management, the more measurements or mitigations conducted the more Department time it takes to enter this data in the database, verify, and review it, and enforce. The Department believes the time it spends on this activity will be directly related to the number of measurements or mitigations which a business conducts. Therefore, level of activity based expenses were distributed among the businesses, based on the anticipated number of measurements or mitigations, via the activity fee.

As previously discussed, the Department has reviewed its program resource needs and its estimate of the number of businesses, and individuals that would likely participate in the program and the number of measurements and mitigations that would be conducted over a twelve month period of time. Based on these revised estimates and the revised estimates of the program costs, N.J.A.C. 7:28-27.30 Schedule B and C are amended and read:

"FEE SCHEDULE B

**Program Administration Fees—Radon Measurement Business

NUMBER OF MEASUREMENT DEVICES EMPLOYED EACH SEMI-ANNUAL PERIOD*	PROGRAM FEE (\$)	ACTIVITY FEE (\$)	TOTAL (\$)
-0-	318	0	318
1-49	318	37	355
50-99	318	110	428
100-199	318	219	537
200-299	318	365	683
300-499	318	584	902
500-999	318	1095	1413
1000-1999	318	2190	2508
2000-5000	318	5110	5428
Greater than 5000	318	7300	7618

*First Calendar Period: July 1—December 31

Second Calendar Period: January 1—June 30

**The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers.

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"FEE SCHEDULE C

**Program Administration Fees—Radon Mitigation Business

NUMBER OF BUILDINGS MITIGATED EACH SEMI-ANNUAL PERIOD*	PROGRAM FEE (\$)	ACTIVITY FEE (\$)	TOTAL (\$)
-0-	496	0	496
1-10	496	77	573
11-24	496	276	772
25-49	496	568	1064
50-74	496	951	1447
75-99	496	1335	1831
100-124	496	1718	2214
125-149	496	2102	2598
150-174	496	2485	2981
175-200	496	2869	3365
Greater than 200	496	3068	3564

*First Calendar Period: July 1—December 31

Second Calendar Period: January 1—June 30

**The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers."

COMMENT: Mitigation businesses will be far more complex to regulate, therefore the activity fee ratio, mitigation (\$746.00): measurement (\$447.00), seems too low.

RESPONSE: The numbers, \$746.00 and \$447.00, are program fees, not activity fees. As previously discussed, the numbers are based on estimated per business based program costs and the estimated number of measurement and mitigation businesses. As previously stated, program costs have been reviewed and therefore the program fees have been revised to \$496.00 and \$318.00, for mitigation and measurement businesses, respectively.

COMMENT: I sell devices to a hardware store; a customer buys five of these devices; who pays the per device fee and how many devices are there?

RESPONSE: As outlined in N.J.A.C. 7:28-27.31, the person selling devices to the hardware store must be a certified radon measurement business. In this example, the certified radon measurement business pays the per device fee and there are five devices.

COMMENT: If a business sells devices to a second business and the second business is the one which places the devices, why do both businesses pay a fee for the device?

RESPONSE: Both businesses do not pay a fee for the device. Only the second business which places the devices, that is, deals directly with the public, pays the device fee.

COMMENT: I do not see the logic of fees based on when activities occurred or the amount of activity, without taking into account the complexity. Why should charcoal canister placement require the same fee as installation of a continuous radon monitor?

RESPONSE: Although measurement devices such as the continuous radon monitor are capable of generating more extensive data for the customer, such as hourly readings of radon concentrations, the value which will be reported to the Department will be a single value which represents the average radon concentration over the length of the measurement. The charcoal canister device also generates a single value which represents the average radon concentration over the length of the measurement. This represents an equal workload of data for the Department which is independent of the source of the data.

COMMENT: Several comments were submitted regarding the inspection fee in N.J.A.C. 7:28-27.30, including:

- 1) the inspection fee is excessively high and other Department programs do not charge inspection fees;
- 2) the inspection fee should be dropped;
- 3) are inspections mandatory before certification will be granted and will the public have access to the inspection reports.

RESPONSE: Other Department programs, such as the hazardous waste program, do charge inspection fees. The inspection fee is for inspection of a business's facility and would include, for example, inspection of records and equipment. The facility inspection enables the Department to determine compliance with requirements of these rules. The amount of the fee is based on the estimated time for a professional to travel to

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the facility, conduct the inspection, and to generate a report and includes the appropriate clerical support. The Department disagrees that the fee should be dropped. An on-site inspection of the measurement business is mandatory if proficiency testing is not available, see N.J.A.C. 7:28-27.6(a)9i to v. The report is considered a public document except for any proprietary information, and in accordance with N.J.S.A. 26:2D-78, if the person being inspected believes he/she has proprietary information of a research and development nature or of an exclusively used technique, the person inspected must file a request with the Department if he or she believes this type of information should not be included in the report. The Department will review and respond to the request.

COMMENT: There should only be a nominal annual fee for certification. The State should bear in mind that companies are performing a valuable service to the State. It is the duty of the State to support the small businesses, which comprise most of the radon industry, for their services.

RESPONSE: The Department acknowledges that the services which measurement and mitigation businesses provide is important to the health and welfare of the citizens of New Jersey. The Department also believes that since this service does involve the health and welfare of individuals that individuals rendering these services should stay abreast of recent developments within the field and that they should be held accountable for the quality of the services which they have provided. The Department has tried to accommodate for the impact of the fees on different size businesses through the program administration fee, which is based, in part, on business activity. The program administration fee is paid after the business has accrued revenues from its business activities and is greater for larger businesses with more business activity. The Department has balanced the need to protect the public from unnecessary radiation due to radon and its decay products against the economic impact and compliance requirements of the regulation and has determined that to minimize the impact of the regulation would endanger the environment, health and public safety.

COMMENT: The fees that the Department collects for the certification program will not only cover the cost of the program but also bring in revenues greatly exceeding the funds needed to run the program. For example, if you assume there are 119 measurement businesses and each pays an application fee (\$400.00), at least one inspection fee (\$400.00), employs at least one specialist (\$685.00) and one technician (\$425.00), and performs at least 50 test a week, those businesses would generate \$1,253,308 in revenue. If there are 48 mitigation businesses and each pays an application fee (\$400.00), at least one inspection fee (\$400.00), employs at least one specialist (\$685.00) and one technician (\$425.00) and conducts at least three mitigations per week, these businesses would generate \$382,464 in revenues. In total, fees would generate \$1,635,772. The regulation states that \$420,541 is needed to run the program. Fees should be reduced by at least 75 percent.

RESPONSE: The Department does not find data in its voluntary database to support these estimates. For the period 4/88 to 5/89, of the 137 businesses listed in the State voluntary radon measurement program, only five in the first six months and nine in the second six month period showed measurement activity equal to 50 measurements a week. For the period 1/89 to 12/89, of the 57 businesses listed in the State voluntary radon mitigation program, only four in the first six months and five in the second six month period showed measurement activity equal to three mitigations a week.

N.J.A.C. 7:28-27.31 Exemptions

COMMENT: How does the exemption in N.J.A.C. 7:28-27.31(a)1 apply to the following: businesses, multi-tenant structures, schools, and municipalities?

RESPONSE: The exemption in N.J.A.C. 7:28-27.31(a)1 is intended for persons who personally perform testing or mitigation on a building they own. Therefore, the Department believes that this exemption, which is derived from the exemptions listed in the statutory authority, N.J.S.A. 26:2D-72, is unlikely to apply to non-residential structures. All the groups listed above are considered to be non-residential and will therefore need to employ certified testing and mitigation services.

COMMENT: There should be a total ban on radon test kits sold in retail outlets, by mail order, or through health departments; it is inconsistent to require extensive training for businesses involved in charcoal canister or track etch placement and to allow the untrained public to do the same activity.

RESPONSE: The Department disagrees with this point. Retail outlets, mail order businesses, and health offices simplify device acquisition and

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encourage testing by homeowners. Regulatory controls for these enterprises are adequately addressed in N.J.A.C. 7:28-27.31(a)3.

COMMENT: Persons who construct schools or residences in accordance with the radon mitigation subcode, N.J.A.C. 5:23-10, should be exempt from the certification requirements, including the use of certified individuals in N.J.A.C. 7:28-27.

RESPONSE: The purpose of N.J.A.C. 5:23-10 is to outline specific construction standards to be used in new construction to minimize radon or radon progeny entry and facilitate any subsequent remediation that might prove necessary. In order to delineate preventive measures and remediation as used in N.J.A.C. 5:23-10 and N.J.A.C. 7:28-27, the Department met with representatives of the Department of Community Affairs. A person who constructs schools or residences in accordance with N.J.A.C. 5:23-10 may do so without the use of certified personnel, certified pursuant to N.J.A.C. 7:28-27. However, if that person sells, real or implied, said school or residence as having been mitigated for radon or exceeds the steps outlined in N.J.A.C. 5:28-10 by installing a mitigation system then said work must be conducted by personnel certified under N.J.A.C. 7:28-27. To help clarify this point, the following revisions are made to N.J.A.C. 7:28-27.2, " 'Mitigation system' means a step or series of steps employed to actively reduce radon levels in buildings including, but not limited to, sealing techniques, natural and forced-air ventilation techniques, and soil ventilation techniques." N.J.A.C. 7:28-27.31(a)2 to 4 are renumbered to (a)3-5. N.J.A.C. 7:28-27.31(a)2 is added and reads, "2. Those persons incorporating construction techniques outlined in N.J.A.C. 5:23-10; however, mitigation system installation must be done by persons certified pursuant to N.J.A.C. 7:28-27."

COMMENT: Several comments were submitted regarding N.J.A.C. 7:28-27.31(a)4, including:

- 1) should be deleted;
- 2) prior approval from the Department will limit research and development as divulging this information to the Department may be a possible source for theft of ideas;
- 3) you should be qualified, whether you are a retail outlet, non-profit organization, government body or involved in research, to perform the service whether or not you get paid for it;
- 4) these exemptions do pose a serious health threat to the environment, health, and public safety;
- 5) this loophole could be exploited by those who have a biased interest in the outcome of the test;
- 6) without remuneration should apply only to those persons who are not performing any other services of value to the building's owner;
- 7) what will constitute approval.

RESPONSE: The Department disagrees with these points. The Department periodically funds research activities to examine particular radon issues. Since the Department is intimately involved with these projects, it is able to evaluate the possible health effects associated with carrying out these projects. Other situations which may be applicable to a research exemption will be reviewed on a case-by-case basis.

The remuneration exemption comes from the enabling legislation, N.J.S.A. 26:2D-72.

Persons wishing to conduct work within one of these exemption categories shall contact the Department in writing with the specifics of the project including, but not limited to, who will conduct the work, the purpose of the work, the professional relationship between the person doing the work and the person benefiting from the work and quality assurance/quality control of the work. The Department will review these materials and respond either with an approval or denial to the person, in writing.

COMMENT: Does N.J.A.C. 7:28-27.31(a)3iii preclude consultations by academic people?

RESPONSE: N.J.A.C. 7:28-27.31(a)3iii applies to consultations on radon provided by uncertified persons in conjunction with the sale of radon devices in exempt retail outlets.

COMMENT: N.J.A.C. 7:28-27.31(a)3iv is unenforceable; how will the Department know if a homeowner is submitting a device to an uncertified business?

RESPONSE: N.J.A.C. 7:28-27.31(a)3iv applies to uncertified persons associated with exempt retail outlets and health offices. These persons are not allowed to place devices in buildings.

COMMENT: It is a commendable effort to make test devices available over-the-counter but they lack quality control. Who controls how and where the devices are stored on their way to and once it reaches the store? Who, at the store, will advise the customer on which test kit to buy?

RESPONSE: It is the responsibility of the certified radon measurement business to arrange for proper and prompt transportation of their devices. It is also the responsibility of the certified radon measurement business which is selling its devices through the retail outlet to have educated the outlet on how the devices must be stored and displayed while at the outlet. In order for an outlet to maintain its exemption from certification under N.J.A.C. 7:28-27, persons affiliated with the outlet must not consult with customers on radon.

N.J.A.C. 7:28-27.32 Examinations

COMMENT: Will the United States Environmental Protection Agency's Radon Contractor Proficiency Program exam qualify for the initial certification exam required in N.J.A.C. 7:28-27.32?

RESPONSE: The Department is proceeding to negotiate with the United States Environmental Protection Agency to use the Radon Contractor's Proficiency exam to satisfy the exam requirement for the radon mitigation specialist. In order to accommodate this situation, N.J.A.C. 7:28-27.32(a) is revised to read, "... offered or approved by the Department."

N.J.A.C. 7:28-27.33 Elements of Quality Assurance Plans

COMMENT: A quality assurance plan submitted and accepted by the United States Environmental Protection Agency's Radon Measurement Proficiency Program (USEPA-RMP) should satisfy the requirement for a quality assurance plan as outlined in N.J.A.C. 7:28-27.33.

RESPONSE: The requirements of N.J.A.C. 7:28-27.33 in many ways mirror what is required by the USEPA-RMP; however, it is the State which has regulatory authority in this situation. The Department believes that the additional items requested in N.J.A.C. 7:28-27.33 are needed to determine that the radon measurement data is both precise and accurate. The Department sees no compelling reason to change the requirements of this section.

COMMENT: The requirement for a quality assurance plan is absurd when applied to those businesses which only deploy charcoal canisters; quality assurance should start and end at the laboratory.

RESPONSE: This comment seems to show a lack of understanding of the concepts of quality assurance/quality control (QA/QC). Device handling, deployment, retrieval, blanks, duplicates, transport, and tracking require that a QA/QC plan be in place to ensure that devices are utilized properly. While it is acknowledged that certain measurement activities require a more in-depth plan, all measurement activities require some level of QA/QC. The Department has reviewed the requirements in N.J.A.C. 7:28-27.33 and found them to be reasonable; therefore, there will be no changes to this requirement.

COMMENT: The Department, not the applicant, should be charged with developing standardized quality assurance and radiological safety plans. These should be more than word processing exercises and the Department should emphasize compliance with the plans.

RESPONSE: The Department has provided a very lengthy outline of the components of the quality assurance and radiological safety plans in N.J.A.C. 7:28-27.33 and 27.34. The Department agrees that the process of compiling these plans should be more than a word processing exercise and believes that training courses should adequately prepare responsible individuals for completing these plans. Compliance with these accepted plans will be closely monitored.

N.J.A.C. 7:28-27.34 Minimum requirements for radiological safety plans

COMMENT: The requirement of a radiological safety plan, N.J.A.C. 7:28-27.34, for certified measurement businesses is not necessary for testing personnel since testing personnel face no greater exposure than the general public and spend far less time in suspected elevated radon areas than exterminators, plumbers, and heating, ventilation and air conditioning personnel.

RESPONSE: The Department has reviewed this comment and understands the concerns of the persons commenting. Exposure of other professionals which could work in potentially elevated radon areas is outside the scope of these rules, but designating some level of radiological safety for professionals operating in the radon field is within the purview of these rules. Where appropriate, the requirements of the radiological safety plan delineates the different concerns of a measurement and mitigation business. Also, as outlined in N.J.A.C. 7:28-27.34(e), tracking exposure is only necessary if there is a potential for exceeding one working level month per year. The Department believes that radiological safety is important for all certified professionals in the radon industry and that this requirement does not place an excessive burden on the business.

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COMMENT: A health safety program for workers should conform to the United States Environmental Protection Agency (USEPA) guidelines.

RESPONSE: The Department is not aware of any USEPA radon radiological safety program.

COMMENT: Requirement of a safety plan for radon mitigators is flagrant overkill and fashioned after clean up protocols for contaminated power plants.

RESPONSE: The radiological safety plan found in this regulation was conceived by personnel at the Department after taking into consideration the factors necessary to monitor the radiation exposure of professionals working in the radon industry.

N.J.A.C. 7:28-27.35 Temporary certification

COMMENT: We do not agree with the immediate cessation of activities without hearing requirement outlined in N.J.A.C. 7:28-27.35(c).

RESPONSE: Subsection N.J.A.C. 7:28-27.35(c) will not be adopted, as unnecessary.

COMMENT: Several general comments concerning Temporary Certification were submitted, including:

1) we were on the voluntary list as of September 1989 and we assume there is no further application necessary for us to continue in business;

2) we meet the requirements of N.J.A.C. 7:28-27.35 and agree with subsections (a), (b) and (c) and therefore want temporary certification.

RESPONSE: In order to meet the requirements for temporary certification, a certified radon measurement or mitigation business must have been on the Department's list of approved radon testing and mitigation businesses as of January 1, 1990, must submit a complete application for certification within 90 days of the date of adoption of N.J.A.C. 7:28-27.

COMMENT: How did the measurement and mitigation businesses get on the voluntary list and what was the criteria used when approving or denying a firm's request for listing?

RESPONSE: The requirements of the voluntary program for a radon measurement business included a completed and approved application, the major components of which consisted of: 1) the name(s) of individual(s) who have one year's experience in radiation and/or radioactivity measurements and a Bachelor's degree in a natural science, engineering, or other closely related discipline (this individual may be on retainer as a consultant); 2) the name(s) of individual(s) who have completed a State sponsored radon measurement course; 3) a complete listing of the radon testing services offered; 4) proof of passing (or enrollment) in the United States Environmental Protection Agency's Radon Measurement Proficiency Program (RMPP) for each service offered (or proof that the radon business is on the client list of a laboratory that has passed the RMPP); 5) a quality assurance/control plan; 6) an example of a form for reporting results to clients; and 7) filing a monthly report with the Department.

The requirement of the voluntary program for the radon mitigation business included a completed and approved application, the major components of which consisted of: 1) the name(s) of individual(s) who possess any combination of five years relevant college education (architectural, civil or mechanical engineering or closely related discipline or professional or work experience (the design and construction of buildings and associated heating ventilation and air conditioning systems or closely related activities); 2) the name(s) of individual(s) who have completed a State sponsored radon mitigation course; 3) if the business does its own testing, it must be approved as a testing business, if not it must show proof of association with an approved testing business; 4) a complete listing of services offered; 5) complete warranty information; and 6) filing a quarterly report with the Department.

Failure to comply with any of these requirements resulted in denial of voluntary status to any business.

COMMENT: The temporary certification period for a mitigation specialist who does not have five years of experience but who has been performing in the voluntary program without problem should be extended so the specialist can accumulate enough work experience time to qualify.

RESPONSE: The temporary certification does not apply to individuals. Only radon measurement and mitigation businesses may apply for temporary certification.

Summary of Agency Initiated Changes:

Additional changes have been made on adoption to clarify the requirements as follows:

In response to several telephone inquiries inquiring whether someone who just evaluates radon and/or radon progeny measurements must be certified, the definition of certified radon measurement specialist found

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in N.J.A.C. 7:28-27.2 is amended to read, "... to perform and/or evaluate radon ...".

To correct the wording in N.J.A.C. 7:28-27.3(a) so that it is consistent with the wording in N.J.S.A. 26:2D-72, N.J.A.C. 7:28-27.3(a) is amended to read, "... 90 days (May 13, 1991) after the date of establishment of this subchapter, ...".

To allow the Department ample time to process applications under this subchapter, the date of establishment of this subchapter is defined in the following addition to N.J.A.C. 7:28-27.3(a)1, "1. The date of establishment of the certification program will be 120 days (February 12, 1991) after the date of adoption of this subchapter. Program administration and activity fees assessed under this subchapter will not be collected until the program is established."

To accommodate changes in Departmental procedures involving the Bureau of Revenue, the following changes are made to N.J.A.C. 7:28-27.3(g), "... described in this subchapter shall submit an application and the appropriate fee to the New Jersey Department of Environmental Protection, Division of Fiscal and Support Services ... A person who wishes to add a category to an existing certification shall submit an application to the Bureau of Environmental Radiation, Radon Certification Program, New Jersey Department of Environmental Protection, CN 415, Trenton, New Jersey 08625."

To update the phone number in N.J.A.C. 7:28-27.3(i), the following amendment is made, "... New Jersey 08625, (609) 987-6396."

In order to clarify the type of technician referred to in N.J.A.C. 7:28-27.5(i), the following changes are made, "... have on staff a certified radon measurement technician who has ...".

On review of the proposed rules, it was found that an improper reference had been made in N.J.A.C. 7:28-27.16(a)4. Therefore, the following revision is made, "... described in N.J.A.C. 7:28-27.15(a)2 above, have ...".

In order to correct a grammatical error in N.J.A.C. 7:28-27.25(g)2, the following amendment is made, "... of this subchapter for which he or she has been suspended;".

In order to correct an error in this subchapter, the following change is made to N.J.A.C. 7:28-27.28(e)3, "... post-mitigation radon test results, test dates, ...".

In order to clarify what type of inspection is associated with the fee presented in N.J.A.C. 7:28-27.30 Certification Fee Schedule A, the following amendment is made, "... Facility Inspection Fee (each inspection) ...".

On review of the proposed rules, it was found that an improper reference had been made in N.J.A.C. 7:28-27.34(e). Therefore, the following revision is made, "... Radon Exposure Tracking Form set forth in (o) below."

On review of the proposed rules, it was found that an improper reference had been made in N.J.A.C. 7:28-27.35(a). Therefore, the following revision is made, "... radon mitigation business, N.J.A.C. 7:28-27.7 and 8, a temporary certification ...".

In response to several telephone inquiries regarding whether radon measurement and mitigation businesses had to employ certified radon professionals in order to qualify for temporary certification, the following change is made to N.J.A.C. 7:28-27.35(a), "... and mitigation firms, the firm submits a complete application for certification within 90 days (January 13, 1991) of the date of adoption of this subchapter and the firm submits proof it employs certified individuals."

In order to clarify when the temporary certification period begins, the following amendment is made to N.J.A.C. 7:28-27.35(b), "... temporary certification shall start at the end of the 90 day period and extend for one year, ...".

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 27. CERTIFICATION OF RADON TESTERS AND MITIGATORS

7:28-27.1 Scope

This subchapter establishes rules, requirements and procedures that a person who wishes to perform radon testing or mitigation in New Jersey shall comply with in order to become and remain certified. Certification is mandatory in New Jersey pursuant to N.J.S.A. 26:2D-70 et seq. for any person who sells radon/radon progeny devices, tests for radon/radon progeny or mitigates radon in buildings. Mitigation devices that reduce only radon progeny levels

will not be certified under this subchapter. Any person not certified and performing radon services shall be subject to the criminal penalties in N.J.S.A. 26:2D-77.

7:28-27.2 Definitions

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

"Act" means the New Jersey Radiation Protection Act, N.J.S.A. 26:2D-1 et seq.

"Applicant" means any person who applies for certification.

"Authorized measurement protocols" means, for radon measurements in air, the "Interim Indoor Radon and Radon Decay Product Measurement Protocols", E.P.A. 520/1-86-04, amendments thereto, or its latest revision; and "Interim Protocols for Screening and Follow-up Radon and Radon Decay Product Measurements", EPA 520/1-86-014-1; page 4 and 13, and 15.

"Authorized proficiency program" means the United States Environmental Protection Agency Radon/Radon Progeny Measurement and Proficiency Program, at the Eastern Environmental Radiation Facility, Montgomery Alabama 36109 or other program equally stringent and authorized by the Department in accordance with the latest edition of New Jersey Department of Environmental Protection document "New Jersey Radon Measurement Proficiency Program."

"Building" means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing, shelter, enclosure or support of individuals.

"Business day" means any day of the year, exclusive of Saturdays, Sundays, and State of New Jersey holidays.

"Certified radon laboratory" means a radiological laboratory which analyzes samples for the presence of radon and/or radon decay products in a facility separate from the location in which the sample was taken using stationary detection equipment, and holds a current valid certificate issued by the Department pursuant to N.J.A.C. 7:18 for radon analysis.

"Certified person" means a certified radon measurement business, certified radon measurement specialist, certified radon measurement technician, certified radon mitigation business, certified radon mitigation specialist or certified radon mitigation technician as defined in this subchapter.

"Certified radon measurement business" means a commercial business enterprise certified pursuant to this subchapter to sell devices or test for radon and/or radon progeny.

"Certified radon measurement specialist" means a person certified pursuant to this subchapter to perform and/or evaluate radon and/or radon progeny measurements for a certified radon measurement business.

"Certified radon measurement technician" means a person certified pursuant to this subchapter to perform radon and radon progeny measurement activities.

"Certified radon mitigation business" means a commercial business outlet certified pursuant to this subchapter to design and/or install systems in buildings to mitigate and safeguard against radon contamination.

"Certified radon mitigation specialist" means a person certified pursuant to this subchapter to evaluate diagnostic tests to determine appropriate radon mitigation and safeguard strategies for a building.

"Certified radon mitigation technician" means a person certified pursuant to this subchapter who installs and/or supervises the installation of radon mitigation or safeguard systems in buildings.

"Department" means the New Jersey Department of Environmental Protection.

"Diagnostic tests" means tests performed or procedures used to determine appropriate mitigation methods for a building.

"Effective(ness)" as it applies to mitigation means, a system, material, or procedure which when installed in a building consistently reduces radon levels to or below 4 pCi/l in the lowest lived-in level of the building.

"Mitigate" means to apply materials and/or install systems and materials to reduce radon concentrations in the indoor atmosphere or prevent entry of radon into the indoor atmosphere.

"Mitigation system" means a step or series of steps employed to actively reduce radon levels in buildings including but not limited to, sealing techniques, natural and forced air ventilation techniques and soil ventilation techniques.*

"Person" means and shall include corporations, companies, associations, societies, firms, partnerships, and joint stock companies as well as individuals.

"Picocurie per liter (pCi/l)" means 2.2 disintegrations per minute of radioactive material per liter. It may be used as a measure of the concentration of radon gas in air. One picocurie is equivalent to 10^{12} Curies.

"Proficiency test" means a test conducted within an authorized proficiency program that a radon measurement business must pass at prescribed times in order to demonstrate its ability to test for radon and/or radon progeny and to become certified and maintain certification.

"Radon" means the radioactive noble gas radon-222.

"Radon progeny" means the short-lived radionuclides formed as a result of the decay of radon-222, including polonium-218, lead-214, bismuth-214 and polonium-214.

"Reciprocal agreement state" means a state, formally recognized by the Department, which has established radon certification requirements and procedures no less stringent than those required by this subchapter and complies with the requirements of N.J.A.C. 7:28-27.23.

"Scope of employment" means acts carried out which are so closely connected with what a servant is employed to do and so fairly and reasonably incidental to it that they may be regarded as methods, even though improper, of carrying out the objectives of the employment and furthering the interest of the employer.

"USEPA" means the United States Environmental Protection Agency.

"Working level (WL)" means that concentration of short-lived radon decay products that will result in 130,000 million electron volts of potential alpha particle energy per liter of air. Working level is a measure of radon decay product concentration in air.

7:28-27.3 General provisions

(a) Beginning 90 days ***(May 13, 1991)*** after the ***[effective]*** date ***of establishment*** of this ***[subchapter]*** ***certification program***, no person may sell devices, test for, mitigate, or safeguard against the presence of radon in the State of New Jersey unless such person is certified pursuant to this subchapter or has been exempted from certification pursuant to N.J.A.C. 7:28-27.31, or temporarily certified in accordance with the provisions of N.J.A.C. 7:28-27.35.

1. The date of establishment of the certification program will be 120 days (February 12, 1991) after the date of adoption of this subchapter. Program administration and activity fees assessed under this subchapter will not be collected until the program is established.

(b) A certified person shall continuously remain in compliance with the Act and this subchapter.

(c) No certification shall be issued or renewed unless the applicant demonstrates to the Department that the following requirements are met:

1. The applicant is not in violation of the Act or this subchapter and does not have a certification issued by the Department suspended or revoked; and

2. The applicant is capable of performing the activities for which he or she is seeking certification in accordance with the Act and this subchapter.

(d) Any person certified to perform radon measurement and/or mitigation shall only do such measurements and/or mitigations for which the person is certified.

1. Any person certified to perform radon measurement and/or mitigation who does not perform so in accordance with this subchapter shall be subject to the suspension and revocation provisions set forth in N.J.A.C. 7:28-27.25.

(e) A certified person shall conduct his or her activities in accordance with the approved certification and the provisions of the Act, this subchapter, and all other applicable municipal, county, state, and federal regulations and codes.

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(f) A certified business shall submit to the Department, in writing, changes in the information provided in the original application including changes in client reporting forms, quality assurance/quality control plans, measurement or mitigation techniques *[and certified personnel]* 30 days prior to their use by the certified business. No fee is charged for such application amendments. ***The certified business shall also report to the Department, in writing, changes in certified personnel 14 days prior to their use.***

(g) A person who wishes to be certified in any or all of the categories described in this subchapter*[, or if already certified, who wishes to add a category]*, shall submit an application ***and the appropriate fee*** to the *[Bureau of Environmental Radiation, Radon Certification Program, New Jersey Department of Environmental Protection, CN 415, Trenton, New Jersey, 08625. A person who wishes to become certified shall submit the appropriate fee to the]* New Jersey Department of Environmental Protection, Division of Fiscal and Support Services, Bureau of Revenue, CN 402, Trenton, New Jersey, 08625, (609) 530-5767 prior to the Department issuing the approved certification. ***A person who wishes to add a category to an existing certification shall submit an application to the Bureau of Environmental Radiation, Radon Certification Program, New Jersey Department of Environmental Protection, CN 415, Trenton, New Jersey, 08625.***

(h) A person shall be guilty of a crime of the third degree if he or she tests for or mitigates against radon/radon progeny in air unless he or she is certified for activities performed pursuant to N.J.A.C. 7:28-27.18 or this subchapter.

(i) Unless otherwise specified, any questions concerning the requirements of this subchapter and requests for application forms should be directed to the Bureau of Environmental Radiation, Radon Certification Program, New Jersey Department of Environmental Protection, CN 415, Trenton, New Jersey 08625, (609) *[633-6397]* ***987-6396*.**

(j) It is the responsibility of the certified businesses to obtain the appropriate certificates, to maintain certified professionals in employment, to develop the quality assurance/quality control and radiological safety plan required by and in accordance with to N.J.A.C. 7:28-27.33 and N.J.A.C. 7:28-27.34 and to report results of all measurement and/or mitigation activity to the Department.

7:28-27.4 Signatories

(a) All applicants shall, upon submission of initial or renewal applications, sign the following certification on the application forms:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification set forth in (a)1 above shall be signed by the individual seeking certification and the highest ranking individual at the facility with overall responsibility for that facility.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fine and/or imprisonment."

i. The certification required by (a)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

(b) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (a)1i above is the same person as the official required to certify in (a)2i, only the certification in (a)1 need be made. In all other cases, the certifications of (a)1 and 2 shall be completed.

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(c) All signatures required by this section shall be notarized.

7:28-27.5 Certification requirements for radon measurement business

(a) A certified radon measurement business shall at all times maintain on staff or retain as a consultant a certified radon measurement specialist.

1. The certified radon measurement specialist shall direct the measurement activities of the measurement business and shall sign and be responsible for the review, approval, and verification of the reports required *[by this subchapter]* ***in N.J.A.C. 7:28-27.28*.**

2. The certified radon measurement specialist shall assess quality assurance and quality control measures of the measurement business, evaluate operating procedures, and ensure compliance with State and Federal regulations.

(b) Radon or radon progeny testing may only be performed by certified radon measurement specialists or certified radon measurement technicians.

1. Any person who wishes to test or analyze for radon in water must be certified pursuant to N.J.A.C. 7:18.

(c) The certified radon measurement business shall develop and adhere to a plan of quality assurance and quality control for each type of measurement equipment employed in order to assure the reliability and validity of radon measurements. Such plan shall contain the elements of N.J.A.C. 7:28-27.33, be submitted and approved by the Department and, at a minimum, include the requirements of the authorized measurement protocols.

(d) The certified radon measurement business shall develop and comply with a radiological safety plan designed to keep each employee's exposure to radon and radon progeny as low as reasonably achievable. Such plan shall be submitted and approved by the Department and include the requirements of N.J.A.C. 7:28-27.34.

(e) A certified radon measurement business shall secure the services of a certified radon laboratory certified pursuant to N.J.A.C. 7:18 to analyze samples for the presence and level of radon and/or radon progeny when the analysis requires the use of non-portable equipment in a facility separate from where the sample was taken.

(f) A certified radon measurement business which analyzes samples using non-portable equipment such as carbon canisters, alpha track detectors, or radon progeny integrated sampling units shall also be certified pursuant to N.J.A.C. 7:18.

(g) The use of portable radon or radon progeny measurement equipment such as a continuous radon monitor or a continuous working level monitor, does not require laboratory certification pursuant to N.J.A.C. 7:18.

(h) A certified radon measurement business shall have its Department radon certification number prominently displayed on each measurement device and/or package it utilizes.

(i) A certified radon measurement business shall at all times have on staff a ***certified radon measurement*** technician who has currently passed the authorized proficiency test required for initial and renewal certification.

1. In the case where a certified radon measurement business loses the services of the technician who passed the proficiency test, the business shall have no more than 45 days to either employ another technician who has passed the most recent proficiency or have a currently employed technician take and pass a proficiency test.

i. In the case where no proficiency testing is available through an authorized proficiency program within the 45 day period, the certified radon measurement business shall be subject to the requirements of N.J.A.C. 7:28-27.6(a), 9iii, iv, and v.

7:28-27.6 Application requirements for a radon measurement business

(a) A person applying for certification as a radon measurement business shall submit the following information on forms provided by the Department:

1. The name, business location, address, and telephone number of the applicant;

2. The applicant's status as a corporation, company, association, society, firm, partnership, joint stock company or sole proprietorship;

3. The name and address of owners, officers, general and limited partners, directors, and principal shareholders;

4. For the persons listed in (a)3 above, the nature of any interest, financial or otherwise, in radon mitigation businesses or services;

5. For corporations, the state of domestic incorporation, and the names and principal places of business of any parent corporations of the applicant;

6. An identification of the type of radon and/or radon progeny measurement equipment for which certification is sought, as defined in the authorized measurement protocols;

7. An identification of the certified radon measurement specialists and certified radon measurement technicians employed by the business as staff members or consultants to be utilized by the applicant;

8. An identification of all instrumentation to be used in radon or radon progeny measurement: by manufacturer, model number, and serial number, or for non-portable measurement equipment, the analytical laboratory name, address, and relevant Department laboratory certification number;

9. Proof of successful completion of a proficiency test for each type of measurement equipment to be offered;

i. This requirement may be met by applicants who have devices such as carbon canisters, alpha track detectors*, **charcoal liquid scintillation, radon progeny integrating sampling units, and pump carbon radon grab samples*** or other devices analyzed by certified radon laboratories by submitting reports indicating that laboratory's successful completion of proficiency tests.

ii. Businesses which utilize portable instrumentation such as continuous working level monitors*,* **[and]* continuous radon monitors*, electret ion chambers, evacuated scintillation cells, pump-collapsible bag devices, flask grab samples, and radon progeny grab samples*** shall participate in an authorized proficiency program and demonstrate proficiency for each type of equipment utilized.

iii. If an applicant, which utilizes portable instrumentation, submits proof that he or she has applied to an authorized proficiency program but testing will not be available within six months after he or she applied to the program, then the proficiency requirement is met provisionally, until the applicant takes and passes the next proficiency test, provided the applicant shows proof of at least two equipment/instrument calibrations during the six month period directly prior to applying for certification and all other requirements of this subchapter are fulfilled.

iv. If the applicant takes and does not pass the next proficiency test or does not take the next proficiency test, the provisional certification is void and he or she must re-apply for certification in accordance with the provisions of this subchapter.

v. If a proficiency test is not available during the provisional period, the final certification will be based on an on-site inspection of the business;

10. A copy of the quality assurance plan specified in N.J.A.C. 7:28-27.33;

11. A copy of the radiological safety plan specified in N.J.A.C. 7:28-27.34; and

12. A copy of all reporting forms used to report results to clients.

7:28-27.7 Certification requirements for a radon mitigation business

(a) The certified radon mitigation business shall employ as a staff member or consultant a certified radon mitigation specialist who shall be responsible for evaluating diagnostic tests in buildings and designing mitigation systems for those buildings.

(b) The certified radon mitigation business shall obtain all necessary permits for installation of mitigation systems from the appropriate construction code enforcing agency or other pertinent authorities prior to initiating any activity requiring the permit.

(c) The certified radon mitigation business shall assure that radon mitigation system installations are performed under the direct supervision of a certified radon mitigation specialist or certified radon mitigation technician.

(d) The certified radon mitigation specialist shall perform a visual inspection and diagnostic tests, as appropriate, prior to system installation to determine the appropriate mitigation system to be installed. Observations and test results made during inspections shall be documented by the specialist.

(e) The certified radon mitigation business shall provide all warranty information on the reduction of the radon level, and the proper functioning of mitigation equipment in writing to clients prior to installation of the system. When a business warrants a system, the warranty shall be honored and the precise coverage shall be explicitly stated in the contract offered to the client.

(f) The certified radon mitigation business shall have each building tested for radon levels before and after mitigation work is performed. Such tests shall be of comparable duration and sufficient type and consistency to allow for comparison of before and after mitigation radon levels, and shall be performed by a certified measurement business. The post mitigation test shall be started no sooner than 12 hours following mitigation.

(g) The mitigation system or material installed shall have been demonstrated to the Department to be effective in reducing radon levels in buildings or water supplies.

(h) The certified radon mitigation business, prior to commencing any work, shall provide the client*, **in writing, a description of*** **[with written instructions on the operation, maintenance and]* any adverse effects produced by the operation of the mitigation system including** ***a discussion of the possible types of*** **[any added]* energy costs** ***to be incurred in operating the system. Immediately upon completion of the installation of the mitigation system, the certified radon mitigation business shall provide the client, in writing, instructions on the operation and maintenance of the system*.**

1. The certified radon mitigation business shall also affix a statement on the installed equipment. This statement shall disclose the purpose and correct operating and maintenance procedures of the system.

(i) The certified radon mitigation business shall develop and adhere to a radiological safety plan submitted and approved by the Department designed to keep each employee's exposure to radon as low as is reasonably achievable. Such plan shall, at a minimum, include the requirements in N.J.A.C. 7:28-27.34.

7:28-27.8 Application requirements for radon mitigation business

(a) A person applying for certification as a radon mitigation business shall submit the following information on forms provided by the Department:

1. The name, business location, address, and telephone number of the applicant;

2. The applicant's status as a corporation, company, association, society, firm, partnership, joint stock company or sole proprietorship;

3. The names and addresses of owners, officers, general and limited partners, directors, and the principal shareholders;

4. For the persons listed in (a)3 above, the nature of any interests, financial or otherwise, in radon measurement businesses or services;

5. For corporations, the state of domestic incorporation and the names and principal places of business of the parent corporation of any applicant;

6. A description of all mitigation systems offered, and types of diagnostic evaluations performed;

i. Proof that the systems and the diagnostic evaluations offered have been effective in reducing radon levels;

7. An identification of the certified radon mitigation specialists and the certified radon mitigation technicians employed by the business as staff or consultants to be utilized by the business;

8. An identification of the certified radon measurement businesses to be utilized by the certified radon mitigation business to perform radon and/or radon progeny testing prior to and following the radon mitigation;

9. An identification of all procedures and instrumentation used in performing diagnostic tests;

10. A copy of the forms to be used when reporting to the client; and

11. A copy of the radiological safety plan meeting, at a minimum, the requirements specified in N.J.A.C. 7:28-27.34.

7:28-27.9 Certification requirements for radon measurement specialists

(a) Prior to applying for certification as a radon measurement specialist:

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1. An applicant shall possess a Bachelor's degree from an accredited institution in *[a natural science]* ***biological sciences, chemistry, physics, geology, or other natural science*** or engineering ***and at least one year of radiation work experience.***

***i. Persons currently certified in the United States as a Certified Health Physicist are considered to have met the degree requirements and radiation experience of this section.**

ii. Radiation work experience shall include documentable experience in two or more of the following areas:

(1) Establishment and/or evaluation of a radiation protection program;

(2) Design and/or the evaluation of the design of the radiation protection aspects of a facility;

(3) Design and implementation of a radiation protection training course or program;

(4) Development of an experimental and/or measurement program designed to answer questions related to radiation protection;

(5) Evaluation of measurement data;

(6) Analysis and solution of radiation protection problems; and

(7) Preparation, interpretation, and implementation of recommendations and regulations.*

***[2. An applicant shall have at least one year of radiation work experience which includes at least 64 hours of either lectures, briefings, seminars, or laboratory sessions covering basic radiation principles in the following areas:**

i. Radiation Physics and Instrumentation;

ii. Radiation Protection;

iii. Radiation Biology; and

iv. Radiation Risk Communication;]*

***[3.]*2.* An applicant shall have at least six months of measurement work experience within the State or in a reciprocal agreement state administering radon and/or radon progeny measurement activities and evaluating the results of radon tests;**

***[4.]*3.* An applicant shall have successfully completed a course or seminar consisting of at least 24 hours of training approved by the Department, covering radiation with emphasis on radon; and**

***[5.]*4.* An applicant shall pass a written examination offered or approved by the Department.**

(b) Certification as a radon measurement specialist qualifies a person as a certified radon measurement technician.

(c) If a certified radon measurement specialist wishes to function as a measurement business, he or she must be certified as a radon measurement business.

7:28-27.10 Application requirements for *[a]* radon measurement specialists

(a) A person applying for certification as a radon measurement specialist shall submit the following information on forms provided by the Department:

1. The name, address, and telephone number of the applicant;

2. Proof, such as a certified true copy of a transcript, showing that he or she holds a bachelor's degree from an accredited institution in a natural science or engineering;

3. Proof of at least one year of radiation work experience;

4. Proof of at least six months of measurement work experience within the State or in a reciprocal agreement state;

5. Proof that he or she has successfully completed a Department approved course with emphasis on radon;

6. Proof of passing a written examination offered or approved by the Department; and

7. A list of all certified radon measurement businesses for which the applicant will be a certified radon measurement specialist.

7:28-27.11 Provisional certification of radon measurement specialists

(a) Provisional certification shall be granted to an applicant fulfilling the requirements specified in N.J.A.C. 7:28-27.10(a)1 through 5 and 7. The applicant shall take and pass the next radon measurement specialist examination offered or approved by the Department and accrue an additional six months of measurement work experience as defined in N.J.A.C. 7:28-27.9(a)*[3]2* following the examination or the provisional certification becomes null and void. The**

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provisional certification will terminate seven months after the date of the exam unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails an examination required for certification or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

(b) Provisional certification shall be granted to those applicants fulfilling the requirements specified in N.J.A.C. 7:28-27.10(a)1, 2, 3, 5, 6 and 7 above. Such provisional certification will allow the applicant to accrue the measurement work experience required by N.J.A.C. 7:28-27.9(a)*[3]2*. The provisional certification will terminate seven months after the date of issuance unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails to successfully complete the continuing education courses or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.**

7:28-27.12 Certification requirements for radon measurement technicians

(a) Prior to applying for certification as a radon measurement technician:

1. An applicant shall have at least one half year of technical measurement work experience *within the State or a reciprocal agreement state*** performing radon and/or radon progeny measurements;**

2. An applicant shall have successfully completed a Department approved course or seminar consisting of at least 16 hours of training on radiation with emphasis on radon; and

3. An applicant shall pass a written examination offered or approved by the Department.

7:28-27.13 Application requirements for radon measurement technician

(a) A person applying for certification as a radon measurement technician shall submit the following information on forms provided by the Department:

1. The name, address, and telephone number of the applicant;

2. Proof of at least one half year of technical measurement work experience *within the State or a reciprocal agreement state***;**

3. Proof that he or she has successfully completed a Department approved course or seminar on radiation with emphasis on radon;

4. Proof of passing a written examination offered or approved by the Department; and

5. A list of all the certified radon measurement businesses for which the applicant will be a certified measurement technician.

7:28-27.14 Provisional certification of radon measurement technician

(a) Provisional certification will be granted to those applicants fulfilling the requirements specified in N.J.A.C. 7:28-27.13(a)1 through 3 and 5. The applicant shall take and pass the next radon measurement technician examination offered or approved by the Department and accrue an additional six months of technical measurement work experience as defined in N.J.A.C. 7:28-27.12(a)1 following the examination or the provisional certification becomes null and void. The provisional certification will terminate seven months after the date of the exam unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails an examination required for certification or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

(b) Provisional certification will be granted to those applicants fulfilling the requirements of sections N.J.A.C. 7:28-27.13(a) 1, 3, 4, and 5. Such provisional certification will allow the applicants to accrue the requisite technical measurement work experience required by N.J.A.C. 7:28-27.12(a)1. The provisional certification will terminate seven months after the date of issuance unless the applicant submits proof to the Department in writing that he or she meets all

the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails to successfully complete the continuing education courses or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

7:28-27.15 Certification requirements for radon mitigation specialists

(a) Prior to applying for certification as a radon mitigation specialist:

1. An applicant shall possess any combination of five years of relevant college education or work experience. ***Persons currently licensed in New Jersey as Professional Engineers are considered to have met the five years of relevant college education and work experience requirements of this section.***

i. Relevant college education means ***[a]* *an undergraduate or graduate* curriculum in architecture, *[or civil or mechanical]* engineering*, or HVAC studies*.**

ii. Relevant work experience means the design, construction and renovation of buildings, and associated heating, ventilation, and air conditioning systems*; or **design and installation of radon mitigation systems*;**

2. An applicant shall have at least six months of mitigation work experience ***within the State or in a reciprocal agreement state*** performing and/or evaluating radon and/or radon progeny diagnostic tests made in a building, soil or water and designing mitigation systems;

3. An applicant shall have successfully completed a Department approved course or seminar consisting of at least 24 hours of training on radon diagnosis and mitigation; and

4. An applicant shall pass a written examination offered or approved by the Department.

(b) If a certified radon mitigation specialist wishes to function as a radon mitigation business he or she must be certified as a radon mitigation business.

(c) Certification as a radon mitigation specialist qualifies an individual as a certified radon mitigation technician.

7:28-27.16 Application requirements for radon mitigation specialists

(a) A person applying for certification as a radon mitigation specialist shall submit the following information on forms provided by the Department:

1. The name, address, and telephone number of the applicant;

2. Proof of any combination of five years of relevant college education or work experience;

3. Proof of at least six months of mitigation work experience ***within the State or in a reciprocal agreement state*;**

4. Proof which satisfactorily demonstrates to the Department that evaluation procedures and mitigation systems, described in N.J.A.C. 7:28-27.15(a)*[1 and] *2 above, have been effective;

5. Proof of successful completion of a Department approved course on radon diagnosis and mitigation; and

6. Proof of passing a written examination offered or approved by the Department.

7:28-27.17 Provisional certification of radon mitigation specialists

(a) Provisional certification shall be granted to those applicants fulfilling the requirements specified in N.J.A.C. 7:28-27.16(a)1 through 5. The applicant shall take and pass the next radon mitigation specialist examination offered and accrue an additional six months of mitigation work experience as defined in N.J.A.C. 7:28-27.15(a)2 following the examination or the provisional certification becomes null and void. The provisional certification will terminate seven months after the date of the exam unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails an examination required for certification or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

(b) Provisional certification shall be granted to those applicants fulfilling the requirements specified in N.J.A.C. 7:28-27.16(a)1, 2, 5

and 6. Such certification will allow the applicant to accrue the requisite mitigation work experience specified in N.J.A.C. 7:28-27.15(a)2. The provisional certification will terminate seven months after the date of issuance unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails to successfully complete the continuing education courses or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

7:28-27.18 Certification requirements for radon mitigation technicians

(a) Prior to applying for certification as a radon mitigation technician:

1. An applicant shall have at least two years experience in the building or construction trades*, **including the heating, ventilation and air conditioning trade*;**

2. An applicant shall have at least one half year of technical mitigation work experience ***within the State or a reciprocal agreement state*** installing radon mitigation systems;

3. An applicant shall have successfully completed a Department approved course or seminar consisting of at least 16 hours of training with emphasis on radon mitigation; and

4. An applicant shall have passed a written examination offered or approved by the Department.

7:28-27.19 Application requirements for radon mitigation technicians

(a) A person applying for certification as a radon mitigation technician shall submit the following information on forms provided by the Department:

1. The name, address and telephone number of the applicant;

2. Proof of at least two years of experience in the building or construction trades;

3. Proof of at least one half year of technical mitigation work experience ***within the State or a reciprocal agreement state*;**

4. Proof of successful completion of a Department approved course or seminar consisting of at least 16 hours of training with emphasis on radon mitigation; and

5. Proof of passing a written examination offered or approved by the Department.

7:28-27.20 Provisional certification of radon mitigation technicians

(a) Provisional certification shall be granted by the Department to an applicant fulfilling the requirements specified in N.J.A.C. 7:28-27.19(a)1 through 4. The applicant shall take and pass the next certified radon mitigation technician examination offered and accrue an additional six months of technical mitigation work experience as defined in N.J.A.C. 7:28-27.18(a)2 following the examination or the provisional certification becomes null and void. The provisional certification will terminate seven months after the date of the exam unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails an examination required for certification or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

(b) Provisional certification shall be granted by the Department to those applicants fulfilling the requirements in N.J.A.C. 7:28-27.19(a)1, 2, 4 and 5. Such certification will allow the applicant to accrue the requisite technical mitigation work experience required by N.J.A.C. 7:28-27.18(a)2. The provisional certification will terminate seven months after the date of issuance unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails to successfully complete the continuing education courses or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

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7:28-27.21 Recordkeeping requirements for a certified radon measurement business or a certified radon mitigation business

(a) The certified radon measurement business shall maintain the following records for five years:

1. Records of all radon tests performed including information required in N.J.A.C. 7:28-27.28;
2. Records of all instrument calibration and quality control;
3. Records and results of participation in an authorized proficiency program;
4. Copies of certification for the certified radon measurement specialists and certified radon measurement technicians employed by the business;
5. Copies of the methods and techniques in the authorized measurement protocols used by the certified radon measurement business; and

6. Copies of all applications submitted to the Department and all correspondence between the Department and the certified measurement business.

(b) The certified radon mitigation business shall maintain the following records for five years:

1. Records of all mitigation work performed including, but not limited to, client name, address, diagnostic evaluation results, a brief description of the mitigation system installed, copies of permits required for installation, pre- and post-mitigation radon measurements including method of measurement, all measurement dates, and the names of the certified measurement business and certified measurement specialist responsible for such measurements;
2. Records of mitigation plans developed, utilized, and signed by a certified radon mitigation specialist;
3. Records of all instrument calibration;
4. Copies of all certification applications and all correspondence between the Department and the mitigation business; and
5. Copy of each mitigation contract, including the warranty of equipment installed, signed by the owner of the building mitigated ***or his/her agent to act on behalf of the owner of the building mitigated***.

7:28-27.22 Renewal of certification

(a) A certification will be valid for one year following the date of issuance. No radon measurement, mitigation, or safeguard activity shall be conducted after the expiration of the term of a certification unless an application for renewal certification has been received by the Department 30 days prior to the expiration date of the certification and is pending approval. If the renewal application is rejected by the Department, no radon measurement, mitigation or safeguard activity may be conducted after receipt by the applicant of notice of rejection.

(b) An application for a renewal certification shall contain all the information required in an initial certification, proof of successful completion of the continuing education requirements for the requested certification and the proper fee.

i. For a certified mitigation business, renewal of certification shall, in addition to the initial application requirements, be based on the effectiveness of the previous years' mitigation systems installed.

ii. Upon completion of the final mitigation system installation, a post mitigation radon measurement test shall be conducted. If the post mitigation test is short term, it must be conducted at least in the lowest livable area. The lowest livable area, such as the basement, does not have to be finished or even used as livable space. If this test is at or below 4 pCi/l the mitigation is deemed effective. If the post mitigation test result is above 4 pCi/l, a long term radon test must be conducted in the lowest living area of the house. If the result of this test is at or below 4 pCi/l the mitigation is deemed effective.

(c) A certified person, in order to maintain his or her certification, shall ***[participate in a]* *accumulate*** continuing education ***[program]* *credits*** consisting of ***[courses]* *lectures*** offered or approved by the Department each certification year. The courses shall be successfully completed during the certification year and shall include the following minimum number of hours of instruction:

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1. ***[Sixteen]* *Eight*** hours for maintaining certification as a radon measurement specialist;

2. ***[Eight]* *Four*** hours for maintaining certification as a radon measurement technician;

3. ***[Sixteen]* *Eight*** hours for maintaining certification as a radon mitigation specialist; and

4. ***[Eight]* *Four*** hours for maintaining certification as a radon mitigation technician~~*[.]**.~~

(d) A certified radon measurement business in order to maintain certification, shall participate in an authorized proficiency program and pass one proficiency test each certification year for each type of measurement equipment offered.

1. This requirement may be met by applicants who have charcoal canisters, alpha track detectors or other devices analyzed by certified radon laboratories by submitting reports indicating the laboratory's successful completion of proficiency tests.

2. If there are no proficiency tests available during the certification year for businesses which utilize portable instrumentation, such as continuous working level monitors or continuous radon monitors, the business shall show proof of registration in an authorized proficiency program and proof of at least two equipment instrumentation calibrations during the certification year.

7:28-27.23 Reciprocity

(a) The Department may waive initial certification review where an applicant has previously been certified in another state or territory of the United States of America pursuant to a valid certification test given in that state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a certification program at least as stringent as New Jersey's.

(b) A New Jersey radon measurement or mitigation certification will be issued pursuant to this section provided the following conditions are satisfied:

1. The Department receives proof of a valid certification from any state or territory which has been officially recognized by the State of New Jersey as having a certification program at least as stringent as New Jersey's and which has signed a reciprocity agreement with the State of New Jersey relating to the reciprocal certification of radon testers and mitigators;

2. The Department receives a complete application from the applicant;

3. The applicant demonstrates to the Department a knowledge of relevant New Jersey radiation and radon laws and rules; and

4. The Department receives all applicable fees.

7:28-27.24 Inspections

(a) The Department and its representatives may enter and inspect any site, building or equipment, or any portion thereof, owned or operated by an applicant or by the certified radon measurement or mitigation business, at any time, in order to ascertain compliance or non-compliance with the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., this subchapter, any certification, or any other agreement or order issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test any equipment at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or applicant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Certified businesses or applicants, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. This assistance includes allowing the Department and its representatives to accompany the certified person while performing any measurement, mitigation, or safeguard activity, at a particular building or property for the purpose of inspection of those activities. During such inspections by the Department, the certified person shall use all sampling and measurement equipment under

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normal routine operating conditions or under such other conditions as may be requested by the Department. The certified person shall, upon request, make available such sampling and measurement equipment to the Department for the purpose of making comparative measurements.

(c) Upon request, a certified business shall make known to the Department's representatives, the owners, residents, and addresses of properties or buildings where radon measurement, mitigation, or safeguard activities are scheduled, in progress, or completed for the purpose of possible inspection by the Department. This assistance shall also include deploying Department sampling devices alongside the business' device and returning the Department sampling devices to a designated location.

7:28-27.25 Denial, suspension, or revocation of a certification

(a) The Department may refuse to issue a certification or renewal certification to any person who is not in compliance with all of the provisions of the Act or this subchapter.

(b) The Department may suspend a certification for one or all techniques or devices for which a person is certified by reason of amendments to the Act or adoption of rules promulgated pursuant to the Act, or if the person:

1. Violates any requirements of the certification;
2. Violates a statute, rule, or order of the Department;
3. Makes misrepresentations to the Department on any report, record, or application requirement;
4. Fails to comply with any of the requirements of this subchapter;
5. Changes personnel or techniques without disclosure thereof to the Department;
6. Does not pay the applicable fees;

*[7.]**7.* Publicly makes false or fraudulent claims or uses "scare tactics" such as exaggerated cancer risks, through any written or verbal communication, or misrepresents the effect of any radon mitigation method utilized;*

*[8.]**7.* Fails to submit required reports to the Department in a timely manner;

*[9.]**8.* Offers or performs tests not in conformance with the authorized measurement protocols;

*[10.]**9.* Offers or performs services for which he or she is not certified;

*[11.]**10.* Makes false or misleading claims with regard to any products or tests and/or services offered;

*[12.]**11.* Records faulty measurements or installs malfunctioning or ineffective mitigation systems;

*[13.]**12.* Fails to consistently demonstrate effectiveness of mitigation systems, methods or procedures in reducing radon levels in buildings;

i. Upon completion of the final mitigation system installation, a post mitigation radon measurement test shall be conducted. If the post mitigation test is short term, it must be conducted at least in the lowest livable area. The lowest livable area, such as the basement, does not have to be finished or even used as livable space. If this test is at or below 4 pCi/l the mitigation is deemed effective. If the post mitigation test result is above 4 pCi/l, a long term radon test must be conducted in the lowest living area of the house. If the result of this test is at or below 4 pCi/l the mitigation is deemed effective;

*[14.]**13.* Does not pass the required proficiency tests;

*[15.]**14.* Fails to adhere to the approved quality assurance or radiological safety plan;

*[16.]**15.* Fails to grant access to Department employees or agents for inspections; or

*[17.]**16.* Does not have on staff, in accordance with N.J.A.C. 7:28-27.5, a technician who has currently passed the proficiency test required for initial or renewal certification.

(c) Suspensions shall be effective immediately upon receipt of the suspension notice by the violator.

1. Suspension notices shall be served by way of certified mail return receipt requested or by personal service.

2. The suspension notice will:

- i. Identify the section of the Act, rule, administrative order, or certification violated;
- ii. Concisely state the facts which constitute the violation;

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iii. Order the violation to cease; and

iv. Specify the duration of the suspension;

(d) A suspension will not be of a duration of more than four months except when all bases for the suspension have not been eliminated or rectified.

1. Specific suspension periods will be determined by the Department according to the severity of the violation.

(e) Suspensions will not be withdrawn until all bases for the suspension have been eliminated or rectified.

1. If the person is suspended for a violation involving faulty measurements, the person shall take and pass a proficiency test before the suspension will be withdrawn.

(f) The Department may revoke a certification upon request submitted by the certified person to the Department.

(g) The Department may revoke a certification in one or all techniques or devices for which a person is certified by reason of amendments to the Act, adoption of rules, pursuant to the Act or suspension notice issued pursuant to the Act or if the applicant:

1. Continues to test and/or mitigate while the person's certification is suspended;

2. Violates a provision of this subchapter for which he ***or she*** has been suspended;

3. Fails to grant access to Department employees or agents for inspections;

4. Demonstrates a pattern of recording faulty measurements or installs malfunctioning mitigation systems or installs mitigation systems which do not consistently demonstrate effectiveness;

i. Upon completion of the final mitigation system installation, a post mitigation radon measurement test shall be conducted. If the post mitigation test is short term, it must be conducted at least in the lowest livable area. The lowest livable area, such as the basement, does not have to be finished or even used as livable space. If this test is at or below 4 pCi/l the mitigation is deemed effective. If the post mitigation test result is above 4 pCi/l, a long term radon test must be conducted in the lowest living area of the house. If the result of this test is at or below 4 pCi/l the mitigation is deemed effective;

5. Performs testing or mitigation services not contained in the person's certification;

6. Fails to pass a proficiency test for the requested certification;

7. Endangers the public health, safety and welfare;

8. Operates in such a manner so as to cause harm, injury or damage to persons, property or the environment or poses a significant risk of harm, injury or damage;

9. Aids, abets, combines with, or conspires with any person for any purpose which will evade or be a violation of the provisions of the Act, this subchapter or his or her certification;

10. Does not have on staff, in accordance with N.J.A.C. 7:28-27.5, a technician who has currently passed the proficiency test required for initial or renewal certification; or

11. Commits any of the acts in (b) above authorizing a suspension.

(h) Revocations shall be effective immediately upon receipt of the revocation order by the violator.

1. Revocation orders shall be served via certified mail return receipt requested or by personal service.

2. A recipient may request a hearing on his or her certification revocation within 20 days of receipt of the notice.

3. A revocation order shall:

i. Identify the section of the Act, rule, suspension notice, or certification violated;

ii. Concisely state the facts which constitute the violation;

iii. Order the violation to cease; and

iv. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:28-27.27.

(i) Revocations shall be of a duration of not more than two years unless all bases for the revocation have not been eliminated or rectified.

1. Specific revocation periods will be determined by the Department according to the severity of the violation.

(j) Revocations will not be withdrawn until all bases for the revocation have been eliminated or rectified.

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1. A person whose certification has been revoked cannot apply for any certification authorized by this subchapter until the entire revocation period has expired.

2. A person applying for a new certification after his or her certification has been revoked and the revocation period has been completed shall comply with all the provisions of this subchapter in order to receive a new certification.

(k) Upon voluntary or involuntary revocation, a certified person shall immediately surrender his or her certification documents to the Department.

(l) Use of any remedy under this section shall not preclude the use of any other remedy available to the Department.

7:28-27.26 Criminal penalties

(a) Any person who violates N.J.S.A. 26:2D-72, 73, or 74 or any rule or regulation adopted pursuant to N.J.S.A. 26:2D-72, 73, or 74 shall be guilty of a crime of the third degree.

(b) Use of any remedy under this section shall not preclude the use of any other remedy available to the Department.

7:28-27.27 Request for adjudicatory hearing

(a) Within 20 calendar days from receipt of a certification denial, refusal to renew or revocation issued by the Department pursuant to N.J.A.C. 7:28-27.25, the applicant may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. Name, address, and telephone number of the applicant;
2. Identification of the applicant's certification category, that is, radon measurement business, specialist, or technician or radon mitigation business, specialist, or technician;

3. The applicant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to the contested conditions as well as suggested or revised or alternative conditions;

4. Information supporting the applicant's factual position and proposed conditions and a copy of other written documents relied upon to support the request for a hearing;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request if necessary for a barrier free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the applicant of a certification denial or revocation issued by the Department pursuant to N.J.A.C. 7:28-27.25, shall be denied by the Department.

(c) If the applicant fails to include all of the information required by (a) above, the Department may deny the hearing request.

(d) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held 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.

7:28-27.28 Reporting requirements

(a) A certified radon measurement business shall submit to the Department by the *[15th]* ***first*** day of each month the results of all radon and radon progeny measurements ***[taken thirty days prior to the 15th day of the current month]*** ***performed during the second previous month. For example, the results from May testing are to be submitted July 1***. Data shall be submitted in the format and the media required by the Department. For each test conducted, this data shall include, but not necessarily be limited to:

1. Name of owner and resident, street address, municipality, county and zip code of location where testing was performed;

[2. Block and lot numbers of property tested;]

[3.]*2. The type of equipment used for radon and/or radon decay product testing according to the authorized measurement protocols, media tested, and conditions under which testing was performed;

[4.]*3. The level or floor of the building where tests were conducted;

[5.]*4. The results of the test in picocuries/liter (pCi/l) of radon gas or working level (WL) of radon decay products;

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[6.]*5. The date and start and completion times when the test was conducted;

[7.]*6. The purpose of the test, for example, screening, follow-up, diagnostics, pre-mitigation, post-mitigation; ***[and]***

[8.]*7. The certified radon laboratory performing analysis of the sample devices^{***};

8. The type of building the test was performed in: residential or non-residential;

9. Who performed the sampling: building owner or certified radon professional; and

10. Whether the test was conducted as part of a real estate transaction.

(b) The certified radon measurement business shall report test results for radon and radon progeny directly to the owner of the building and the Department. Radon results shall be reported in picocuries per liter (pCi/l), decay product results shall be reported in working levels (WL). The report provided to the owner shall include the following statements:

"This notice is provided to you by an organization or individual certified by the New Jersey Department of Environmental Protection to perform radon and/or radon progeny measurements. N.J.S.A. 26:2D-73 requires that ***[radon measurement data be kept confidential and be sent only to]*** ***no certified person disclose to any individual, except*** the Department of Environmental Protection or ***[on request, to]*** the Department of Health ***the address or owner of a nonpublic building that the person has tested or treated for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. In the case of a prospective sale of a building which has been tested for radon gas and/or radon progeny, the seller shall provide the buyer, at the time the contract of sale is entered into, with a copy of the results of that test and evidence of any subsequent mitigation or treatment, and any prospective buyer who contracts for the testing shall have the right to receive the results of that testing***. Any questions, comments, or complaints regarding the persons performing these measurements, or related mitigation, or safeguarding services should be directed to the New Jersey Department of Environmental Protection. Attention: Radon Section, Bureau of Environmental Radiation (1-800-648-0394)."

1. Notwithstanding other remedies available to the Department, a person shall be guilty of a crime of the third degree for reporting radon/radon progeny test results to any person other than the owner of the building tested ***[or]**, the Department *or, in the case of a prospective sale, the buyer who contracts for the testing***.

(c) A certified radon measurement business and certified radon mitigation business, prior to any mitigation work, shall provide to each client ***or his/her*** a copy of the most recent version of the Department's publication titled "Guidance on Performing Screening and Follow-up Measurement Tests."

(d) A certified radon measurement business shall clearly identify to his or her clients the certified radon laboratory used, if any, to analyze the devices. The certified radon measurement business may either send a copy of the original laboratory results to the client or clearly state next to the results reported to the client, the name of the certified radon laboratory and its Department certification number.

(e) A radon mitigation business shall submit to the Department by the *[15th]* ***first*** day of each month a report on all mitigation work performed during the ***second*** previous month. Reports shall be submitted on forms provided by the Department and shall include at a minimum:

1. The name and address of the owner and resident of the building in which mitigation work was performed ***and the type of building that was mitigated, either residential or non-residential***;

2. A description of the mitigation work performed in each building, specifying the type of mitigation systems installed and the date of installation;

3. All pre- and post-mitigation radon ***[and radon progeny]*** test results, test dates, methods of measurements, and level of building on which tests were performed and the name of the certified measurement business performing tests; ***and***

[4. Copies of all permits required for each mitigation system installed; and]

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*[5.]*4. The certified radon mitigation business shall include in all mitigation contracts the following statement:

"This notice is provided to you by an organization or individual certified by the New Jersey Department of Environmental Protection to perform radon mitigation or safeguarding services.

At some time in the near future, a representative of the Department of Environmental Protection may contact you to ask your permission to visit your building. The purpose of this visit would be to inspect the recently installed mitigation system.

Any questions, comments or complaints regarding the persons performing these mitigation or safeguarding services should be directed to the New Jersey Department of Environmental Protection, Attention: Radon Projects Section, Bureau of Environmental Radiation (1-800-648-0394)."

(f) The certified radon mitigation business shall include in all mitigation contracts a statement on the possible adverse side effects produced by the operation of the proposed mitigation system. This statement shall include *an estimation of the energy costs incurred in operating the system* ***a discussion of the possible types of energy costs incurred in operating the system***.

7:28-27.29 Liability of certified radon measurement or radon mitigation business for actions of employees

Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any certified radon measurement or radon mitigation

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business shall be responsible for any violation of the Act committed by an employee in the scope of his or her employment. This responsibility shall be joint and several.

7:28-27.30 Fees

(a) All persons wishing to become certified or renew their certification shall submit to the Department a non-refundable application fee and annual application renewal fee in accordance with Certification Fee Schedule A below.

(b) All persons taking the certification examination shall submit a non-refundable examination fee in accordance with Certification Fee Schedule A below.

(c) All persons taking a course offered by the Department shall submit a non-refundable course fee in accordance with Certification Fee Schedule A below.

(d) In addition to the fees in Schedule A, a program administration fee shall be submitted to the Department by a certified radon measurement business in accordance with Fee Schedule B below.

(e) In addition to the fees in Schedule A, a program administrative fee shall be submitted to the Department by a certified radon mitigation business in accordance with Fee Schedule C below.

(f) Fees specified in (d) and (e) above shall be submitted semi-annually to the Department at the address specified on the certification application.

(g) The above fees shall be used to cover the cost of Department implementation of the certification provisions of this subchapter.

CERTIFICATION FEE SCHEDULE A*

	INITIAL COURSE FEE	CONTINUING ED. COURSE FEE	EXAMINATION FEE	CERTIFICATION APPLICATION FEE	ANNUAL RE-CERTIFICATION FEE	*FACILITY* INSPECTION FEE (each inspection)
Radon Measurement Business	N/A	N/A	N/A	400	200	400
Radon Measurement Specialist	200	135	200	150	75	N/A
Radon Measurement Technician	150	50	150	75	50	N/A
Radon Mitigation Business	N/A	N/A	N/A	400	200	400
Radon Mitigation Specialist	200	135	200	150	75	N/A
Radon Mitigation Technician	150	50	150	75	50	N/A

*Fees are in dollars and non-refundable

FEE SCHEDULE B

**Program Administration Fees—Radon Measurement Business

NUMBER OF MEASUREMENT DEVICES EMPLOYED each SEMI-ANNUAL PERIOD*	PROGRAM FEE(\$)	ACTIVITY FEE(\$)	TOTAL(\$)
-0-	*[447]* *318*	0	*[447]* *318*
1-49	*[447]* *318*	*[49]* *37*	*[496]* *355*
50-99	*[447]* *318*	*[145]* *110*	*[592]* *428*
100-199	*[447]* *318*	*[290]* *219*	*[737]* *537*
200-299	*[447]* *318*	*[484]* *365*	*[931]* *683*
300-499	*[447]* *318*	*[775]* *584*	*[1,222]* *902*
500-999	*[447]* *318*	*[1454]* *1095*	*[1,901]* *1413*
1000-1999	*[447]* *318*	*[2909]* *2190*	*[3,356]* *2508*
2000-5000	*[447]* *318*	*[6790]* *5100*	*[7,237]* *5428*
Greater than 5000	*[447]* *318*	*[9700]* *7300*	*[10,147]* *7618*

*First Calendar Period: July 1-December 31

Second Calendar Period: January 1-June 30

**The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers.

FEE SCHEDULE C

****Program Administration Fees—Radon Mitigation Business**

NUMBER OF BUILDINGS MITIGATED EACH SEMI-ANNUAL PERIOD*	PROGRAM FEE(\$)		ACTIVITY FEE(\$)		TOTAL(\$)	
0	*[746]*	*496*	0		*[746]*	*496*
1-10	*[746]*	*496*	*[144]*	*77*	*[890]*	*573*
11-24	*[746]*	*496*	*[459]*	*276*	*[1205]*	*772*
25-49	*[746]*	*496*	*[971]*	*568*	*[1717]*	*1064*
50-74	*[746]*	*496*	*[1627]*	*951*	*[2373]*	*1447*
75-99	*[746]*	*496*	*[2283]*	*1335*	*[3029]*	*1831*
100-124	*[746]*	*496*	*[2939]*	*1718*	*[3685]*	*2214*
125-149	*[746]*	*496*	*[3595]*	*2102*	*[4341]*	*2598*
150-174	*[746]*	*496*	*[4251]*	*2485*	*[4997]*	*2981*
175-200	*[746]*	*496*	*[4920]*	*2869*	*[5666]*	*3365*
Greater than 200	*[746]*	*496*	*[5248]*	*3068*	*[5994]*	*3564*

*First Calendar Period: July 1-December 31

Second Calendar Period: January 1-June 30

**The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers.

7:28-27.31 Exemptions

(a) The certification requirements of this subchapter shall not apply to:

1. Those persons testing or mitigating buildings that they own;

2. Those persons incorporating construction techniques outlined in N.J.A.C. 5:23-10; however, mitigation system installation must be done by persons certified pursuant to N.J.A.C. 7:28-27;

[2.]**3. Those persons performing specific construction tasks under the direct supervision of a certified radon mitigation specialist or certified radon mitigation technician;

[3.]**4. Those persons who sell or offer for sale at a retail outlet radon measurement devices, such as charcoal canisters, provided that:

i. The radon measurement devices are manufactured or supplied by a certified radon measurement business;

ii. The analysis, result, and interpretation of such tests are performed and sent directly to the purchaser by the certified radon measurement business;

iii. Consultation on radon is provided only by a certified radon measurement business;

iv. Measurement devices are not being placed in buildings to be analyzed by uncertified persons; and

v. The measurement devices are stored and displayed in a manner that maintains their integrity; or

[4.]**5. Those persons testing for or mitigating radon and/or radon progeny as part of scientific research approved by the Department or as a public service without remuneration approved by the Department.

7:28-27.32 Examinations

(a) All applicants for initial certification shall take and pass a written examination offered ***or approved*** by the Department. Examinations will be offered at least three times each calendar year. Examinations will cover, but not be limited to, the following:

1. For certification as a radon measurement specialist:

i. The basic principles of radioactivity, interaction of radiation with matter, units of radiation measurement, biological effects of radiation exposure, radon related detection methods and instrumentation, radon measurement protocols, risk assessment and communication, State or Federal radiation programs, recommendations and guidelines related to radon measurement, diagnostic and mitigation methods, and quality assurance/quality control programs.

2. For certification as a radon measurement technician:

i. The basic principles of radioactivity, interaction of radiation with matter, units of radiation, radon and radon progeny measurement protocols, risk assessment and communication, State and Federal radiation programs, recommendations and guidelines related to

radon and radon progeny measurements, diagnostic and mitigation methods, and quality assurance/quality control programs.

3. For certification as a radon mitigation specialist:

i. Radon mitigation diagnostics, mitigation methods, radon transport and entry, follow-up testing procedures, and health effects of radon and radon progeny.

4. For certification as a radon mitigation technician:

i. Radon mitigation methods, construction codes, radon transport and entry into buildings and worker protection and health effects of radon exposure.

7:28-27.33 Elements of quality assurance plans

(a) Those firms wishing to obtain certification in New Jersey in the radon measurement business category shall prepare and submit quality assurance/quality control (QA/QC) plans for radon testing services offered to the public to the Department. The plans shall contain the following information as it pertains to the activities of the business:

1. A title page including:

i. The title of the document—Quality Assurance/Quality Control Plan for Radon Measurement;

ii. The authors' names;

iii. The authors' organization;

iv. The business name and address; and

v. The month and year the document was prepared.

2. A table of contents;

3. A description of the business' organization and lines of responsibility including:

i. If the firm has more than five employees, a chart or figure showing the firm's organization and line of authority;

ii. The designation of persons performing quality assurance functions and their relationship to the firm's management structure;

iii. The names of the firm's certified radon measurement specialists;

iv. The names of the firm's certified radon measurement technicians; and

v. The names of other key individuals responsible for analysis, or data assessment;

4. A description of sampling procedures for each type of measurement equipment for which certification is being sought to include:

i. Deployment procedures, including the desirable locations at which devices are to be placed;

ii. The environmental conditions desired during the test period;

iii. Equipment operation procedures;

iv. Copies of instructions to clients if testing devices are mailed;

v. The test period in days, hours, months, etc; and

vi. The procedures used by the firm to ensure that technicians understand and follow the procedures;

5. If the radon measurement business is or works with a certified radon laboratory, the sampling procedures described shall coincide with the laboratory quality assurance/quality control requirements, for example, for duplicate analysis:

i. References can be made to the authorized measurement protocols and copies of these need not be included;

6. A description of sample tracking/chain of custody procedures used to track detector receipt, and delivery between the business and the certified radon laboratory as appropriate, including:

i. The names and duties of the detector custodians who sign for incoming field samples and verify the entry of pertinent information into custody records;

ii. The data tracking information required to be entered on the businesses' tracking forms; and

iii. Samples of tracking forms;

7. Analytical procedures for portable instruments to include, for each radon/radon progeny testing method for which the business performs analysis of samples, a list of instrument procedures and calculations used, and the equipment used;

8. A description of procedures for calibration and maintenance of portable instruments including:

i. The calibration equipment and procedures used for both pumps and measurement equipment, and formulas for calculating calibration factors;

ii. The frequency at which calibrations of each piece of equipment, both pumps and measurement, are performed shall be given. Said calibrations of equipment, both pumps and measurement, shall occur at least twice a year;

iii. The calibration standards or sources used and their traceability. Include whether calibrations are performed in a radon chamber and/or by other methods; and

iv. Equipment maintenance procedures;

9. A description of internal quality control procedures for portable instruments;

10. Data reduction and reporting procedures including:

i. The data reduction scheme planned for all analytical data from portable instruments;

ii. Methods used to identify and treat anomalous data; and

iii. The names or positions of key individuals who will handle data and be responsible for reporting results to clients and maintaining appropriate confidentiality;

11. Corrective action procedures including:

i. The predetermined limits for data acceptability beyond which corrective action is necessary;

ii. The corrective action to be taken; and

iii. The names or positions of individuals responsible for initiating and approving the corrective actions; and

12. A brief description of the quality assurance reports that will be submitted to the businesses' management including:

i. The periodic assessment of measurement accuracy and precision;

ii. Results of intercomparisons and calibrations;

iii. The results of any internal or external audits; and

iv. All significant quality assurance/quality control problems encountered and recommended solutions.

7:28-27.34 Minimum requirements for radiological safety plans

(a) All new employees or consultants of a certified radon measurement business or certified radon mitigation business who will be entering structures with unknown radon levels or radon levels above four picocuries per liter (pCi/l) for purposes of radon or radon progeny measurement, or designing, installing or repairing radon mitigation systems shall be instructed by the certified radon measurement specialist or certified radon mitigation specialist of the business on proper radiation safety practices prior to entering such a structure, in accordance with the businesses' radiological safety plan. Each new employee shall be required to take and pass a test on radiation safety developed by the certified radon measurement or certified radon mitigation specialist. The passing level of the test shall be determined by the certified radon measurement or mitigation specialist.

(b) The certified radon measurement or certified radon mitigation business is responsible for the radiological safety of all their employees.

(c) Refresher radiation safety training of workers shall be conducted at a minimum of once annually.

(d) At a minimum, the practices identified below shall be followed by all radon testers and mitigation workers entering buildings where the radon level is unknown or above 4 pCi/l.

1. For radon testing:

i. Limit the amount of time spent in elevated radon areas, for example, basements, crawl spaces;

ii. Respond to questions or concerns of clients in a low radon area, for example, upper floors or patios during field visits;

iii. Analyze samples in a low radon area. An exception would be those cases in which continuous real time monitoring is used to monitor mitigation system performance or to alert workers to the presence of high radon levels; and

iv. Calibrate/set up radon testing equipment prior to entering an elevated radon area.

2. For radon mitigation work:

i. The pre-mitigation radon test result from the building in which a mitigation system is being installed shall be made known to all mitigation workers by the certified radon mitigation specialist prior to beginning mitigation work. The radon or radon progeny level from this test shall be entered on the Radon Exposure Tracking Form specified in (n) below;

ii. Building areas where mitigation work is being performed shall be ventilated during the work period to the extent practicable;

iii. The time spent in areas with potentially high radon concentrations, for example, crawl spaces, and other confined spaces should be limited, to the extent consistent with performing diagnostic work;

iv. Work breaks/lunches shall not be taken in elevated radon areas;

v. Exhaust gases from subslab suction systems shall be vented outdoors, preferably above roof eaves and away from potentially occupied areas;

vi. Only the number of persons necessary to carry out mitigation work shall be present in the building being mitigated; and

vii. Smoking by employees shall not be permitted in buildings being mitigated.

(e) Each certified radon measurement and mitigation specialist and technician shall track their exposure to radon progeny if a potential for exposure exceeds one working level month per year (WLM/year). This may be done by wearing a passive long term, meaning greater than three months, radon detector during work periods or keeping records in accordance with the Radon Exposure Tracking Form set forth in *(n)**(o)* below.

(f) The certified radon mitigation specialist or certified radon measurement specialist shall be responsible for tracking exposures of workers utilized by the business if there is potential for exceeding one WLM/year exposure.

(g) The certified radon mitigation specialist or certified radon measurement specialist shall review exposures on a quarterly basis and compute estimated exposures for each person cited in (e) and (f) above. Annual cumulative exposures shall also be estimated.

(h) Individual workers with estimated work related exposures exceeding two WLM/year shall not be assigned mitigation work in higher radon level buildings on a continuing basis.

(i) The certified radon mitigation specialist shall notify workers in writing of estimated exposures quarterly. At any time when estimated exposure of a worker could potentially exceed four WLM/year, an investigation shall be conducted and actions shall be taken to reduce exposure to the worker.

(j) No employee shall be permitted to receive exposure from inhalation of radon progeny in excess of four WLM/year in one calendar year.

(k) Exposure records shall be maintained by the business for each worker exposed to elevated radon levels, on a continuing basis. Cumulative exposures for each quarter and each year of employment shall be recorded.

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(l) Records of worker radiation safety training and annual refreshers shall be maintained by the business during and at least one year after the employee terminates his or her employment. These records shall include date of training, instructor, length of session, and topics covered.

(o) RADON EXPOSURE TRACKING FORM

DATE OF MEASUREMENT	RADON/RADON PROGENY LEVEL (pCi/l or WL)	DATE OF EXPOSURE
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7:28-27.35 Temporary certification

(a) The Department may allow for a radon measurement business, N.J.A.C. 7:28-27.5 and 6, and a radon mitigation business, N.J.A.C. 7:28-27.*[8]**7* and *[9]**8*, a temporary certification for up to one year if that business is listed, as of January 1, 1990, on the Department's list of approved radon testing and mitigation firms*,* [and]* the firm submits a complete application for certification within 90 days *(January 13, 1991)* of the *[effective]* date *of adoption* of this subchapter*, and the firm submits proof that it employs certified individuals*.

(b) The period of temporary certification shall *start at the end of the 90 day period and* extend for one year, or until the Department completes its review of the application and approves or denies a certification or provisional certification in accordance with the requirements of this subchapter, whichever occurs sooner.

(c) To receive a temporary certification pursuant to (a) above, an applicant must agree, in writing, to cease any radon measurement or mitigation activity without prior hearing if so instructed by the Department at any time during the period of temporary certification. The applicant must further acknowledge its understanding that this temporary certification confers on it no permanent rights to operate a radon measurement or mitigation business and agrees to cease any radon measurement or mitigation activity upon expiration of the temporary certification or when the application for full or provisional certification is denied.

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(a)

PUBLIC HEALTH COUNCIL DIVISION OF COMMUNITY HEALTH SERVICES Licensure of Persons for Public Health Positions Readoption with Amendments: N.J.A.C. 8:7

Proposed: July 2, 1990 at 22 N.J.R. 1977 (a).

Adopted: September 13, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health, and September 10, 1990, by the Public Health Council, Louise Chut, PhD., M.P.H., Chairperson.

Filed: September 14, 1990 as R.1990 d.502, with portions not adopted and with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-38 et seq.

Effective Date: September 14, 1990, Readoption
November 19, 1990, Amendments.

Expiration Date: September 14, 1995.

Summary of Public Comments and Agency Responses:

As a result of the comments on the proposal, both written and offered at the Public Health Council meeting held on August 13, 1990, the Department and the Public Health Council have elected to withdraw the proposed amendments to the readoption, with the exception of those provisions at N.J.A.C. 8:7-1.6 and 1.7 which relate to the appeal process. These provisions were not the subject of comment, beyond one comment submitted supporting such a process. N.J.A.C. 8:7-1.6 has been amended on adoption to allow an applicant more time in which to file an appeal

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(m) Records which indicate each employee's performance on the radiation safety test shall be maintained by the business along with copies of the test which was given.

(n) Safety records shall be available for inspection by the Department during normal business hours at the place of business.

TIME EXPOSED (HRS)	VENTILATION CONDITIONS DURING EXPOSURE (windows open/ fan/closed house)
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and to allow for more timely hearing of the appeal. N.J.A.C. 8:7-1.7 has been adopted as proposed.

The comments submitted at the August 13, 1990 meeting indicated the existence of disagreement regarding the qualifications necessary for admission to the examination for licensure for public health positions. The Public Health Council, therefore, elected to readopt the rules without these amendments. The Department and the Council will review the rules for Licensure of Persons for Public Health Positions (N.J.A.C. 8:7) to determine what the minimum qualifications should be, and will repropose amendments to N.J.A.C. 8:7.

A summary of specific comments and responses follows:

1. COMMENT: N.J.A.C. 8:7-1.9. Eleven comments were received which were opposed to allowing a candidate for the Health Officer Licensing examination to become eligible to take the examination with an M.P.H. degree, or its equivalent, and two years of work experience, with one year in an administrative capacity. Nine of the comments were received from individuals, one from the New Jersey Department of Environmental Protection, and one from the New Jersey Health Officers' Association. The commenters were concerned about the admission of any individual, regardless of the degree requirement, to the Health Officer Licensing examination with less than three years of full-time work experience in a local health agency.

RESPONSE: The Department and the Council consider a Master's degree in Public Health (M.P.H.) and two years of full-time work experience in a public health agency adequate preparation for admission to the Health Officer Licensing examination. An individual without the M.P.H. would be required to have three years of full-time work experience in a public health agency. However, the Council and the Department have elected to not adopt this amendment, in order to allow an opportunity for further discussion.

2. COMMENT: N.J.A.C. 8:7-1.2(h). Three commenters opposed the provision for telephone contact with the members of the Council in order to secure a quorum for the purpose of a vote on an issue. The commenters stated that their opposition was based upon their opinion that full disclosure of all facts was essential to decisions, and that interaction via telephone did not provide an opportunity for a full exploration of the facts and a discussion of the information and issues.

RESPONSE: The Department and the Council believe that there is a need to respond to candidates for licensure in a timely fashion, particularly where an appeal of a negative decision has been made. The use of the telephone to achieve a quorum allows for a more timely response.

3. COMMENT: N.J.A.C. 8:7-1.9. Two commenters opposed eliminating the requirement that a candidate for the Health Officer Licensing examination document specific experience in three of the five functional areas found in the Minimum Standards (N.J.A.C. 8:52): Administration, Environmental Health, Communicable Disease, Maternal and Child Health, and Chronic Disease. The commenters stated that the work of a health officer requires experience in all five of the functional areas.

RESPONSE: The Department and the Council consider an appropriate Master's degree and the specified number of years of full-time work experience in a public health agency sufficient to gain admission to the Health Officer Licensing examination. This requirement provides a more objective measure of experience than does that suggested by the commenters, since specific experience in the five functional areas is difficult to document reliably.

4. COMMENT: N.J.A.C. 8:7-1.6. One commenter opposed deleting the requirements for formal hearing, with a review by the Public Health Licensing and Examination Board provided.

RESPONSE: Provisions for review and for formal hearings are provided in the adopted rules at N.J.A.C. 8:7-1.6 and 1.7. The Department and the Council intend to allow for a timely appeal process for

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each candidate for the Health Officer Licensing examination, and have adopted those portions of the proposal which provide such a process. Additionally, changes have been made on adoption which assure the candidate 30 days in which to file a request for review of a denial by the Public Health Council of an initial request for review. The changes made on adoption also allow the Commissioner of the Department to conduct the second review.

5. COMMENT: N.J.A.C. 8:7-1.9(b)4ii. The New Jersey Department of Environmental Protection requested that all references to functions of the D.E.P. which are not found in the Minimum Standards (N.J.A.C. 8:52) be deleted.

RESPONSE: N.J.A.C. 8:52-1.7 refers to the standards adopted by the Department of Environmental Protection pursuant to N.J.S.A. 26:3A2-21, which include all the areas proposed at N.J.A.C. 8:7-1.9(b)4ii, with the exception of hazardous waste management and sewage disposal. The proposed amendment was not adopted, but will be the subject of further discussion and possible future rulemaking.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:7.

Full text of the adopted amendments follows (deletions from the proposal indicated in brackets with asterisks *[thus]*; additions to the proposal indicated in boldface with asterisks *thus*).

8:7-1.2 New Jersey Public Health Licensing and Examination Board

(a) There shall be established within the New Jersey Department of Health, a board of examiners to be known as the Public Health Licensing and Examination Board.

[(a) The Public Health Council shall prescribe the qualifications necessary for the licensing of Health Officers and Sanitary Inspector, First Grade and shall prescribe the qualifications necessary for the renewal of any license permitted to remain in effect under N.J.S.A. 26:1A-41.]

(b) On behalf of ***the New Jersey Public Health Council and*** the New Jersey Commissioner of Health, the Board shall conduct examinations for the licensing of:

1. Health Officer; and
2. Sanitary Inspector, First Grade

(c) The Public Health Council shall prescribe the qualifications necessary for the licensing of Health Officers and Sanitary Inspector, First Grade and shall prescribe the qualifications necessary for the renewal of any license permitted to remain in effect under N.J.S.A. 26:1A-41.

[(c) There shall be established within the New Jersey Department of Health, a board of examiners appointed by the New Jersey Commissioner of Health, to be known as the Public Health Licensing and Examination Board.]

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

(f) As vacancies occur, the Commissioner of Health shall appoint a person ***representing the constituency similar to that of a person being replaced*** *[meeting the qualifications of the respective position being replaced]*. The replacement appointment shall be for completion of the unexpired term.

(g) For the purpose of conducting business, six members of the Board shall be required for a quorum and no actions shall be taken by the Board in the absence of a quorum.

(h)**[(g)] In the absence of the Chairperson at a business meeting, the members of the Board shall elect a Chairperson pro tem to direct the business of that meeting.

*[(h) For the purpose of conducting business, six members of the Board shall be required for a quorum and no actions shall be taken by the Board in the absence of a quorum. A quorum may be obtained via telephone.

(i) Board members absent for three or more consecutive meetings without justifiable cause will have their membership from the Board terminated.]*

(i)**[(j)] Any action of the Board shall require a majority vote of members present. No proxy votes shall be permitted. In order to provide a timely response to issues before the Board, under special circumstances, Board members may be polled by the Chairperson via telephone*[, outside of a regularly scheduled meeting]*.

Recodify existing (k) through (m) as (j)-(l) (No change in text.)

ADOPTIONS

8:7-1.3 Submission of evidence of qualification

(a) (No change.)

(b) A person who desires to be admitted to an examination may obtain an application form from the New Jersey State Department of ***Health, P.O. Box 1540, Trenton, New Jersey 08625*** *[Environmental Protection]*. The application shall be filed with the department and accompanied by documentary evidence satisfying the education, training, and experience requirements for the position. ***Such documentary evidence shall include an evaluation of the candidate's performance written by the supervisor(s) under whom the candidate obtained such working experience.*** *[Such documentary evidence for those candidates applying for the health officers license shall include a written evaluation of the candidate's performance by the supervisor under whom such working experience was obtained.]*

(c) (No change.)

8:7-1.4 Examination and ***initial license*** *[licensing]* fees

The New Jersey State Department of Health shall collect a fee, as established by statute from each qualified candidate for licensure prior to the examination. Such fee will be payable only after a candidate has been notified of eligibility for admission to the examination. Candidates who are successful in passing the examination will not be required to pay an additional fee for the issuance of their initial license.

*[(a) The Public Health Licensing and Examination Board on behalf of the State Department of Health shall collect an application and examination fee from each candidate for licensure as follows:

1. Examination Fee:
 - i. Health Officer \$25.00;
 - ii. Sanitary Inspector, First Grade \$25.00;
2. Renewal Fee (Annually) \$10.00.

(b) Such fee will be payable only after a candidate has been notified of eligibility for admission to the examination. Candidates who are successful in passing the examination will not be required to pay an additional fee for the issuance of their initial license.]*

8:7-1.5 Determination of qualified candidates

***(a) Appropriate members of the Public Health Examining Board shall review each candidate's application for admission to the licensure examination. Based upon the qualifications of the candidate, the Board shall approve or deny such candidate entrance to the examination.**

(b) The candidate and the Department of Health shall be notified within ten days of the Board's determination. In case of a denial the candidate shall have the opportunity to appeal the decision of the Board.*

*[(a) The Public Health Licensing and Examination Board shall review each candidate's application for admission to the licensure examination.

(b) Based upon the qualifications of the candidate, the Board shall recommend to the Commissioner to approve or deny such candidate entrance to the examination and notify the candidate within 10 days of the Board's determination.]*

8:7-1.6 Appeal procedure

(a) Any candidate who has been denied admission to a licensure examination by the Public Health Examining Board may appeal the Board's action according to the following procedure:

1.-2. (No change.)

3. In the event that the Board reaffirms its denial decision, the candidate may ***[immediately]**, within 30 days,*** request a review of his ***or her*** case*. ***[in accordance with the Department's rules at N.J.A.C. 8:3. The Office of the Commissioner shall arrange for such review to be conducted by the Public Health Council.]***

4. At the conclusion of the review, ***[the Council will forward its findings and recommendations to]*** the Commissioner of Health ***[for]* ***shall issue*** a final decision.**

8:7-1.7 Suspension or revocation of license

(a) Any license issued in accordance with the provisions of P.L. 1947, c.177 (N.J.S.A. 26:1A-41) and the rules governing the licensing of health officers and sanitary inspector, first grade, heretofore issued by the State Department of Health, may be suspended or revoked for any of the causes as defined in Section 43 of P.L. 1947, c.177 (N.J.S.A. 26:1A-43).

(b) Upon written charges alleging any such violation, act or happening being filed by the Commissioner or by the local board of health within whose territory or jurisdiction such violation, act or happening occurred, the licensee shall be entitled to a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

8:7-1.8 Examinations

(a) The Department of Health shall schedule examinations for the licensure of persons for public health at least ***twice a year*** [three times each year]*.

(b) (No change.)

(c) If any qualified candidate fails an examination for a particular type of license two times, such candidate shall not be permitted entrance to the next examination for that type of license until*, and unless, the candidate submits evidence, to the Board of further formal training and supervised experience specifically in those areas in which the candidate was deficient. The board in its discretion, may accept the additional evidence or require the candidate to postpone taking the licensure examination for a period of one year from the date of the last examination. During the one year waiting period the candidate shall be required by the Board to either obtain further training and experience under the supervision of a person licensed for the position for which the candidate seeks licensure, or obtain further educational training and experience through formal courses at an accredited institution of higher education or through recognized professional or governmental bodies. At the conclusion of the one-year period, the candidate shall furnish the Board with a written report from his supervisor or from the educational institution, attesting to the completion of the additional training and experience and may then make application to gain admission to the licensure examination.* [one year has passed from the date of the last examination. The candidate will then be allowed to take the examination every other time offered, but no sooner than six months after the date of the last failed examination until he or she has passed the examination.]*

[8:7-1.8] **8:7-1.9 Record keeping requirements of the Board**

The Public Health Examining Board shall keep minutes of its meetings and shall transmit the record of all its transactions and recommendations to the Commissioner of Health.*

[8:7-1.9] **8:7-1.10* Qualifications of candidates for licensure**

(a) Regarding the qualifications of health officer candidates, applicants shall meet one of the following qualifications:

1. (No change.)

2. Degree of doctor or master from an accredited college or university program in a health-related field (recognized as such by the New Jersey Department of Higher Education and/or Education, as appropriate) such as medicine, osteopathy, veterinary medicine, public health, environmental ***science*** [health]*, health ***[care]*** administration, ***social work***, nursing or health education. ***The core course work for the degree shall include or be supplemented by at least three credits in each of the following: planning, administration, environmental science, social science and epidemiology.*** [Academic preparation shall include at least three credits in each of the following: planning, administration, environmental health, epidemiology, and social science]*; and

i. Unless otherwise exempted by statute, satisfactory completion of two years full-time employment in a position providing administrative experience in at least three of the five existing recognized public health activities as specified in N.J.A.C. 8:51.

***[i. Unless otherwise exempted by statute a candidate shall have satisfactorily completed three years of full-time employment with a public health agency. However, candidates with a Masters Degree in Public Health or equivalent shall only be required to have completed two years of full-time employment with a public health agency. Employment with the public health agency shall include one year administrative or supervisory experience. For the purposes of this licensing category, a public health agency means a state or local health agency engaged in public health activities including Environmental Protection and Human Services. Other public health agencies engaged in providing recognized public health services and activities will be acceptable to meet these requirements. If employment is with a governmental public health agency, no documentation**

will be required regarding the scope of that experience. If the employment is with a non-governmental public health agency, the applicant must document that the public health agency provides services in three of the following areas: Regulation, Chronic Disease, Environmental Health, Maternal and Child Health and Communicable Disease.

3. Notwithstanding the absence of working experience qualifications established by the Public Health Council, the State Commissioner of Health shall admit to examination for a license as a health officer any applicant who is the holder of the degree of doctor of medicine awarded by an accredited medical school and who is licensed to practice medicine in this State.]*

***[4.]*3.* What a candidate for health officer license should know:**

i. The health officer is expected to provide leadership in the field of public health in his community. In addition to being the administrative officer of a local health department, he is responsible for evaluating the health problems of his community, planning appropriate activities to meet their health problems, developing necessary budget procedures to cover these activities, and directing the department's staff so as to carry out the activities efficiently and economically. These activities are covered in "Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey. Applicants are examined relative to these essential activities.

[i. The health officer is a licensed full-time employee of a local health department who functions as the chief executive officer for the governing body and is responsible for enforcing public health law. The health officer is expected to provide leadership in the field of public health, including the functional areas of administration, environmental health, communicable disease, maternal and child health and chronic disease. The health officer is responsible for evaluating health problems, planning appropriate interventions to resolve health problems, developing necessary budget procedures to accommodate services, and directing staff so as to carry out services efficiently and effectively. The health officer is the licensed agent responsible to the New Jersey Department of Health for compliance with "Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey."]

(b) Sanitary Inspector, first grade, qualifications are as follows: 1.-3. (No change.)

4. What a candidate for sanitary inspector, first grade license, should know:

i. The sanitary inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Such inspections shall be in all environmental sanitation activities, particularly those indicated in the "Recognized Public Health Activities and Minimum Standards of Performance for Local Health Departments in New Jersey." ***Applicants are examined relative to these indicated activities.***

***[ii. Sanitary inspectors may also engage in activities related to occupational and environmental health such as air pollution control, water pollution control, solid waste management, hazardous waste management, noise control, and sewage disposal.**

iii. Applicants are examined relative to all the indicated activities named in this paragraph.]*

(c)-(i) (No change.)

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Consumer Health Services

Depuration of Hard Shell and Soft Shell Clams

Adopted Repeal and New Rules: N.J.A.C. 8:13-2

Proposed: January 16, 1990 at 22 N.J.R. 109(a).

Adopted: October 4, 1990 by Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health.

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Filed: October 12, 1990 as R.1990 d.542, **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. 24:2-1.

Effective Date: November 19, 1990.

Expiration Date: September 8, 1992.

Summary of Public Comments and Agency Responses:

The Department received 56 comments concerning the proposed repeal and adoption of new rules at N.J.A.C. 8:13-2, Depuration of Hard Shell and Soft Shell Clams, which appeared in the January 16, 1990 New Jersey State Register at 22 N.J.R. 109(a).

A public hearing concerning the proposed new rules was held on February 2, 1990 at the Monmouth County Public Health Center, Freehold, New Jersey.

The Department considered all the comments suggested and has modified the rules in several areas to accommodate the concerns of the shellfish industry and other agencies. The changes being made do not pose a major impact upon the overall goal of protecting public health.

The oral and written comments and the Department's responses follow:

COMMENT: The Department received the following general comments which do not refer to specific provisions of the proposal. A commenter said that depuration "works" and offers the consumer the "safest" product. The commenter suggested that the regulatory agencies are negatively biased against the depuration industry and suggested, along with another commenter, that the Department of Agriculture should be the supervising regulatory agency because shellfish is a replenishable resource. The commenter also suggested that the licenses and permits issued by the Department of Health and Department of Environmental Protection should be combined into a single license. Further, it was indicated that the rules need to be workable, cost effective, reasonable, offer greater simplicity, and that all vagueness should be removed from the regulatory process.

RESPONSE: The Department agrees that scientific evidence supports that shellfish can be microbiologically cleansed in the depuration process. While the Department also recognizes that microbiologically cleansing can take place in natural shellfish growing areas, which is the basis for the State's long-standing shellfish relay programs, shellfish can also be safely microbiologically cleansed through the depuration process. Shellfish are capable of concentrating pathogenic microorganisms from their environment and, if the shellfish are damaged or are not placed under optimal conditions while undergoing the depuration process, they may not purge themselves of these contaminants. In this context, the proposed rules are designed to minimize these risks and offer the consumer a safe product.

The Department does not believe that the agencies charged with the enforcement of the rules have shown bias against the depuration industry. The record documents numerous regulatory actions based upon serious infractions of the previous rules which could have caused serious public health implications and have resulted in actions to suspend and revoke depuration plant operating licenses. Court proceedings have supported the Department's findings and both the Department of Health and the Department of Environmental Protection have had these actions upheld in Appellate Court, with no indication of bias.

The Department believes that although the depuration process involves "a replenishable resource," the rules governing the operation of a depuration plant clearly fall within the statutory mandate and authority of the Department of Health, under N.J.S.A. 24:2-1. As such, it is beyond the scope of these proposed rules to comment on the merits of transferring regulatory responsibility to the Department of Agriculture.

In regard to the commenters' suggestion that the Department of Health and the Department of Environmental Protection issue a single permit or license, it is the position of the Department that each license, permit, and certification has a distinct and separate purpose which falls under a number of statutory provisions. The issuance of a consolidated license would require statutory changes, which are beyond the scope of these proposed rules. Historically, both departments have provided assistance to all individuals and groups regarding obtaining the licenses and permits necessary to operate a depuration plant.

The Department recognizes that the cost of constructing and operating a depuration plant is an important consideration to the shellfish industry. While economic considerations are important, the Department's primary responsibility is to insure that public health protection is being afforded and, because of the serious health consequences of consuming shellfish taken from polluted waters, strict regulatory controls are deemed necessary.

ADOPTIONS

A commenter indicated that the additional costs required because of the proposed rule changes would not significantly alter the overall costs associated with the operation of a depuration plant. Also, this commenter provided information at the public hearing that the costs associated with safe depuration would not result in a profitable operation because of inherently high cost associated with the depuration process. The Department believes that the analysis provided by this commenter does have merit and supports the Department's contention that the additional costs incurred by these rule changes would not significantly alter the overall cost of constructing and operating a depuration plant. Also, the Department has reviewed certain areas concerning the cost effectiveness associated with complying with recommendations made by the U.S. Food and Drug Administration calling for the Department to provide daily surveillance of the depuration operations because of the recurring regulatory infractions uncovered through periodic surveillance and inspections conducted by the Department. The proposed rules allow for the use of a video surveillance system at the suggestion of shellfish industry representatives in order to avoid the high cost for providing daily surveillance by regulatory personnel, which the Department is not in a position to provide due to funding constraints.

Concerning a commenter's suggestion that all vagueness should be removed from the rules, while at the same time the rules should provide greater simplicity, the Department believes that the proposed rules are specific enough to provide the shellfish industry the necessary detail to properly construct and operate a depuration plant, while at the same time provide a certain degree of flexibility in certain areas without jeopardizing product safety. The commenter did not offer any specific alternatives for carrying out these recommendations.

COMMENT: The Department was requested to consider the utilization of a wet storage system for clams as a shellfish capacity control measure.

RESPONSE: Current Department rules under N.J.A.C. 8:13-1.2(d) allow for wet storage as defined in Part II of the National Shellfish Sanitation Program (NSSP) Manual of Operations, published by the U.S. Food and Drug Administration, which is a guidance document used in the development of regulatory proposals. (Further references in this response document to the NSSP Manual of Operation will appear as "NSSP Manual.") Under the NSSP, wet storage is for the temporary storage of **approved** shellfish, for de-sanding and/or improving palatability. Wet storage is not designed or intended to increase safety of the shellfish. Additionally, current Department of Environmental Protection leasing rules under N.J.A.C. 7:25-24 do not allow for the leasing of beds in waters classified as other than Approved and/or Seasonally Approved. Therefore, the Department cannot consider wet storage of shellfish from Special Restricted waters as a viable alternative at this time.

COMMENT: During the public hearing held on February 2, 1990, a commenter stated that there was legislation introduced to transfer certain shellfish program activities to the Department of Agriculture.

RESPONSE: The proposed rules to govern the operation of depuration are currently under the regulatory responsibility of the Departments of Health and Environmental Protection. It is beyond the scope of this proposed rulemaking to evaluate the merit of proposed legislation transferring the functions to another Department.

COMMENT: A commenter suggested that the proposed rules are written to cover the operation of the plant by a private operator. Two other modes should be addressed:

1. Depuration on a "fee for service" basis; and
2. Operation by a public or quasi-public entity.

RESPONSE: The rules do not preclude these types of operations and are designed to facilitate reasonable and necessary regulatory control of depuration processes regardless of the nature and types of the ownership and operation structure.

COMMENT: At the public hearing, two commenters suggested that clam harvesters be permitted to sell their catch (or part of their catch) either to the depuration plant and/or to the relay program on the same harvest day. In addition, two written comments were received suggesting that this procedure be permitted.

RESPONSE: Both the Department of Health and Environmental Protection have determined that this suggestion would provide flexibility for the harvesters and could be structured so that the public health protection controls will not be compromised. The Department of Environmental Protection will be modifying the rules found at N.J.A.C. 7:12-1 to permit this activity.

COMMENT: A commenter requested a definition of the term "microbiologically cleansed".

RESPONSE: The term "microbiologically cleansed", as used in the Economic Impact Statement, means the purging of organisms and/or substances from the gut of shellfish via the shellfish's natural biological behavior as a filter feeder.

COMMENT: The Department was requested to consider a tamper evident tag for use on all products leaving the depuration plant.

RESPONSE: The Department believes that a tamper evident tag would not be practical at this time, since the Rules Governing the Sanitation, Handling, Shipping and Shucking of Shellfish under N.J.A.C. 8:13 do not prevent market shellfish from being transferred into another container by a certified dealer. The Department will reconsider the recommendation when N.J.A.C. 8:13 is reviewed for readoption.

COMMENT: A comment was received requesting that the Department include eastern oyster and blue mussel as species which can be depurated.

RESPONSE: The proposed rules are specific to hard and soft shell clams because there is a documented and historical resource of these species. Upon a formal request, and after documentation that there is an adequate resource, the appropriateness and necessity for oyster and/or blue mussel pilot depuration rules would be evaluated.

COMMENT: A comment was received requesting the Department to establish a procedure whereby product harvested from out-of-State waters and from unclassified waters in New Jersey can be depurated.

RESPONSE: The Department has concern for the introduction of non-native species of shellfish in that these non-native species may be detrimental to native shellfish via introduction of harmful organisms into the waters of the State through the depuration plant's effluent. Therefore, the rules will continue to address only those shellfish harvested from New Jersey waters designated for depuration. Unclassified waters cannot be used as a source of shellfish, according to provisions of the NSSP Manual. Also, storing shellfish from both approved growing areas and restricted (marginally polluted) in the same plant would make enforcement very difficult and would not be consistent with the current version of the NSSP Manual.

COMMENT: Both Maine and Massachusetts currently accept the Membrane Filtration Fecal Coliform Test (M.F.C.) in lieu of the Most Probable Number (MPN) test. With appropriate verification data, the Department of Agriculture requested that the M.F.C. test be included as an alternative standard for the New Jersey rules. The advantage of the M.F.C. test is that it requires a shorter processing time. The commenter emphasized that depuration has been shown to actually reduce the shelf life of shellfish and the additional time savings can be critical in the marketing of the product.

RESPONSE: The State of New Jersey has approved the Elevated Temperature Coliform Procedure (ETCP). This methodology, like the M.F.C. test, is a 24 hour bacteriological test that uses a pour plate technique. The proposed rules erroneously list the bacteriological results as MPN (most probable number). N.J.A.C. 8:13-2.21 has been changed to reflect the proper nomenclature (organisms/100 gms.)

Where the commenter cited specific sections of the proposed rules and made specific recommendations, the Department has addressed these comments individually under the appropriate rule citation, as follows:

N.J.A.C. 8:13-2.1 COMMENT: A comment was received concerning the Department of Environmental Protection's (DEP) concurrent rule proposal N.J.A.C. 7:12-1.2, recommending that the definition of "depuration plant" should be revised to eliminate the use of the phrase "bacteriology and virally acceptable" and replace it with the term is "microbiologically acceptable". This comment also impacts on the Department's definition, which is the same as the Department of Environmental Protection.

RESPONSE: The Department agrees with the commenter and has modified the definition to reference the term "microbiologically acceptable."

N.J.A.C. 8:13-2.1 COMMENT: A comment was received regarding the definition of "depuration process", suggesting that the term should be changed to "depuration program."

RESPONSE: The Department agrees that the definition of depuration process does not clearly define the term and, therefore, will modify the definition to remove the reference to transportation, as suggested by the commenter. The Department does not believe that a new definition for the term "depuration program" is necessary, based upon the modifications being made to the definition of "depuration process."

N.J.A.C. 8:13-2.1 COMMENT: A comment was received regarding the definition of "lot", requesting that it be changed to "harvest lot."

RESPONSE: The Department feels that this definition is clear and is consistent with the one in the most recent version of the NSSP Manual; therefore, the Department does not believe a change is warranted.

N.J.A.C. 8:13-2.1 COMMENT: A comment was received requesting an additional new definition for "depuration unit."

RESPONSE: The Department agrees that an additional definition for the term "depuration unit" is appropriate and has incorporated the change in the rules as follows: "Depuration unit means a tank or series of tanks supplied by a single process water system."

N.J.A.C. 8:13-2.1 COMMENT: A comment was received requesting a modification to the definition of "process batch."

RESPONSE: The Department agrees that a slight modification to this definition is appropriate and will make it consistent with the one found in the most recent version of the NSSP Manual. The change in the first sentence of the definition will read: "'process batch' means the number of lots of clams and the identification of each lot used to fill each separate depuration unit."

N.J.A.C. 8:13-2.1 COMMENT: A comment was received requesting the addition of a new definition for "process water."

RESPONSE: The Department concurs that a definition for "process water" would be appropriate and has incorporated into the final adoption the following definition: "'Process water' means the water in depuration tanks during the time that shellfish are being depurated."

N.J.A.C. 8:13-2.1 COMMENT: A comment was received taking exception to the requirement that the depuration plant operator be certified. The commenter also questioned the number of Certified Depuration Plant Operators (DPO) necessary to satisfy this requirement.

RESPONSE: It is the Department's intent that the person identified as the Depuration Plant Operator (DPO) under these rules be responsible for plant operations and be familiar with basic depuration principles, as well as the rules and requirements governing depuration. The purpose of the testing requirement is to measure the depuration plant operator's basic knowledge of depuration principles, as well as familiarity with the primary requirements of N.J.A.C. 8:13-2. In addition, the Department has determined that it is necessary that at least one DPO be present during the plant's critical control activities to ensure that the depuration process is conducted and supervised in accordance with the provisions of N.J.A.C. 8:13-2. Failure on the part of the DPO to ensure that the critical control activities are followed could jeopardize the effectiveness of the process. Therefore, the Department does not intend to modify this provision.

N.J.A.C. 8:13-2.1 COMMENT: Several comments were received requesting that industry representatives be included on the Shellfish Resource Recovery Steering Committee (SRRSC).

RESPONSE: The SRRSC is comprised of member of the Division of Fish, Game and Wildlife and Water Resources in the Department of Environmental Protection, and members of the staff of Consumer Health Services in the Department of Health who have regulatory responsibilities for depuration programs. The Department believes that there are mechanisms for industry involvement with the SRRSC through the Marine Fisheries and Shellfisheries Councils. Also, during the rulemaking process, the committee invited various industry representatives who had expressed an interest in the depuration program. These individuals made recommendations, some of which were incorporated into the proposed rules for depuration. The SRRSC will continue to seek input from industry representatives whenever possible and will be open to specific industry requests for input. Due to the regulatory nature of the SRRSC, it would not be appropriate to have an industry representative present at all meetings and discussions held by the SRRSC.

N.J.A.C. 8:13-2.1 COMMENT: A comment was received suggesting a change in the definition of "depuration," to include "to reduce the level of microbial contaminants in live shellfish."

RESPONSE: The Department feels that the rule definition is consistent with the one in the most recent version of the NSSP Manual and does not warrant change.

N.J.A.C. 8:13-2.1 COMMENT: Several comments recommended the elimination of the U.S. standard bushel as the reference standard.

RESPONSE: In the Department's opinion, the U.S. standard bushel has been utilized by the industry over the years and its use should not present any additional hardship. A standard size and type of container is necessary to insure accountability and to avoid confusion on the part of the industry and the regulators concerning the amount of incoming and outgoing shellfish. Also, the standard U.S. bushel container size requirements refer only to soft shell clams, which are normally marketed in bushel containers. The proposed rules provide flexibility for different

sizes of hard shell clam harvesting containers which are compatible with loading into the depuration process.

N.J.A.C. 8:13-2.3(b) COMMENT: A comment was received questioning the necessity of a facsimile machine.

RESPONSE: The Department believes that facsimile machines will provide the most cost effective and timely method for regulatory officials to have access to records while the product is still in the possession of the depuration plant.

N.J.A.C. 8:13-2.5(a)11 COMMENT: A comment was received, indicating that this requirement may be unclear, suggesting that the text be changed to read as follows: "Plant verification will be based on the results of a series of at least three independent process runs in each of which all critical control activities have been satisfied and the end-point bacteriological assay results for the shellfish indicate that the contaminant load has been reduced to a titre equal to or less than the allowable maxima specified for the particular species being processed."

RESPONSE: The Department believes that the current wording is clear and concisely stated and is consistent with the commenter's interpretation of this requirement in these proposed rules. Therefore, no change has been made in the rules.

N.J.A.C. 8:13-2.6(d) COMMENT: A comment was received regarding the transferability of the Department's wholesale food/cosmetic licenses.

RESPONSE: The Department's wholesale food/cosmetic license, which applies to every wholesale food establishment under N.J.A.C. 8:31-9.6, is not transferable with respect to persons or locations. The intent of this rule is to maintain legal ownership accountability. The Department does not agree with the commenter's analysis that this provision is a restraint of trade, since the Department's rules do not restrict an individual or corporation from filing an initial license based upon ownership or location change.

N.J.A.C. 8:13-2.9 COMMENT: Several comments were received regarding the feasibility, purpose, cost, and operation of a video surveillance monitoring system.

RESPONSE: The purpose of the video surveillance system is to provide the regulatory officials of the Department of Health and the Marine Enforcement Office of the Department of Environmental Protection with the capability to perform daily surveillance of activities that are critical in terms of the depuration process, and to prevent the depuration process from being circumvented. The Department feels that a video surveillance system is a cost effective means to provide daily monitoring rather than funding licensed state, county, or local sanitarians or other enforcement personnel to provide these services. No funding is available to provide the level of monitoring necessary to ensure compliance. The United States Food and Drug Administration has indicated to the Department that daily monitoring by regulatory officials should be a mandatory part of the depuration regulatory activities because of past history of non-compliance and the implicit public health risk associated with improperly depurated shellfish reaching the market. In addition, the video surveillance system was recommended by industry representatives in the preliminary phase of the development of these rules.

In regard to the question concerning the number of surveillance cameras required, the Department did not set a specific number because the plant design and layout would dictate the number necessary to observe the critical control areas. The number of cameras would be determined during the initial plan review.

In response to the comment regarding surveillance monitor breakdowns during a critical control activity, it is the Department's opinion that the procedures to be followed would be outlined in the "Standard Operating Procedures" to be developed by the plant operator and approved by the Department prior to certification.

N.J.A.C. 8:13-2.10(a) and (d) COMMENT: A comment was received regarding a perceived contradiction between N.J.A.C. 8:13-2.10(a) and (d), the criteria for viewing shellstock during off loading periods and the covering of shellstock during storage and transport for protection purposes.

RESPONSE: As explained at the public hearing by the hearing officer, there is no contradiction, because one must differentiate between short-term and long-term storage and transportation. The rules require the covering of shellstock during harvest and transportation to the depuration plant in the vessels. Once the shellfish are landed, they shall be protected from contamination and undue stress. Only in N.J.A.C. 8:13-2.10(d), which addresses unloading procedures, do the rules stipulate that the shellfish shall not be covered but be open to view.

N.J.A.C. 8:13-2.11(a) COMMENT: A comment was received requesting the Department to allow untreated hard shell clams to be stored at temperatures above 68 degrees Fahrenheit.

RESPONSE: The Department believes that the present maximum temperature of 68 degrees Fahrenheit for storage of untreated shellfish is consistent with the most recent version of the NSSP Manual and changes to this requirement would not be appropriate, based upon the limited information provided by the commenter.

N.J.A.C. 8:13-2.11(b) and (c) COMMENT: A comment was received requesting the Department to allow depurated clams to be placed into final shipping containers while in storage in the intermediate refrigeration unit, pending laboratory analysis.

RESPONSE: The Department has determined that the intermediate cooler is necessary in order to readily identify and account for shellfish with pending laboratory confirmation of bacterial acceptability. This will prevent confusion by plant and regulatory officials in determining the status of the shellfish in relation to the depuration process. The intermediate cooler facilitates the effective storage of shellfish that may fail laboratory analysis and must be returned for further depuration.

N.J.A.C. 8:13-2.12(b)1 COMMENT: A comment was received requesting that the Department modify the wording of the bacteriological requirements for the process seawater, to "no detectable coliform organism" from "a maximum of one total coliform per 100 ml."

RESPONSE: The Department concurs with the commenter's suggestion and has incorporated the change into the rules on adoption, because the modified wording, while not changing the meaning, is more scientifically precise.

N.J.A.C. 8:13-2.12(b)5i COMMENT: A comment was received requesting the Department to allow the process seawater to exceed 68 degrees Fahrenheit.

RESPONSE: The Department believes that the commenter's reasons for the proposed change have some merit, but the present requirement of 68 degrees Fahrenheit is consistent with the most recent version of the NSSP Manual. A technical change should be proposed to the Interstate Shellfish Sanitation Conference (ISSC) for a full evaluation on the merits of allowing an increase in the maximum water temperature before the Department would act to modify this requirement. Suggested technical changes such as this, if agreed upon and enacted by the ISSC, would be included in the NSSP manual of operations and then could be adopted by the State. A deviation of these critical parameters by the State could result in the Shellfish Program being rated as not in compliance with the NSSP Manual, and interstate shipment of these shellfish could be restricted.

N.J.A.C. 8:13-2.13(b) COMMENT: Comments were received requesting wording changes "to follow the actual limits" of hydraulic flow of process waters, as follows:

1. Hydraulic flow is established and maintained in the loaded tank so as to provide an exchange of water in the shellfish containers adequate to meet the physiological requirements for oxygen supply and metabolite removal of the shellfish and hence support their normal pumping and filtration activities.

2. Proper stacking and orientation of the shellfish process containers is maintained during the entire period in which the shellfish are being depurated so as not to compromise the appropriate flow patterns of the process water.

RESPONSE: While the commenters' text is very similar in content to that proposed, the terminology is considered by the Department to be more "scientific" than is appropriate in these rules. Therefore, the Department has not changed the text on adoption.

N.J.A.C. 8:13-2.13(b)7ii COMMENT: A comment was received indicating that a three-inch minimum spacing in all directions around the clam processing containers, except for the space between the bottom of the tank and processing containers as required in the proposed rules, is hydraulically unsound.

RESPONSE: The Department believes that the commenter's concerns and proposed modification have scientific basis and, therefore, the final adoption has been modified to reflect the current scientific information regarding spacing around clam processing containers. The modification made in the rules is also in conformity with the most recent version of the NSSP Manual.

N.J.A.C. 8:13-2.13(b)8i COMMENT: A comment was received requesting the Department to reduce the flow-axis/head-wall ratio to a value of one or less to assure optimal utilization of the process water.

RESPONSE: The Department agrees with the commenter's suggestion and has modified the final rule on adoption. Since new scientific evidence has shown that various tank designs are effective, the Department has deleted N.J.A.C. 8:13-2.13(e) and has amended N.J.A.C. 8:13-2.13(b) to allow more flexibility in regard to tank design.

N.J.A.C. 8:13-2.13(d) COMMENT: A comment was received questioning the feasibility of using hinged depuration process tank covers and associated tamper-evident serially numbered seals.

RESPONSE: The Department feels that the depuration process tank covers provide an additional safeguard to insure that the polluted shellfish have not been removed prematurely and have been purified for the required 48 hour period. The Department has modified the final rule on adoption, eliminating the term "hinged" to allow for other mechanisms to secure the cover to the tanks. The Department agrees that hinged covers are not always necessary to accomplish this purpose. The intent of the proposed rules is to allow the Certified Depuration Plant Operator to supervise the sealing and opening of the process tank covers. The Department believes that the serially numbered tamper evident seals are necessary to ensure accountability.

N.J.A.C. 8:13-2.13 (e) COMMENT: A comment was received requesting the Department to incorporate N.J.A.C. 8:13-2.13(e), which provides for alternate tank designs, as subparagraph iv under N.J.A.C. 8:13-2.13(b)8, which encompasses the requirement for process tank criteria.

RESPONSE: The Department believes that the commenter's recommendation has merit and has modified N.J.A.C. 8:13-2.13 on adoption to incorporate the commenter's suggestion, which clarifies the entire section. This modification is consistent with the most recent version of the NSSP Manual.

N.J.A.C. 8:13-2.14 COMMENT: A comment was received which suggested that, to clarify items 1 and 2 under (a), the following wording be used:

1. For hard clams the maximum depth of shellfish in the process containers shall be three inches (76 mm) and the volume of shellfish in each container shall not exceed 1/2 US bushel.

2. For soft-clams the maximum depth of shellfish in the process containers shall not exceed eight inches (203 mm) and the volume of shellfish in each container shall not exceed 1/2 US bushel.

RESPONSE: The Department feels that the existing wording above referenced sections, N.J.A.C. 8:13-2.14(a)1 and 2, is clear, concise, and consistent with the intent of the most recent version of the NSSP Manual. The rules as proposed allow for the use of larger containers, as long as they do not exceed the three inch maximum depth requirement and are in increments that can be easily measured for accountability purposes. Therefore, no change has been made.

N.J.A.C. 8:13-2.15(a) COMMENT: A commenter stated that, as in the case of N.J.A.C. 8:13-2.12(b)1, the wording here should be changed to conform to the process water requirements as specified in Part 2, Sec.1.5.d.ii of the NSSP Manual, as follows:

(a) An ultraviolet (UV) water treatment system shall be installed to provide process water containing no detectable coliform organisms as measured by the standard five-tube MPN test for drinking water, or by a test of equivalent sensitivity, in the water collected at the outlet of the UV unit, unless this water quality can be met by natural seawater sources and provided the process water is not recirculated in the unit. In the case of recirculating systems all the process water must pass through the UV treatment system before its reintroduction to the distribution network supplying the tanks holding the clams.

RESPONSE: The Department agrees and has revised the requirement on adoption, to conform to the NSSP Manual.

N.J.A.C. 8:13-2.15(a)1 COMMENT: A comment was received regarding the need for minor wording changes allowing alternate methods of bacterial reduction of the process water, as follows: "The Department will consider alternate methods of water treatment to reduce bacterial contaminant loads if adequate..."

RESPONSE: The Department concurs and has incorporated the recommended changes into the final rule.

N.J.A.C. 8:13-2.15(a)2 COMMENT: A commenter stated that the text was ambiguous as written; the following rewording was suggested, in recognition of current FDA policy:

2. Chemicals, such as active chlorine compounds, shall not be used to treat the process water unless the compound is completely inactivated prior to introduction of the water into the distribution system and provided there are no compounds formed during water treatment, which are not generally recognized as safe food additives, that would be introduced into the tanks in which the shellfish are depurated.

RESPONSE: The Department agrees with the commenter and has revised this provision to remove the ambiguity.

N.J.A.C. 8:13-2.15(b)1 COMMENT: A commenter stated that the text should be revised as follows: "The water treatment system shall have an

actual operating capacity equivalent to one gallon per minute of process water, that meets the criteria defined in 8:13-2.12(b), per bushel of clams that would be contained in all of the tanks at the maximum designated loading of the unit being supplied by the treatment system."

RESPONSE: The Department feels that the existing wording of the above referenced sections, N.J.A.C. 8:13-2.15(b)1, is clear, concise, and consistent with the most recent version of the NSSP Manual.

N.J.A.C. 8:13-2.15(b)3i COMMENT: Comments were received requesting that the Department change "ultraviolet transmission" to "ultraviolet transmissivity" of the process water being treated.

RESPONSE: The Department concurs and has incorporated the recommended change into the final rules.

N.J.A.C. 8:13-2.15(b)3ii COMMENT: A commenter requested revision as follows: "Any degradation in quality of, or reduction in intensity of the output of the ultraviolet lamps beyond the limits established as part of the preliminary verification study."

RESPONSE: The Department feels that the existing wording of the above referenced section, N.J.A.C. 8:13-2.15(b)3ii, is clear, concise, and consistent with the intent of the most recent version of the NSSP Manual.

N.J.A.C. 8:13-2.15(b)4 COMMENT: A comment was received requesting that other types of thermographs should be acceptable for the recording of the output the ultraviolet sterilization unit.

RESPONSE: The intent of this requirement is not to prohibit the use of other types of recorder units and, therefore, the Department has provided clarification by modifying this rule to allow alternate types of recording units.

N.J.A.C. 8:13-2.15(b)5 COMMENT: A commenter suggested the following revision:

"The ultraviolet unit shall have provisions for in-place cleaning of the water-contact surfaces of the irradiation chamber and the envelopes of the ultraviolet lamps;"

RESPONSE: The Department feels that the existing wording of N.J.A.C. 8:13-2.15(b)5 is clear, concise and consistent with the intent of the most recent version of the NSSP Manual.

N.J.A.C. 8:13-2.15(b)6 COMMENT: A commenter suggested the following revision:

"The ultraviolet lamps shall be replaced when the output has degraded to less than 60 percent of that output determined after the initial four hours of operation of the new lamps, or when the operating life has reached 7500 hours."

RESPONSE: The Department feels that the existing wording of N.J.A.C. 8:13-2.15(b)6 is clear, concise and consistent with the intent of the most recent version of the NSSP Manual.

N.J.A.C. 8:13-2.16(a)2 and 3 COMMENT: A commenter suggested that the text be combined and rewritten to allow for alternate recording devices, as follows:

"The thermograph record chart shall have a minimum range of 28F to 100F, with each temperature scale division equivalent to 2F or less and each time scale division equivalent to one hour or less."

(Excessive range requirements are counterproductive in terms of instrument precision and sensitivity.) The same commenter also suggested that N.J.A.C. 8:13-2.16(a)6 be revised to require that "the recorded elapsed time, as indicated by the thermograph chart excursion, shall be within 2% of the true elapsed time." Also, another commenter requested that the Department consider alternate type of water temperature recording devices.

RESPONSE: Water temperature recording devices required under this section of the proposed rules have been required under existing depuration rules and serve as an effective means of confirming and recording temperature of the process water, which is a critical factor in effective shellfish depuration. The Department agrees that alternative temperature recording devices not currently specified under the proposed rules are effective and, therefore, the rules have been changed at N.J.A.C. 8:13-2.16(c), to allow for the use of these devices. N.J.A.C. 8:13-2.16(a)4 has been deleted, as it is not necessary, given the addition of (d). N.J.A.C. 8:13-2.16(a)5 has been amended on adoption to require that the recorded elapsed time be within two percent of true elapsed time, as suggested by the commenter.

N.J.A.C. 8:13-2.17(a)3 COMMENT: A comment was received requesting that the specific responsibilities of the Certified Depuration Plant Operator (DPO) be referenced in the rules.

RESPONSE: The Department feels that the responsibilities of the DPO are implied in the definition of the "DPO" and "critical control activities" with specific responsibilities delineated throughout the proposed rule.

Therefore, the Department does not believe it would be necessary to further specify the DPO's responsibilities.

N.J.A.C. 8:13-2.19(a) COMMENT: Comments were received suggesting that the rules require the appropriate culling and washing of the shellfish soon after receipt at the plant, unless this operation can be effectively performed aboard the harvest vessel.

RESPONSE: The Department agrees that washing and culling prior to depuration is appropriate and may be effectively performed aboard the harvest vessel. Existing shellfish depuration rules allow for soft shell clams to be washed and culled at the plant prior to depuration. The final rule has been modified to require the washing and culling of hard and soft shell clams prior to depuration either on the harvest vessel or at the plant.

N.J.A.C. 8:13-2.19(b) COMMENT: A comment was received expressing concern about the length of time necessary for regulatory officials to respond to and witness the destruction of culled products. The commenter also requested that the rules provide for disposal procedures which could be utilized should a regulatory officer be unable to respond in a timely fashion.

RESPONSE: The Department feels that this activity can be conducted at the time of sample collection by the government laboratory official or under special circumstances by Department of Health or Department of Environmental Protection enforcement officials. In the Department's opinion, this will not create a public health nuisance and poses minimal inconvenience to plant operations, since any regulatory official who has responsibility for enforcing this chapter, may witness the destruction of culled products. This has been clarified on adoption.

N.J.A.C. 8:13-2.20(a) COMMENT: A comment was received recommending the elimination of the three hour time requirement for cleaning tanks and containers following the shellfish depuration process in order to provide flexibility for the plant operator's cleaning schedule.

RESPONSE: The purpose for the three hour requirement for cleaning tanks and containers is to ensure that these surfaces are cleaned and sanitized prior to sediments becoming encrusted on the tanks, drains, piping, and containers which would occur if the system was drained and left to stand for excessive time periods. Also, allowing these residual sediments to accumulate for extended time periods will cause odors, attract flies, and provide an environment for rapid bacterial growth. Therefore, the Department feels that this requirement is reasonable and necessary, and has made no change to the rule.

N.J.A.C. 8:13-2.22(a) COMMENT: A commenter stated that there may be more than one reason for Departmental approval of a nongovernment laboratory and that all reasons should be stated in the rules.

RESPONSE: The Department feels that no change is necessary to this section, since the rule was proposed only to consider interim approval of a nongovernment laboratory when a government laboratory is not available. Also, the commenter did not provide examples of other reasons for the Department to consider the use of a nongovernmental laboratory.

N.J.A.C. 8:13-2.22(b) COMMENT: A comment was received suggesting that the zero hour sampling frequency can change on a daily basis.

RESPONSE: This rule is designed to allow the Department to modify the zero hour sampling frequency during emergency situations or when seasonal changes occur causing elevated bacterial loading of the shellfish. The Department does not intend to modify the zero hour on a daily basis.

N.J.A.C. 8:13-2.22(b) COMMENT: A comment was received requesting the Department to increase the sampling frequency of the process water and the untreated raw seawater.

RESPONSE: During the process verification studies, process seawater and the untreated seawater will be sampled several times during each process. The Department believes that the current proposed sampling frequency is consistent with the most recent version of the NSSP Manual. The standard concerning water sampling is a minimum requirement and a plant operator could increase the frequency in order to minimize the occurrence of a failed process batch.

N.J.A.C. 8:13-2.23(a) COMMENT: Comments were received recommending that the requirement of maintaining a record of the "number of clams" harvested should be deleted from the harvester's daily receipt because it was an invasion of privacy and serves no purpose. Also, a comment was received indicating that the record keeping requirements for harvesters are not necessary.

RESPONSE: The information provided by requiring the recording of the number of clams harvested is necessary both for enforcement and resource management purposes. This requirement ensures accountability, especially because these rules deal with a contaminated food product, thus making it essential that there are proper controls to protect public health.

From a resource management standpoint, the two most important considerations are the resource base (population) and the removal (harvest) from that resource base. Shellfish population estimates are determined through the shellfish inventory programs conducted by the Department of Environmental Protection. The shellfish harvested represent that part of the resource removed from the population. The Department has determined that this information (number of clams) is vital to both the enforcement and resource management aspects of the depuration program. This information is also required under the D.E.P. clam relay rules at N.J.A.C. 7:25-15.1. Therefore, the Department will retain the requirement, clarifying it on adoption.

N.J.A.C. 8:13-2.24(a) COMMENT: Several comments were received which stated that use of the harvester allocation tag was burdensome to the regulated public, in that special supplies are required.

RESPONSE: It is the Department's intent to ensure accountability and provide a mechanism for tracing the shellfish to a particular harvester. The Department feels that in order to accomplish this, a harvester allocation tag must remain with the product throughout the depuration process. Waterproof tags with waterproof ink are readily available for this purpose.

N.J.A.C. 8:13-2.25 COMMENT: A commenter recommended elimination of designated harvester landing times.

RESPONSE: Specific landing times have been in place in the hard clam relay for over five years and in the hard clam depuration program for two years. The requirements have not placed undue hardships on the participants in these programs. Designated landing times play an important part in controlling the program and assuring that all shellfish harvested from "condemned" or "special restricted" water reach their proper destinations. The rules are flexible in that they provide for more than one landing time per day to accommodate tide changes. Landing times do not prohibit harvesters from docking their boats at the depuration plant at anytime during the day, nor require anyone to remain on the water during poor weather conditions. Shellfish are to be offloaded only during the designated landing times. The Department believes that designated landing times are an essential component of the depuration program and, therefore, has made no change to the rules.

Summary of Changes Made between Proposal and Adoption

The Department has made corrections where typographical and grammatical errors were found in the text of the proposed rule. Additional changes were made, after Departmental review, as follows:

N.J.A.C. 8:13-2.1 Definitions

Under the definition of Shellfish Resource Recovery Steering Committee (SRRSC) the words "resource recovery" were added in place of the word "depuration", in order to be consistent with the definition in the rule adoption N.J.A.C. 7:12-1 and 9 of the New Jersey Department of Environmental Protection.

Definitions of "Treated Clams and Untreated Clams" were added in order to clarify the meaning of these terms, which are referred to in the body of the rules.

Under the definition of "Turbidity", the term "Nephelometric Turbidity" was replaced with the word "Nephelometer." This change was made in order to update the definition with the current scientific terminology.

The definition of "Ultraviolet light" was modified in order to reflect the current scientific reference of the intensity of the light to a measurement system of Nanometers, which replaces Angstrom units.

The definition of "zero hour" was modified and references the term "depuration unit" to replace the words "tank or tanks" because the term "depuration unit" is more precise.

N.J.A.C. 8:13-2.2 was amended to add "handling" to more clearly delineate the process of clam depuration.

N.J.A.C. 8:13-2.4(e) was modified in order to clarify the responsibilities of the depuration plant for the cost of construction and operation.

N.J.A.C. 8:13-2.10(c) was modified to delete the reference to containers specified in N.J.A.C. 8:13-2.14, and to include a requirement for serially numbered harvesting containers because it was the Department's original intention to include this requirement in the rule proposal. This change is consistent with the Department of Environmental Protection's rule proposal N.J.A.C. 7:12-9.7(a)8i, 7:12-9.7(a)10 and 7:12-9.7(d)10, for Soft Clam and Hard Clam Depuration, stated as follows:

N.J.A.C. 7:12-9.7(a)8i. The owner/operator of the depuration plant shall issue each harvester a specific number of Department of Health approved containers based on the plant capacity. A stamped/validated waterproof serially numbered harvester-allocation tag approved by the

State Department of Health shall be issued by the plant and affixed to each harvest container in the plant as part of the daily harvest allocation. No other containers or bags may be possessed in or on the harvest vessels during any phase of the program.

N.J.A.C. 7:12-9.7(a)10. All soft and hard clams harvested under this permit shall be landed at the depuration plant for further processing at the designated landing times except those hard clams sold to a relayer. All other species of shellfish shall not be removed from the harvest site but shall be immediately deposited at the location from which they were harvested. Only Department of Health specified and approved serially numbered containers shall be used for the harvesting, transportation, and receiving of clams at the depuration plant. All reasonable measures shall be taken to assure that the containers of clams received at the plant are filled to capacity.

N.J.A.C. 7:12-9.7(b)10. Upon completion of the day's harvesting all clams shall be offloaded at the depuration plant for storage and/or processing. Only Department of Health specified and approved serially numbered containers shall be used for the harvesting, transportation, and receiving of clams at the depuration plant.

The Department feels that this is not an onerous requirement and will not have a significant economic impact on the operations of the depuration plant. Furthermore, this requirement is necessary for accountability, since harvesters have been given the option, under a revised N.J.A.C. 7:12-9.7(a)10 of the Department of Environmental Protection's Rules for Soft Shell and Hard Shell Clam Depuration, to sell their harvest to those individuals involved in the relay program. This Department of Environmental Protection rule change allows additional flexibility for the harvesters participating in the depuration program.

N.J.A.C. 8:13-2.14(a) was modified by the Department to delete the phrase "in or out of the process tanks." This deletion clarified the requirement dealing with the intermediate washing of shellfish in the process containers during depuration. Process tanks are required to have sealed lids under N.J.A.C. 8:13-2.13(b)7, and shall remain sealed until the completion of the 48 hour process. Therefore, by removing this phrase the requirement is no longer ambiguous and is straight forward in its intent that clam processing containers must be designed to allow intermediate washing of clams while in the depuration process tanks.

N.J.A.C. 8:13-2.19(b) is a new requirement added to this section to clarify the procedures for the storage of the "cull" of untreated shellfish if culled at the plant. This requirement minimizes the expense of an additional temperature controlled storage facility to hold this product and clarifies the handling of the requirements.

N.J.A.C. 8:13-2.19(d) was added to the proposed rules to assist the depuration plant operator and regulatory officials in identifying and differentiating cull product from the untreated and treated clams. The labeling of the two types of culled product should not cause a significant additional expense to the depuration plant.

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 2. DEPURATION OF HARD SHELL AND SOFT SHELL CLAMS

8:13-2.1 Definitions

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

"Certified depuration plant operator" (DPO) means a person who is responsible for maintaining complete and accurate records of all depuration processes and controls all critical control activities of the depuration plant. This certification will be granted based upon the plant operator(s) receiving a passing score of at least 70 on a standard examination administered by the State Department of Health.

"Critical control activities" means and includes all the critical parameters for depurating shellfish, including, but not limited to, the allocation of process containers, the procedures for harvesting and landing of shellfish, treatment of process water, standard operating procedures for the depuration process, building*, tank and equipment maintenance and construction, process security and surveillance procedures and equipment, sanitation procedures, and required recordkeeping.

"Department" means the State Department of Health.

"Depuration" or "controlled purification" means the process that uses a controlled aquatic environment to reduce the level of bacteria and viruses in live shellfish.

"Depuration plant" means a premises or establishment in which clams obtained from waters officially sanctioned and classified by the Department of Environmental Protection as special restricted or seasonal special restricted are subject*[ed]* to a process of controlled purification with the proper controls approved by the Department which will render the depurated clams alive, and ***[bacteriologically and virally safe]*** ***microbiologically acceptable*** within the meaning of State ***[statutes]*** ***rules*** and regulations.

"Depuration process" means the procedure ***and equipment*** by which shellfish harvested from waters officially sanctioned and classified by the Department of Environmental Protection as Special Restricted or Seasonal Special Restricted are ***[transported to]*** ***treated at*** a depuration plant for controlled purification.

Depuration unit means a tank or series of tanks supplied by a single process water system.*

"Fecal coliform" means bacteria of the coliform group which will produce gas from EC medium when such medium is incubated for 24 hours plus or minus two hours at 44.5 degrees Celsius plus or minus 0.2 degrees Celsius in a water bath, or produce growth of colonies on a selected medium at an elevated temperature of 45 degrees Celsius and incubated for 24 hours.

"Hard shell clams" means the species *Mercenaria mercenaria*.

"Lot" means the number of bushels of clams which have been harvested on a particular day from the same area designated by the Department of Environmental Protection.

"MPN" means most probable number, which is an estimate of the numbers of bacteria per 100 milliliters or grams of sample.

"Person" means an individual, or a firm, partnership, company, corporation, trustee, association, cooperative, or any public or private entity.

"Process batch" means the number of lots of clams and the identification of each lot ***[which makes up a process batch]*** ***used to fill each separate depuration unit***. A process batch can be one lot or more but cannot exceed two consecutive days harvest, nor exceed the number of bushels of clams the process tanks are capable of handling.

"Process tank(s)" means the tanks in which the controlled purification process is carried out.

"Process water" means the water in depuration tanks during the time that shellfish are being depurated.

"Sanitize" means an effective bactericidal treatment of clean surfaces of equipment and utensils, to effectively destroy microorganisms, including pathogens.

"Shellfish Resource Recovery Steering Committee" (SRRSC) means designated representatives from the Department of Environmental Protection and the Department of Health who have regulatory responsibilities for ***[depuration]*** ***resource recovery*** programs.

"Soft shell ***[calms]*** ***clams***" means the species *Mya arenaria*.

"Standard operating procedures" (SOP) means a written manual to include all depuration procedures and operations that will be conducted in a depuration plant including identifying individuals responsible for critical control activities and procedures to be employed by the depuration plant when operations must be discontinued or when critical control activities are not being met.

"Total coliform" means bacteria of the coliform group which will produce gas from brilliant green bile lactose broth two percent when such broth is incubated for 51 hours or less at 35 degrees Celsius plus or minus 0.5 degrees Celsius.

"Treated clams" means shellfish that have been depurated.

"Turbidity" means particles in water which reduce light transmittance as measured by a ***[Nephelometric turbidimeter]*** ***nephelometer***. Units are usually given as Nephelometric turbidity units or as N.T.U.

"Ultraviolet light*[, also referred to as UV]* ***("UV")*** means ***[the bactericidal wave length of light of 2,537 Angstrom units. The intensity is given as microwatts/cm]*** ***that portion of the light spec-**

trum containing the bactericidal wave lengths centered around 254 nanometers*.

"U.S. Standard Bushel" means United States dry measure of four pecks, or 2150.42 cubic inches.

"Untreated clams" means shellfish that have not been depurated.*

"Zero hour" (*0 hour***)** means the time at which a [tank or tanks] *depuration unit* [become] *becomes* full with process water and the ***last*** container of the last lot of clams is placed into the tanks for depuration.

8:13-2.2 General requirements

Any person engaged in the depuration of clams shall conform to the rules governing sanitation, ***handling,*** shipping and shucking of shellfish promulgated under N.J.A.C. 8:13, and provisions set forth under Title 24 of the Revised Statutes.

8:13-2.3 Prohibited acts

No person shall distribute or sell, offer for sale or have in his or her possession with the intent to distribute or sell any clams which have been harvested from special restricted waters and have not been depurated for at least 48 hours and which do not meet the bacteriological standards set forth under N.J.A.C. 8:13-2.21. Clams shall be depurated for a minimum of 48 hours, but not longer than 72 hours. Depuration shall be restricted to clams of the species approved by the Department. Only clams harvested from waters approved for this purpose by the Department of Environmental Protection pursuant to N.J.S.A. 58:24-1 et seq. may be depurated. Clams from other sources may not be stored on the premises of the depuration plant. The depuration plant shall be used for no purpose other than the depuration of clams.

8:13-2.4 Hard and Soft Shell Clam Depuration Program

(a) Any person(s) wishing to construct and/or operate a soft or hard shell clam depuration plant shall submit to the SRRSC a detailed proposal providing all pertinent information concerning the proposed plant on applications provided by the SRRSC. A detailed set of construction plans shall accompany the application. All depuration plant proposals shall be forwarded to:

New Jersey State Department of Health
Consumer Health Services
Shellfish Project
CN 364

Trenton, New Jersey 08625-0364

(b) The SRRSC shall only accept proposals for consideration which demonstrate that they will be in conformance with all local requirements, including zoning, building, and fire codes.

(c) The SRRSC will respond in writing to each proposal after all requested information has been submitted. Each response shall state the reason(s) for acceptance or denial of the proposal.

(d) If an applicant does not initiate construction within six months of its approval, the SRRSC reserves the right to withdraw its approval.

(e) The cost of the construction*, operation, and regulatory requirement]* ***and operation*** of any depuration plant *[program]* ***and conformance with the applicable regulatory requirements*** shall be the responsibility of the individuals proposing same.

(f) The SRRSC shall have the right to limit the number of plant permits issued, based upon Department of Environmental Protection and Department of Health enforcement capabilities.

8:13-2.5 Provisional certificate requirements

(a) Upon approval by the SRRSC to initiate construction of a depuration plant, the issuance of a provisional shellfish certificate to operate on an interim basis until the final verification studies are completed is contingent upon the following:

1. Submission of a shellfish certificate application as required under N.J.A.C. 8:13-1.3 and a food/cosmetic license application with the required statutory fee as required under N.J.S.A. 24:15-13;

2. Final Department approval of construction plans;

3. Departmental approval of the clam processing containers as specified under N.J.A.C. 8:13-2.14;

4. Completion of plant construction;

5. Preoperational inspection conducted by the Department indicating satisfactory compliance with all of the provisions of this subchapter;

6. Filing the necessary permit applications required under Department of Environmental Protection (DEP) rules N.J.A.C. 7:12-9. The Department must receive verification from DEP that the applicant has shown proof that they can meet the DEP regulatory provisions;

7. A written SOP, which shall include all the critical control activities to include the plant's record keeping format for depurating shellfish, which must be submitted for approval to the Department prior to receipt of a provisional depuration plant certification;

8. The plant capacity shall be filed by the firm and approved by the Department utilizing the criteria specified in N.J.A.C. 8:13-2.13 prior to provisional certification approval by the Department;

9. Each plant must have at least one employee as a certified depuration plant operator prior to provisional plant certification. A standard examination which demonstrates a comprehensive knowledge of the principles and procedures of a depuration plant will be administered by the Department. Applicants of this standard test must obtain a passing score of at least 70. A certified depuration plant operator (DPO) will be present in the depuration facility during all critical control activities;

10. A plant verification study shall be conducted by the operator prior to receiving provisional certification. This verification study shall demonstrate to the Department that all critical control parameters meet the specifications as set forth within these requirements and are adequate to insure sufficient physiological activity of the shellfish for purification to occur at any point in the tank under maximum loading conditions; and

11. Plant verification studies will be determined by three consecutive processes which must meet all critical control activities as well as end point bacteriological requirements.

8:13-2.6 Final certificate requirements

(a) Considering the extremes of environmental conditions, an acceptable process verification study shall be conducted during the winter and summer seasons. Only after this additional process verification study indicating that all critical control activities have been met, including satisfactory bacteriological criteria, will final certification be considered by the Department.

(b) Final certification will be issued based upon a record of satisfactory compliance with the critical control activities and the requirements of (a) above.

(c) The certificate shall expire on June 30 of each year. Certificate renewal is required each year on forms supplied by the Department.

(d) Shellfish certification and food/cosmetic license are not transferable with respect to changes in location and/or ownership.

8:13-2.7 Certification restrictions, suspensions, and revocations

(a) Certification is limited to the depuration and sale of depurated clams.

(b) Any certificate issued by the Department pursuant to these rules may be suspended or revoked for any violation of Title 24 of the Revised Statutes or of any rule or regulation of the Department or when bacteriological data shows that the depuration process is not reducing fecal coliform levels to the standards set forth. Any violation of a special permit to possess shellfish harvested from special restricted waters issued by the Department of Environmental Protection is grounds for suspension or revocation of the certificate issued by the Department.

(c) The Department, when in its judgment has determined that any of the critical control activities of the depuration ***[regulations]*** ***rules*** are violated, may, before a hearing, suspend the certification pending the hearing. When the certification has been suspended, the person shall have the right to an expedited hearing. In all other cases, the person shall be afforded the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, prior to the suspension or revocation of the license. When the special permit issued by the Department of Environmental Protection under N.J.A.C. 7:12-9 is suspended or revoked, the shellfish certificate issued by the Department will no longer be valid.

8:13-2.8 Plant location and site specification

The depuration plant shall be located in such an area where seawater of proper quality and sufficient quantity is available for the process. The plant shall be located close enough to the harvest site to minimize travel time, to prevent excessive bacterial multiplication, and to reduce stress in the clams. The plant shall be so located that it will not be subject to flooding by high tides.

8:13-2.9 Plant design

The plant shall be designed in such a manner as to prevent cross-contamination of untreated and treated clams and in order that a video surveillance system can effectively monitor all critical control activities. Washing and culling facilities, with a convenient supply of potable wash water which meets the requirements of N.J.A.C. 7:10 (Safe Drinking Water Act rules), shall be provided for untreated and treated clams. Three separate dry storage areas meeting the requirements of N.J.A.C. 8:13-2.11 shall be provided for untreated clams, clams treated pending laboratory approval, and treated approved clams. The plant shall be provided with potable running water, electricity, and sewage disposal sufficient to meet all the specifications and carry out all the requirements set forth in these rules.

8:13-2.10 Transportation of clams

(a) The vessel(s) or vehicle(s) used in the transportation of clams shall be kept in a clean and sanitary condition. The clams stored and transported in the vessel(s) shall be protected from undue environmental stress such as freezing in winter and overheating in direct sunlight during the summer months. Clams shall be protected from contamination at all times during harvesting and transportation to the depuration plant.

(b) A waterproof serially numbered harvester-allocation tag approved by the Department shall be issued by the DPO and affixed to each harvest container in the plant as part of the daily harvest allocation, as specified in N.J.A.C. 8:13-2.24, which tags shall be accounted for or used that day only.

(c) Only ***serially numbered*** "U.S. Standard" bushel size containers shall be used in the harvesting, transportation, and receiving of ***hard shell and*** soft shell clams at the depuration plant unless written approval is given to use an alternate standard type of container. ***[Only containers specified in N.J.A.C. 8:13-2.14 of these regulations shall be used in the harvesting, transportation, and receiving of hard shell clams at the depuration plant unless written approval is given to use an alternate standard type of container.]*** All reasonable measures shall be taken to assure that containers of clams received at the plant are filled to capacity.

(d) During the unloading procedures from the harvesting vessels at the designated times and locations, the containers of clams shall not be covered and shall be open to view.

(e) Once off-loading commences, the containers of shellfish shall immediately be moved into the plant and the attached harvester allocation tag be date and time stamped upon receipt by the plant on that harvest day.

(f) Overland transportation must be approved by the SRRSC under the provisions of DEP rules N.J.A.C. 7:12-9.

8:13-2.11 Shellfish storage

(a) Shellfish received from harvesters shall be stored immediately in the untreated controlled storage unit prior to depuration. This location shall be cool and protect the shellfish from contamination. The internal temperature of the shellfish in the controlled storage unit shall be maintained within five degrees Fahrenheit of the processed water temperature, but shall not exceed 68 degrees Fahrenheit (20 degrees Celsius).

(b) After removal from the depuration process, shellfish shall be stored in the intermediate refrigerator at refrigeration temperatures of 45 degrees Fahrenheit or 7.2 degrees Celsius or below pending laboratory analysis.

(c) Upon receipt of satisfactory laboratory analysis, shellfish shall be packed in shipping containers and placed in the treated refrigerator at refrigeration temperatures.

8:13-2.12 Source seawater

(a) No seawater shall be used for depuration unless it meets the following requirements:

1. The source seawater total coliform counts expressed as MPN/100 ml shall not exceed the following level:

i. Median of samples equal to or less than 700: with not more than 10 percent of samples exceeding 2,300 for a five tube, three dilution test, and 3,300 for a three tube, three dilution test.

2. The source seawater shall be free of toxic chemicals, pesticides, detergents, dye stuffs, radioisotopes and marine toxins in concentrations which exceed established State/Federal ***rules or*** regulations, or exist in concentrations deemed hazardous by State or Federal officials.

3. Salinity must be within 20 percent of the harvest area value, at the time of harvest^{*}, expressed in parts per thousand^{*}.

(b) The seawater in which the untreated clams are placed for controlled purification shall be of sufficient quality to assure optimal physiological activity. The following requirements shall be met either naturally or through treatment of the water:

1. ***[A maximum of one total coliform per 100 ml;]*** ***No detectable coliform organisms as measured by the standard five-tube MPN test for drinking water or a test of equivalent sensitivity;***

2. The pH shall be between the range of 7.0 to 8.4;

3. The dissolved oxygen levels shall be a minimum of 5.0 mg/liter;

4. Turbidity shall not be more than 20 Nephelometric turbidity units; and

5. Temperature range shall be a minimum of 40 degrees Fahrenheit (4.4 degrees Celsius) to a maximum of 68 degrees Fahrenheit (20 degrees Celsius) for soft shell clams; and, a minimum of 50 degrees Fahrenheit (10 degrees Celsius) to a maximum of 68 degrees Fahrenheit (20 degrees Celsius) for hard shell clams.

i. Refrigeration units shall be installed of sufficient capacity to cool and maintain processing water 68 degrees Fahrenheit (20 degrees Celsius) or below.

ii. A system shall be established to raise and maintain the water temperature above 40 degrees Fahrenheit (4.4 degrees Celsius) for soft shell clams and 50 degrees Fahrenheit (10 degrees Celsius) for hard shell clams.

8:13-2.13 Plant depuration equipment

(a) Hydraulic seawater system design and material requirements are as follows:

1. The seawater pumping system shall include intake structures, intake pumps, distribution or piping network, valves, filling and flow measuring devices which shall be maintained in good working order at all times and shall be of sufficient size and design to supply the system with process seawater to meet the requirement set forth in (b) below.

2. The distribution piping network shall be constructed in such a manner so that the entire system can be cleaned.

3. Accurate flow control devices shall be installed in the process seawater system to assure that the flow requirements are being met and maintained.

4. Electrical hydraulic equipment such as pumps, ultraviolet unit(s) and other electrical components of the seawater circulation system shall be protected from water splash and corrosion.

5. The seawater hydraulic system shall be constructed of materials which are inert, noncorrosive and nontoxic to man or clams.

6. A minimum of five mg/liter of dissolved oxygen shall be maintained throughout the depuration processing system. An aeration system shall be installed if the oxygen level is below five mg/liter. The aeration system shall not produce excessive foaming. Bubble type aeration systems are prohibited. Accurate dissolved oxygen meters to measure the dissolved oxygen of the process water shall be provided.

(b) The process tank(s) in which controlled depuration is carried out shall be constructed of suitable sturdy material which is smooth, free of breaks and open seams. Materials used in process tank construction shall, under use conditions, be corrosion resistant, nontoxic, relatively nonabsorbent. The tank(s) shall be in good repair and shall be easily accessible for cleaning and inspection. The tank(s) shall be

self-draining to facilitate tank cleaning. Tank design shall be approved by the Department prior to installation. Tank design shall insure that:

1. Uniform hydraulic flow is maintained throughout the tank(s);
2. The proper stacking and removal of shellfish process containers is carried out to insure a satisfactory flow of process seawater;
3. Vibrations and tank disturbances are not present;
4. The flow and quality of treated seawater shall be easily monitored. The volume flowing through each tank shall be at least one gallon per minute per U.S. bushel of clams;

*[5. The tank(s) are protected against chemical, microbiological, or other contamination;

6. The tanks shall be maintained in good repair at all times;

7. Process tank dimensions are as follows:

- i. The tank(s) shall have the capacity to supply at least five cubic feet of seawater per U.S. bushel of clams at the overflow level for soft clams and at least eight cubic feet of seawater per U.S. bushel for hard shell clams; and

ii. A minimum space shall be provided to assure three inches in all directions around the clam processing containers submerged in the process tanks; and

8. If a rectangular tank design is utilized, the following specifications shall be met:

i. The length to width ratio shall be a minimum of 2:1 and not more than 4:1;

ii. The maximum depth of the tank shall be 36 inches; and

iii. The bottom of the tanks should be sloped longitudinally at least 1/4 to 1/2 inch per foot toward the outlet end.

(c) Storage facilities shall provide for physical separation of the treated approved clams from the treated clams pending laboratory analysis and also from the untreated clams and they shall be stored separately at all times.

(d) Process tanks are to be provided with hinged, durable, easily cleanable plastic mesh type lids with adequate openings for sampling. These lids shall have locking mechanisms and shall be sealed with tamper evident seals which are approved by the department and which are serially numbered. The seals shall be put in place at the zero hour of depuration and not removed until completion of the 48 hour process. If the required bacteriological analysis results in a process failure as defined in N.J.A.C. 8:13-2.21, the tank lids shall be in place and sealed at the start of the additional process time and not removed for 24 hours.

(e) The Department will consider alternate tank design specifications other than rectangular, subject to the requirements of 1 through 7 above, if there is adequate scientific information and testing to show that an alternate tank design will accomplish the same results. Utilization of non-rectangular design will require prior approval by the department.]*

*5. The process tank(s) shall have the capacity to supply at least five cubic feet of seawater per U.S. bushel of clams at the overflow level for soft shell clams and at least eight cubic feet of seawater per U.S. bushel for hard shell clams.

6. The depuration processing system shall be designed and constructed so as to provide sufficient water of adequate quality throughout the system in a manner which accomplishes effective purification. This depuration processing system design and construction must be approved by the Department prior to the plant receiving a provisional certification.

7. Process tanks shall be provided with durable, easily cleanable, plastic mesh type lids with adequate openings for sampling. These lids shall have locking mechanisms and shall be sealed with tamper evident seals which are approved by the Department and which are serially numbered. The seals shall be put in place at the zero hour of depuration and not removed until completion of the 48 hour process. If the required bacteriological analysis results in a process failure as defined in N.J.A.C. 8:13-2.21, the tank lids shall be in place and sealed at the start of the additional process time and not removed for 24 hours.

8. The tank(s) shall be protected against chemical, microbiological, or other contamination.

9. The tanks shall be maintained in good repair at all times.

(c) A minimum space shall be provided to assure three inches between the bottom of the clam processing containers and the process tanks.

(d) Clam processing containers shall be adequately submerged in the process water during the entire depuration process.*

8:13-2.14 Clam processing containers

(a) Clam processing container design must be approved by the Department in writing prior to receiving a provisional certificate. Clam processing containers used in the process tanks shall be constructed of materials which are noncorrosive, nontoxic, and of a suitable shape and size to allow processed seawater to pass easily in all directions; allow for intermediate washing of clams *[in or out of the process tanks;]* and be easily cleanable and constructed of materials which can be sanitized. Clam processing containers shall not be used for any other purpose other than for depuration.

1. The maximum depth of shellfish in the containers shall be three inches (76 mm) for hard shell clams and in increments of 1/2 U.S. bushels.

2. The maximum depth of shellfish in the containers shall be eight inches (20.3 cm) for soft shell clams and in increments of 1/2 U.S. bushels.

8:13-2.15 Water purification system(s)

(a) An ultraviolet (UV) bacteriological reduction system shall be installed to provide process seawater meeting a bacteriological quality of no *[more than one fecal coliform/100 ml]* ***detectable coliform organisms as measured by the standard five-tube MPN test for drinking water or a test of equivalent sensitivity*** sampled at the UV unit outlet unless this quality can be met naturally and the water is not recirculated. A recirculating seawater system shall be so designed, installed and operated to assure that the water receives UV treatment prior to entering the system.

1. The Department will consider alternate methods of bacteriological reduction *[units]* if adequate scientific information is presented showing that the *[unit]* ***equipment*** will produce process water of the required bacteriological quality; proper testing is conducted; and the practicability of *[units]* ***equipment*** can be demonstrated.

2. Chemicals such as chlorine or similar disinfecting compounds shall not be used to treat the process seawater, unless the *[water is dechlorinated just prior to use]* ***compounds in the water are completely inactivated prior to introduction into the distribution system***.

(b) The ultraviolet (UV) sterilization unit shall meet the following minimum requirements:

1. The unit shall be designed and operated to deliver at peak load at least one gallon per minute of treated water per U.S. bushel of clams;

2. The unit shall have water flow control device(s) to prevent the water flow exceeding the capacity of the unit regardless of the incoming pressure; and

3. A meter and recording chart shall be attached to the unit which will continuously monitor and record the following:

i. Any changes in ultraviolet *[transmission]* ***transmissivity*** of the water to be treated; and

ii. Depreciation or reduction in the output of the intensity of the ultraviolet lamps;

4. The recorder chart shall be calibrated in hours and days and the chart shall be marked to indicate "0", "24", "48", and "72" hour intervals for each process batch*. **Alternate types of recorder units shall be approved by the Department prior to use and shall be capable of providing the basic required information***;

5. The ultraviolet system shall have provisions for in-place cleaning of the interior of the purification chamber and ultraviolet tubes; and

6. The ultraviolet tubes shall be replaced when they reach a point of 60 percent efficiency or 7,500 hours old.

8:13-2.16 Water temperature recording device(s)

(a) A water temperature recording device or devices shall be installed in a position to accurately record the process water temperature. The device shall be installed to meet the following requirements:

1. The recorder case shall be moisture-proof under normal operating conditions;

2. The temperature recording device shall be graduated with a range between two degrees Fahrenheit and 100 degrees Fahrenheit;

3. The chart shall be graduated with not less than two degrees Fahrenheit divisions, with not more than 40 degrees Fahrenheit per inch of scale, graduated in time scale divisions of not more than one hour;

[4. An accurate indicating thermometer shall be provided to check the temperature recording device;]

*[5.]*4.* The chart shall have a rotation period to record for 72 hours and indicate a continuous recording for the 48/72 hour depuration process;

*[6.]*5.* The recorded elapsed time as indicated by the temperature recorder chart rotation shall *[not exceed the time elapsed as compared to an accurate watch]* ***be within two percent of true elapsed time***; and

*[7.]*6.* The chart support shall be provided with a pin or pins to puncture the chart in a manner to prevent improper or false rotation.

*[i.]**(b)* Temperature recording device operation is as follows:

*[(1)]*1.* The temperature recording device shall be activated on the onset of the depuration process (0 hour);

*[(2)]*2.* Charts shall identify the dates of process batch including lot number(s) and quantity of clams in each lot; and

*[(3)]*3.* Any unusual occurrences shall be recorded on the chart, such as system breakdown or large temperature deviations.

***(c) Alternate types of recorder units will be considered by the Department. Such units must be approved by the Department prior to use.**

(d) An accurate indicating thermometer shall be provided to check the temperature recording device.*

8:13-2.17 Plant capacity control

(a) The maximum amount of clams in each tank shall not exceed the flow requirement of one gallon per minute of seawater per bushel of clams nor the physical size limits of the tank and other spacing criteria established in this subchapter.

1. The plant capacity shall be established as set forth in N.J.A.C. 8:13-2.5. Each process tank shall be posted to indicate the maximum tank capacity for that particular process. This posting shall be of size and legibility to allow for viewing by the required surveillance cameras.

2. If the flow rate of the system or individual tanks decrease, the plant operator shall adjust the number of bushels of clams in the tanks not to exceed the flow requirement and repost the new capacities.

3. The DPO shall employ all reasonable means to ensure that all tanks in the system have equal flow. If this cannot be achieved, then the operator shall post each tank with its rated capacity.

4. The DPO shall notify the Department by telephone at the beginning of the next working day if the total capacity of the system changes, either by an increase or decrease in flow capacity, and resubmit in writing the new rated capacity for departmental approval within five days after verbal notification.

5. The DPO will be responsible for allocating the processing containers and harvester allocation tags for harvesters on a daily basis. The allocation of containers and tags shall not exceed the approved capacity specified in the plant's SOP.

6. The number of bushels of clams harvested each day shall not exceed the amount which the plant is capable of processing on that day.

8:13-2.18 Carryover

(a) In the event that insufficient clams are harvested to make it a full process batch, no more than two consecutive days catch of clams can be combined to make up a process batch.

(b) Processing shall begin within 36 hours of receipt of clams at the depuration plant.

(c) If a plant carries over part of a day's catch, then the next day's harvest cannot exceed the number of bushels which the plant is capable of processing on that day.

(d) If a plant exceeds capacity due to a process failure, the plant shall notify the Department regarding the disposition of these clams by the next working day.

8:13-2.19 Washing and culling of clams

(a) Appropriate culling procedures will be employed *[at the point of harvesting]* to ensure that broken, cracked, dead, or gaping clams are removed and not placed into the process containers. Before depuration, clams shall be washed *[at the plant]* with water taken from a source approved by the *[department]* ***Department***. During the depuration process, the tanks shall be drained whenever necessary and the tank and clams flushed of fecal material, sand, and debris to prevent an accumulation of these materials. After the depuration process is completed, the water shall be drained from the tanks before the clams are removed. Washing facilities shall be designed to prevent cross-contamination of untreated and treated clams.

(b) When culling of untreated clams occurs at the plant, the cull shall be held in the untreated clam controlled storage unit until the destruction of culled product can be witnessed by a regulatory official who has responsibility to enforce rules governing depuration.

[(b)](c)* Final culling of shellfish shall be conducted after the shellfish have been processed and after laboratory results confirming acceptable bacteriological quality have been received by the DPO. Any ***final*** culled product shall be stored in the intermediate refrigerator until the destruction of culled product can be witnessed by an appropriate regulatory official.

(d) Culled shellfish in storage pending destruction shall be appropriately labeled to distinguish them from untreated and treated clams.

8:13-2.20 Cleaning and sanitizing treatment of equipment

(a) Adequate facilities shall be provided for the proper washing, cleaning, and sanitizing treatment of equipment, utensils, and building. All equipment and utensils utilized in the depuration plant shall be maintained in a clean condition. All clams and seawater contact surfaces shall be cleaned and sanitized, as defined under N.J.A.C. 8:24-5.5, at the frequencies listed as follows:

1. Process tanks and seawater distribution piping shall be drained of seawater after each process and tanks and racks shall be cleaned and sanitized within three hours after a process batch is removed from the system and rinsed of sanitizing residuals before another depuration process begins.

2. The seawater reservoir(s) used to hold incoming process seawater shall be drained and flushed after each process batch and cleaned and sanitized at least once a week.

3. Clam processing containers shall be cleaned and sanitized within three hours after removal of clams.

4. The ultraviolet or quartz tubes and tube chamber of the UV unit(s) shall be cleaned within three hours after each depuration process.

8:13-2.21 Bacteriological quality

(a) Depurated clams shall meet the following bacteriological quality standard:

1. A fecal coliform median value not to exceed 50 ***[MPN]**organisms*/100 gms and not more than 20 percent of the samples shall exceed *[an MPN of]* *a* 100 fecal coliform *value* per 100 gms for soft shell clams.**

2. A fecal coliform median value not to exceed 20 ***[MPN]**organisms*/100 gms and not more than 20 percent of the samples shall exceed *[an MPN of]* *a* 50 fecal coliform *value* per 100 gms for hard shell clams.**

(b) The SRRSC reserves the right to establish adjunct bacteriological testing in addition to the fecal coliform standards currently being utilized.

8:13-2.22 Bacteriological sampling

(a) Bacteriological sampling collection and analysis of depurated clams shall be conducted by a government-operated laboratory approved by the State of New Jersey shellfish laboratory evaluation officer, who is certified by the United States Food and Drug Administration under the latest version of the National Shellfish Sanitation Program manual of operations, Part I, Appendix E. The Department

shall reserve the right to approve a nongovernment laboratory, preferably not affiliated with the plant(s) being regulated, on an interim basis when a government laboratory is not available.

(b) The following minimum sampling programs shall be followed:

1. Clams samples are to be taken randomly for each process batch of clams at the following intervals:

i. Zero hour samples shall be collected at a frequency established in writing by the Department. The frequency shall be based on levels of pollution, weather conditions, and seasonal changes with a minimum of two samples per lot when zero hours sampling is deemed necessary.

ii. Five samples per lot at a period of time between 40 and 48 hours. Samples taken prior to 48 hours which do not meet the bacteriological standards shall be resampled to show that the process batch meets the bacteriological standards before being offered for sale and results received by the DPO.

iii. Five samples per lot at "72" hours if found necessary.

2. A water sample of the ultraviolet (UV) treated water shall be taken directly from outlet of each UV unit each week.

*[(b)]**(c)* All bacteriological sampling results shall be forwarded to the Department's shellfish project in writing within five days of completion.

*[(c)]**(d)* Clam process batch(s) which do not meet the bacteriological standards set forth after 48 hours of depuration shall be further depurated for an additional 24 hours. Clam process batch(s) which do not meet the bacteriological standard after 72 hours of depuration cannot be further depurated and shall not be used for human food consumption and shall be disposed of in a manner approved by the Department. The certificate holder shall be responsible to notify the Department's shellfish project by telephone immediately upon receipt of bacteriological results which do not meet the standard after 48 or 72 hours of depuration.

*[(d)]**(e)* No clams are to be packed and shipped until laboratory results confirming acceptable bacteriological quality have been received by the plant.

8:13-2.23 Record keeping

(a) Each lot(s) of clams brought to the depuration plant shall be assigned a process batch number. A separate set of records shall be kept on the premises at all times for at least one year and be available for inspection upon request. All records shall be kept in indelible ink and shall indicate the following:

1. The *[proces]* ***process*** batch number as well as the harvester allocation tag serial number(s) for each process;

2. The name of each clammer working each day along with the number(s) of his or her serialized harvester allocation tag;

3. The number of clams and bushels each clammer harvests each day;

4. The total number of bushels and clams in each process batch;

5. The number of bushels and ***number of*** clams culled ***in the plant before and*** after depuration;

6. The date and time of "0" hour entry for each process;

7. The number of hours the clams are depurated along with the date and time the process is terminated for each process;

8. The ultraviolet (UV) recorder tape corresponding to each process batch shall be attached to the records. A log tube intensity record shall be kept daily which indicates the date and intensity readings;

9. Temperature recorder charts corresponding to each process batch shall be attached to the records;

10. The sales information to include date, number of bushels of soft shell clams, number of hard shell clams, person and address to whom sold shall be recorded at the time of sale and identified to the process batch; and

11. A copy of the harvest depuration receipt as required in N.J.A.C. 7:12-9 shall be available for review and inspection upon request.

(b) Copies of the records required in this section shall be submitted via facsimile machine to the Department shellfish project no later than 12:00 noon of the next working day.

8:13-2.24 Harvester allocation tag

(a) Each container of shellfish shall have a harvester allocation tag affixed to it prior to the container being allocated by the depuration plant to the individual clammer.

1. This tag shall be approved by the Department prior to provisional certification.

2. This tag shall consist of waterproof material and shall be compatible with the time clock which has been approved by the Department.

3. This tag shall, at a minimum, contain the following information:

i. The harvester name and permit number;

ii. The date issued;

iii. The time issued;

iv. A serialized number;

v. The DEP harvest area;

vi. The process date;

vii. The process "0" hour time; and

viii. The date and time issued along with the date and time the shellfish are received by the plant, both of which shall be date and time stamped on this tag.

4. This tag shall remain affixed on each container from the time allocated through and including harvesting, transporting, holding prior to depurating, during the depuration process, while in the intermediate storage refrigerator awaiting process bacteriological evaluation approvals.

5. This tag, when removed prior to market packaging, shall be retained in an orderly fashion by the plant and shall be available at the plant for a period of time no less than one year.

8:13-2.25 Harvester depuration receipt

Upon landing of the shellfish at the approved landing site and time, each harvester shall be issued a receipt(s) by the DPO as required in N.J.A.C. 7:12-9.

8:13-2.26 Shellfish shipping tags

(a) The process batch shall be stamped on all shellfish shipping tags which shall be affixed to each container of clams sold as required by the regulations generally governing the tagging and sale of shellfish (N.J.A.C. 8:13-1.14(b)). Shellfish shipping tags shall be affixed to each shellfish shipping container as it is being packed. The shellfish shipping tags shall meet the following requirements:

1. Shellfish tags shall be at least 2½ inches wide and 5¼ inches long and constructed of a waterproof and tear resistant material;

2. The attachment point shall be reinforced, preferably with a metal and fiber eyelet; and

3. Shellfish tags shall be preprinted or stamped in waterproof ink with the shippers name, address, shippers permit number prefixed with NJ in capital letters, the common name of the shellstock, the harvesting area, the net weight, numerical count, and/or standard measure of the shellstock in the container, and the date shipped. The description of a New Jersey State harvesting area shall not be less specific than the descriptions set out in N.J.A.C. 8:13-1.14 or any revisions of these rules. A certification number shall be followed by the letters "DP" to indicate depurated product on the tag.

8:13-2.27 Depuration plant monitoring/surveillance equipment

(a) A video surveillance system shall be installed and operated to clearly monitor all critical control activities of the depuration plant and shall be in working order and operating at all times. The plant shall provide two monitors for remote viewing via telephone lines in state offices. This system shall be approved by the SRRSC prior to provisional certification.

(b) A video cassette recorder shall be provided and shall operate to record all surveillance camera sequences.

(c) The plant shall have an audible alarm and a visible alarm in plain view of surveillance cameras which is triggered when the electrical service is interrupted during a process.

(a)

COMMUNITY HEALTH SERVICES**Food and Drugs****Readoption with Amendments: N.J.A.C. 8:21****Adopted Repeal: N.J.A.C. 8:21-12**

Proposed: August 20, 1990 at 22 N.J.R. 2465(a).

Adopted: October 19, 1990 by Frances J. Dunston, M.D.,
M.P.H., Commissioner, Department of Health.

Filed: October 23, 1990, as R.1990 d.563 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. 24:2-1, 24:10-57.20, 24:10-57.24(b),
24:10-73.1 and 24:12-12.

Effective Date: October 23, 1990, Readoption; November 19,
1990, Repeal and Amendments.

Operative Date for N.J.A.C. 8:21-9.5, License Fees: December
1, 1990.

Expiration Date: October 23, 1995.

Summary of Public Comments and Agency Responses:

The Department received four letters of comment, in addition to one verbal comment presented at the public hearing held on September 5, 1990, relative to the proposed readoption of N.J.A.C. 8:21-7, Frozen Desserts. The comment received at the public hearing was general in nature, with a representative from the Northeast Ice Cream Association Inc., indicating general support for the Department's proposed rule amendments.

Four other letters of comment were received, with two letters addressing the provisions of subchapter 5, Manufacturing, Storage, Handling, and Standards of Bottled Water and the other two commenting on the provisions of subchapter 10, Designated Fluid Milk Products.

The following is a summary of the comments submitted in reference to the proposed readoption and the corresponding Departmental responses:

COMMENT: N.J.A.C. 8:21-5.2. A comment was received stating that the definition of "spring" under N.J.A.C. 8:21-5.2 would preclude the use of cased "bore holes" drilled adjacent to a spring with external pressure applied in order to extract the water from the aquifer. The commenter believes that this method offers greater source water protection and is acceptable in a number of other states. The commenter requested that the definition of "spring" should be amended to be in conformity with the model bottled water code published by the Association of Food and Drug Officials (AFDO).

RESPONSE: The Department has carefully considered the comment and argument and believes that the drilling of "bore holes" which are cased and are for the purpose of applying external pressure does not meet the intent of the definition of a "spring." The Department's proposed definition is identical to the AFDO definition which states that "water that is taken from a natural orifice in the ground from which water flows without applying external force or vacuum" is spring water. The drilling of bore holes and the application of external pressure to extract the water is contradictory to the definition of a "spring." Finally, the Department believes that the rules establish adequate requirements for protecting a spring and the commenter has not provided documentation that the use of bore holes offers greater source water protection.

COMMENT: N.J.A.C. 8:21-5.5. The Department received three comments concerning a number of the provisions relative to bottled water labeling requirements. A commenter stated that the source water labeling requirement is duplicated in the definition of "drinking water" under N.J.A.C. 8:21-5.5(a)2 and, further, the commenter does not believe that the requirement to specify the source of bottled water is warranted. The commenter also opposes the prohibition of mixing water from multiple sources. Another commenter inquired whether it would be acceptable to indicate the source water information on the cap of five gallon multi-use polycarbonate bottles and requested that the rule should be amended to allow the expiration date to appear on the back label of one gallon containers. The manufacturer cited examples of expiration dates appearing at different locations on bakery products.

RESPONSE: The Department agrees with the commenter that it is not necessary to state the source labeling requirement under the definition N.J.A.C. 8:21-5.5(a) and is therefore revising the definition. N.J.S.A.

24:12-9(b), the law governing bottled water standards and labels, requires that all bottles, packages or containers of bottled water sold, offered for sale, or bottled in the state shall bear a clear and prominent label indicating the specific location at which the water is obtained, including the address of the water purveyor, artesian or driven well, spring or other point of origin. Therefore, only with a statutory change which is beyond the scope of this rule revision could the Department consider amending the provisions requiring the identification of the source of bottled water.

The Department agrees with the commenter that the prohibition on mixing waters from different sources is not necessary because each source must meet the standards set forth in these rules. Therefore, the Department will amend this section to permit the practice, with the provision that all sources are listed on the label as required under N.J.S.A. 24:12-9(b) and N.J.A.C. 8:21-5.5(b), and that different types of waters are not commingled.

In answer to the inquiry as to whether it would be acceptable to provide the source information on the cap of five gallon multi-use polycarbonate bottles, the Department believes that the proposed rule would not preclude this, since the cap may be considered part of the container label. The Department believes that the use of the term primary container has caused some confusion, and the Department will amend this section to reference the labeling term "principal display panel" as defined in the Code of Federal Regulations, 21 CFR 101.1, as the appropriate location for placement of source water information.

In response to the request concerning placement of the expiration date on the rear label panel, the Department recognizes that food labels, including those for bottled water, may have more than one component part. In fact, the Department's food rules, under N.J.A.C. 8:21-1.3, reference the Code of Federal Regulations concerning food labeling and establish rules for principal display and informational panels for food packages. In reference to the example of expiration dates appearing at different locations on bakery products, these dates are not mandated by law, therefore, manufacturers can place this voluntary information on any part of the package. N.J.S.A. 24:12-9 states that bottled water sold, offered for sale or bottled in this state shall bear a clear and prominent label indicating certain information, including an expiration date which is two years from the date on which the water was bottled. Therefore, as called for in the statute, this information must appear on the label. The Department believes that it would be acceptable to include the expiration date on the principal display or informational panel. The Department has clarified the rules governing labeling information mandated under N.J.S.A. 24:12-9 including the expiration date requirement, the source water reporting requirement, and the classification of the type of bottled water.

COMMENT: N.J.A.C. 8:21-5.7. In regard to the requirement set forth in N.J.A.C. 8:21-5.7(f)4, a commenter requested that the Department require specific, detailed sanitation procedures to be employed when multi-purpose bottling equipment is utilized to bottle water.

RESPONSE: The Department agrees that this section needs further clarification and has revised the proposed rule to require that a bottler using multi-purpose bottling equipment establish, in writing, cleaning and sanitization procedures which must be followed.

COMMENT: N.J.A.C. 8:21-5.14(a). The International Bottled Water Association indicated that they were opposed to the provision which requires semiannual testing for hazardous contaminants listed in Table 6 of the rules. The Association indicated that they did not believe the increased frequency from annual testing to semiannual testing was necessary and also stated that such a testing schedule would be costly to small bottlers. They further stated that the Department did not provide an economic impact for this requirement.

RESPONSE: N.J.S.A. 24:12-10, the law requiring testing for hazardous contaminants, calls for semiannual testing for the chemicals listed in Table 6 of the proposed rules. Although the statutory provision does not permit the Department to waive the testing requirement, the law does allow the Commissioner to "determine on a case by case basis that a greater or lesser frequency of testing is necessary or sufficient to ensure the public health and safety." The Department agrees with the commenter that certain water sources have shown a history of not being subject to these contaminants and therefore, it may not be necessary to analyze for hazardous contaminants semiannually. The Department has revised N.J.A.C. 8:21-5.14(a)5 to establish provisions whereby a bottler can petition the Department if they wish to reduce the testing frequency to an annual basis. The Department has established a criteria of three consecutive semiannual analyses without a detectable level for these hazardous contaminants as the basis for reducing the sampling frequency. If

a detectable level is identified for any of the selected hazardous contaminants under N.J.A.C. 8:21-5.14(a), then the frequency would revert back to semiannual testing. This system is currently applied by the New Jersey Department of Environmental Protection for public water purveyors serving less than five thousand customers under N.J.A.C. 7:10-14.11. The Department did not provide an economic impact statement for this specific provision because statutory provisions pursuant to N.J.S.A. 24:12-10 have mandated this frequency of testing since July 30, 1988.

COMMENT: N.J.A.C. 8:21-5.14. The International Bottled Water Association requested that N.J.A.C. 8:21-5.14 be amended to exempt water bottlers from testing source water obtained from public water supplies.

RESPONSE: The Department agrees with the commenter and has revised N.J.A.C. 8:21-5.14 to exempt water bottlers from testing source water obtained from approved public community water systems because these source supplies are already required to meet the standards adopted by the Department of Environmental Protection pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12-A-1.

COMMENT: N.J.A.C. 8:21-5.14 (Table 3). A commenter requested that the pH range for distilled water should be modified because industry standards call for a lower pH than the recommended range found in Table 3 of the proposed rule.

RESPONSE: The Department agrees that the recommended pH range does not recognize the lower pH range for distilled water. The established range of 6.5 to 8.5 units was derived from the United States Environmental Protection Agency (EPA) recommended pH ranges for municipal water supplies. These levels are set in order to protect piping from the corrosive properties associated with water pH values of less than 6.5 units. Additionally, the pH levels for distilled water according to industry standards range from 5.0 to 8.0 units and the United States Pharmacopeia (USP) standard for purified water is from 5.0 to 7.0 units. The Department has footnoted the Table 3 to exempt distilled and purified water from the recommended pH range.

COMMENT: N.J.A.C. 8:21-10. The U.S. Food and Drug Administration (FDA), Mid Atlantic Regional Milk Specialist remarked that the proposed designated fluid product milk rules will provide the Department with the legal basis for an effective milk sanitation program.

RESPONSE: The Department appreciates the support of the FDA Regional Milk Specialist.

COMMENT: N.J.A.C. 8:21-10.12(a). The Department was requested to examine the rules governing the shelf life (expiration) dating of milk and fluid milk products. The commenter suggested three possible changes as follows:

1. The Department should amend its present dating rules to permit a shelf life expiration date of 10 days following the date of packaging, rather than the existing requirement of nine days following the date of pasteurization. The commenter believes that this would provide a more uniform shelf life dating system for milk plants conducting business in the New Jersey/New York/Pennsylvania market, thus making shipping and inventory control easier for these plants;

2. Flavored milks should be included with other fluid milk products to allow for an open code date system instead of the current rule of nine days following the date of pasteurization. The commenter contends that flavored milks have a longer shelf life because they are pasteurized at higher temperatures than whole, lowfat or skim milk. The commenter indicated that this amendment would also be consistent with New York City's dating requirements; and/or,

3. The entire dating system should be amended to utilize either an open code date or a 12 day code. The commenter stated that new testing methods provide better predictability of shelf life and therefore the milk plant should be the entity which establishes the shelf life of all milk and fluid milk products through an open code dating system. The commenter contends that a 12 day code can be proven to be acceptable and has been the maximum time period allowed for firms processing this type of product in the State of Maryland under that state's guidelines.

RESPONSE: N.J.S.A. 24:10-57.23, the enabling statute which requires the shelf life dating of milk and fluid milk products, specifies the methodology to be utilized by the Department when drafting pertinent rules. The shelf life expiration date must be based upon the date of pasteurization, rather than the date of packaging. Therefore, without a statutory change, the Department could not consider amending the current rule to read "date of packaging."

The Department acknowledges that the statutory definition of "date of pasteurization" is subject to more than one interpretation. The agency's interpretation for over 10 years appears to be causing some difficulty

and confusion in establishing a uniform system of shelf life dating in the tri-state market. The Department also accepts the argument that current industry practices could allow for a longer shelf life.

Therefore, based upon information from surrounding jurisdictions and in order to provide for uniformity of shelf life coding in the tri-state market, the rule has been revised to allow for a 10 day shelf life code following the date of pasteurization. The Department does not believe that one additional day of shelf life will adversely effect the wholesomeness or consumer palatability of the product.

The Department is not willing at this time to adopt an open code dating system, nor grant a 12 day maximum code without further study of the procedures utilized in Maryland, as well as additional review of industry practices and an evaluation of the quality of store shelf samples manufactured with this extended shelf life allowance.

Regarding the issue of code dates for flavored milks, the present rule governing the pasteurization of milk products which contain either 10 percent or more milkfat or have added sugars, including flavored milks, requires that the pasteurization temperature for such products be increased by at least five degrees Fahrenheit. This is to allow for proper heat penetration of these high milkfat and/or sugar-containing milk products. The shelf life for high milkfat products is currently established by the milk plant, based upon shelf life studies conducted by the plant which are available for review upon request to the Department. Since the processing technique(s) is the same for both high fat and flavored milk products, the Department has revised N.J.A.C. 8:21-10.12(a)1 to remove flavored milks from the 10 day shelf life dating subsection.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:21.

Full text of the amendments to the readoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from the proposal shown in brackets with asterisks *[thus]*):

SUBCHAPTER 1. FOOD, DRUG, COSMETIC, AND DEVICE LABELING

8:21-1.1 Definitions

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

"Consumer" means an individual who secures a cosmetic for his or her self application and has not received any special training or experience in its use.

"Cosmetic" means "cosmetic" as defined in N.J.S.A. 24:1-1h.

"Label" means "label" as defined in N.J.S.A. 24:1-1j.

"Labeling" means "labeling" as defined in N.J.S.A. 24:1-1k.

"Person" means an individual or firm, partnership, company, corporation, trustee, association, or any public or private entity.

"Professional" means an individual qualified through special training and experience and licensed by the State to perform beauty culture services.

"Professional use only" means for use only by a professional, or words of similar import.

"Retail" means sale or distribution directly to the consumer.

"Retail establishment" means any place used in the production, preparation, processing, manufacture, packing, storage, or handling of cosmetics for sale or distribution directly to the consumer.

"Wholesale establishment" means any place used in the production, preparation, processing, manufacture, packing, storage, or handling of cosmetics for sale or distribution to a person other than the consumer.

8:21-1.2 General labeling requirements

The general labeling requirements of 21 CFR 1.1, 1.3, 1.4, 1.20, 1.21, 1.23, 1.24 are incorporated herein by reference.

8:21-1.3 Food labeling

The food labeling requirements of 21 CFR 101, 102, 104, and 105 are incorporated herein by reference.

8:21-1.4 Drug labeling

The drug labeling requirements of 21 CFR 201 are incorporated herein by reference.

8:21-1.5 Cosmetic labeling

The cosmetic labeling requirements of 21 CFR 701 are incorporated herein by reference.

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8:21-1.6 Labeling, sale, and distribution of cosmetics for professional use only

(a) For the purposes of this section, a cosmetic labeled for professional use only which is offered for sale or distribution to a consumer shall be deemed to be misbranded within the meaning of N.J.S.A. 24:5-18.1 at the time such cosmetic is offered for such sale or distribution.

(b) No person shall distribute or sell, or have in his or her possession with intent to distribute or sell, any cosmetic labeled for professional use only except to professional barbers, professional beauticians, licensed beauty salons, licensed schools of beauty culture, other beauty culture professions, or licensed wholesale establishments.

(c) Any person who offers a cosmetic labeled for professional use only for sale or distribution shall make reasonable inquiries regarding a person's professional status or affiliation as necessary to determine their qualifications to purchase such products so that the retail sale or distribution of such cosmetic may be prevented. This requirement shall not apply to the sale or distribution of cosmetics labeled for professional use only between wholesale establishments.

(d) Cosmetics labeled for professional use only when displayed for sale in a combined retail-wholesale establishment shall be kept separate and apart from retail merchandise. Where such cosmetics are accessible to the general public, posters measuring at least 8½ by 11 inches with lettering measuring at least one-half inch in height shall be conspicuously displayed in all such display areas and contain the following statement, "NOTICE—FOR SALE ONLY TO LICENSED PROFESSIONALS."

(e) A cosmetic labeled for professional use only shall be exempt from all the provisions of this section if it can be shown through factual and scientific evidence in the possession of the person offering such product for sale or distribution prior to such offering that:

1. Such cosmetic does not require professional skill or knowledge for its safe or effective use;

2. Such cosmetic does contain necessary warnings, cautions, and directions for its safe and effective use in such terms as to render it likely to be read and understood by the consumer under customary conditions of purchase and use; and

3. Such cosmetic is labeled in compliance with all State and Federal requirements for retail sale.

(f) A cosmetic labeled for professional use only which has a retail counterpart identical in name, chemical composition, packaging (size, etc.) and labeling (directions, cautions, etc.) shall be exempt from all provisions of these rules.

8:21-1.7 Cosmetic product warning statements

The requirements that apply to feminine deodorant sprays, cosmetics in self-pressurized containers, and coal tar hair dyes posing a risk of cancer of 21 CFR 740, Cosmetic Product Warning Statements are incorporated herein by reference.

8:21-1.8 Definition of soap

(a) "Soap," as quoted in N.J.S.A. 24:1-1h(2), shall apply only to products that meet all of the following conditions:

1. More than 50 percent of the nonvolatile matter in the product consists of a salt resulting from an alkali-fatty acid chemical reaction commonly known as saponification and detergent properties of the product are due to the alkali-fatty acid salt; and

2. The product is labeled, sold and represented only as soap.

8:21-1.9 Device labeling

The device labeling requirements of 21 CFR 801 are incorporated herein by reference.

SUBCHAPTER 2. FOODS

8:21-2.1 (Reserved)

8:21-2.2 (Reserved)

8:21-2.3 (Reserved)

8:21-2.4 (Reserved)

8:21-2.5 (Reserved)

8:21-2.6 (Reserved)

8:21-2.7 (Reserved)

8:21-2.8 (Reserved)

8:21-2.9 (Reserved)

8:21-2.10 (Reserved)

8:21-2.11 (Reserved)

8:21-2.12 (Reserved)

8:21-2.13 through 2.15 (No change.)

8:21-2.16 (Reserved)

8:21-2.17 (Reserved)

8:21-2.18 (Reserved)

8:21-2.19 (Reserved)

8:21-2.20 (Reserved)

8:21-2.21 (Reserved)

8:21-2.22 (Reserved)

8:21-2.23 (Reserved)

8:21-2.24 (Reserved)

8:21-2.25 (Reserved)

8:21-2.26 (Reserved)

8:21-2.27 (Reserved)

8:21-2.28 (Reserved)

8:21-2.29 (Reserved)

8:21-2.30 (Reserved)

8:21-2.31 through 2.34 (Reserved)

8:21-2.35 and 2.36 (No change.)

8:21-2.37 (Reserved)

8:21-2.38 (No change.)

8:21-2.39 Sale of ground meat and similar products

(a) The following Federal standards of identity as currently promulgated and hereafter amended shall apply to the processing and retail sale of ground meat, sausage, and similar products in this State. The quality standards of 9 CFR 319.15, 319.140, 319.141, 319.142, 319.143, 319.144, 319.145, 319.160, 319.180, 319.181, and 319.182 are incorporated herein by reference.

8:21-2.40 (Reserved)

8:21-2.41 (No change.)

8:21-2.42 Prohibition of sale of channel cat fish

No person may expose for sale, or sell channel cat fish (*Ictalurus punctatus*) harvested from the Delaware River between the Interstate 276 Highway Bridge in Burlington Township, Burlington County and Birch Creek, which flows into the Delaware River at Logan Township, Gloucester County.

SUBCHAPTER 3. DRUGS, DEVICES AND COSMETICS

8:21-3.1 (Reserved)

8:21-3.2 (Reserved)

8:21-3.3 (Reserved)

8:21-3.4 (Reserved)

8:21-3.5 (Reserved)

8:21-3.6 (Reserved)

8:21-3.7 (Reserved)

8:21-3.8 through 3.13 (No change.)

8:21-3.14 through 3.18 (Reserved)

8:21-3.19 Paregoric

Paregoric, as defined in the United States Pharmacopoeia XVII, shall be henceforth regarded as a narcotic drug and subject to the provisions of the Controlled Dangerous Substances Act, N.J.S.A. 24:21-1 et seq., of this State requiring a prescription except when sold or dispensed in compounds containing not more than one fluid drachm of Paregoric in each fluid ounce.

8:21-3.20 and 3.21 (No change.)

8:21-3.22 (Reserved)

8:21-3.23 to 3.25 (No change.)

SUBCHAPTER 4. NEW DRUGS

8:21-4.1 (No change.)

8:21-4.2 Combination drugs
(No change in text.)

8:21-4.3 General provisions; definitions
(No change in text.)

8:21-4.4 Exemptions from section 505(a)
(No change in text.)

8:21-4.5 General provisions; new drug applications

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

(c) Full text of Federal regulations pertaining to new drugs, incorporated herein by reference, may be found in sections 310, 312 and 314 of 21 C.F.R., parts 300 through 499, revised as of April 11, 1989 and may be purchased from:

Superintendent of Documents
United States Government Printing Office
Washington, D.C. 20402
Price—\$28.00 per copy.

(d) The complete text of those sections adopted by the Department may be reviewed in the:

Office of Drug Control
Alcoholism and Drug Abuse
New Jersey Department of Health
CN 362 (129 East Hanover Street)
Trenton, New Jersey 08625-0362

8:21-4.6 through 8:21-4.24 (Reserved)

8:21-4.25 (No change.)

8:21-4.26 Amygdalin; testing

(a) As a substance subject to a new drug application (FD form 356H), amygdalin, also known as Laetrile or vitamin B-17, shall not be available for testing on humans until such time as the sponsor identified in FD form 356H provides to the Department the information specified in a "Notice of Claimed Investigational Exemption for a New Drug" (form FD 1571, 1572 and 1573), known as an IND. Copies of these IND forms may be obtained from:

Office of Drug Control
Alcoholism and Drug Abuse
New Jersey Department of Health
CN 362, (129 E. Hanover Street)
Trenton, New Jersey 08625-0362

8:21-4.27 through 4.50 (No change.)

SUBCHAPTER 5. MANUFACTURING, STORAGE, DISTRIBUTION, AND HANDLING OF BOTTLED WATER

8:21-5.1 Separability

If any provision or application of any provision of this subchapter is held invalid, that invalidity shall not affect other provisions or applications of this subchapter.

8:21-5.2 Definitions

The following terms shall have the following meanings, when used in this subchapter:

"Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practices.

"Adulteration" means the term "adulteration" as defined in N.J.S.A. 24:5-8.

"Approved" means acceptable to the Department, local health authority, or other appropriate administrative agency based on its determination as to the conformance with applicable standards and good public health practices.

"Approved source" means the source of water from a spring, artesian well, drilled well, municipal water supply, or any other source which has been evaluated and found to be of satisfactory sanitary quality as determined by the governmental regulatory agency having primary jurisdiction for that source.

"Aquifer" means a water bearing stratum used as a source of potable water supply.

"Artesian well water" means water that comes from a deep well where water is forced up by underground pressure.

"Bottled water" means all water which is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"Bulk water" means water intended for potable uses which is transported by means of tank trucks.

"Certified laboratory" means a laboratory approved by the New Jersey State Department of Environmental Protection in accordance with N.J.A.C. 7:18, Regulations Governing Laboratory Certification and Standards of Performance.

"CFR" means the Code of Federal Regulations.

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

"Drilled well" means a system whereby water is taken from below the ground through a pipe or piping system or similar installed device utilizing external force or vacuum.

"Expiration date" means the date established by N.J.S.A. 24:12-2 as two years from the date the product was bottled.

"Local health authority" means the local board or local board of health of any municipality or the boards, body or officers in such a municipality lawfully exercising any of the powers of the local board of health under the laws governing such municipality, and includes any consolidated board of health, local or county board of health created and established pursuant to law.

"Lot" means a collection of primary containers or units of the same size, type, and style containing a finished product produced under conditions as nearly uniform as possible and designated by a common container, code or marking; and, in any event, "lot" means no more than one day's production.

"Misbranded" means the term "misbranded" as defined in N.J.S.A. 24:5-16 and 17.

"Multi-use containers" means containers intended for use more than one time.

"Nontoxic materials" means materials for product water contact surfaces utilized in the transporting, processing, storing, or packaging of bottled drinking water which are free of substances which may render the water injurious to health or which may adversely affect the flavor, color, odor or bacteriological quality of the water.

"Operations water" means water which is delivered under pressure to a plant for container washing, hand washing, plant and equipment clean up and for other sanitary purposes.

"Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, storage, processing, packaging, labeling or handling of bottled water.

"Product contact surfaces" means those surfaces that contact product and those surfaces from which drainage onto product or onto surfaces that contact product ordinarily occurs during the normal course of operations.

"Product water" means processed water used by a plant for bottled drinking water.

"Sanitize" means adequate treatment of surfaces by a process that is effective in destroying the vegetative cell of microorganisms of

public health significance and in substantially reducing numbers of other microorganisms.

"Source water" means water from a spring, artesian well, drilled well, community water supply or any other approved source which is used for or in connection with bottled water.

"Spring" means water that is taken from a natural orifice in the ground without external force or vacuum. It may be collected from the natural orifice and transported by pipes, tunnels, or similar devices.

"Spring house" means a structure approved by the Department that is constructed over a spring so as to provide complete protection for the source from all types of external sources of contamination.

"Total Trihalomethanes (TTHM)" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, dibromochloromethane, bromochloromethane, bromodichloromethane and tribromomethane).

"Water hauler" means any person who causes bulk water to be transported for bottling for human consumption or other consumer uses from the source to the bottling plant.

8:21-5.3 Water source protection

(a) The source water supply for bottled water shall be from an approved source which is properly located, protected, and operated and shall be easily accessible, adequate, and of safe, sanitary quality. The water quality and sampling frequency shall be in conformance at all times with the applicable laws and rules and regulations of the Department or other governmental agencies having jurisdiction. Examples of source water supplies which may be used for bottled water upon approval by the Department are as follows:

1. Approved public community water systems;
2. Drilled and driven wells when constructed and protected in accordance with applicable standards set forth in N.J.A.C. 7:10-12, Standards for the Construction of Public Non-community and Non-public Water Systems; and
3. Springs inspected for development as a water source and constructed in accordance with the applicable standards established by the Department of Environmental Protection and set forth in N.J.A.C. 7:10-12.24, Standards for the Construction of Public Non-Community and Non-Public Water Systems (springs) and shall meet the standards for springs set forth under N.J.A.C. 8:21-5.4.

8:21-5.4 Springs

- (a) The spring shall be properly protected from the entry of insects, birds, rodents and other vermin.
- (b) Adequate ventilation shall be provided.
- (c) Sufficient protection shall be provided at the intake end of the draw pipe to prevent the introduction of stone, gravel, sand and other particulate matter.
- (d) The overflow shall be free-flowing and shall be constructed in a manner to prevent flooding of the springhouse and surrounding area.
- (e) The minimum distance from a spring to a building sewer line, septic tank, and a distribution box shall be 50 feet. The minimum distance from a spring to a disposal field or seepage pit shall be 100 feet.
- (f) Plumbing shall be sized, installed and maintained in accordance with applicable State and local standards. Also, plumbing shall be properly designed and protected from contamination and damage.
- (g) Walls and ceilings shall be smooth, easily cleanable, free of cracks and crevices and constructed of materials that are not adversely affected by moisture, algae, or mold.
- (h) Proper cleaning and sanitization equipment and facilities shall be available and used whenever a spring is damaged, repaired and/or contaminated.

8:21-5.5 Bottled *[drinking]* water labeling requirements

(a) The type of source water *[for bottled water purposed]* shall be clearly and prominently identified on the *[primary container]* ***principal display panel as defined under 21 CFR 101.1*** according to the following criteria. Additional types of bottled water may be distributed by petitioning the Department to establish additional standards of identity. ***A product meeting more than one standard of identity is permitted to be identified by any of the applicable product**

names, for example, demineralized drinking water. Commingling different source water supplies as specified in N.J.A.C. 8:21-5.3 is prohibited.*

1. For "artificially carbonated water," the source of the carbon dioxide gas being used for carbonation of the water shall not come naturally from the same source the water being bottled or packaged was obtained.

2. "Demineralized water," "distilled water," or "purified water" means water which has been treated by deionization, distillation, reverse osmosis, or other approved processes and contains no more than 10 parts per million total dissolved solids.

3. "Drinking water" means water which is derived from either approved public community or public non-community water systems. ***[The source of bottled water derived from a public community water system shall be clearly identified on the label as to the origin of the water, for example, Newark Water Supply, Hackensack Water Supply, etc.]***

4. "Mineral water" means water containing at least 500 parts per million of naturally impregnated mineral solids which is derived from an underground source.

5. "Naturally carbonated" or "naturally sparkling water" means any water which contains carbon dioxide as it emerges from the source and is bottled directly with its entrapped gas, or, the carbon dioxide is mechanically separated from the water and later reintroduced into the water at time of bottling.

6. "Spring water" means water which is derived from an approved spring, that is a gravity spring, artesian spring, seepage spring, tubular spring, or fissure spring.

7. "Well water" means water which is derived from either an approved driven or a drilled well.

(b) ***[The origin of the bottled water shall be clearly and prominently identified on the primary container. As a minimum, the common name of the source(s) and the location(s) including the municipality and state where located shall appear on the label. The primary container of bottled water shall not contain water from more than one source.]*** ***The principal display panel as defined under 21 CFR 101.1 shall bear a statement indicating the specific location at which the water was obtained, including the municipality, state, and country, if not the United States. If the water source is a public community water system, the label shall state "public water supply." If more than one water source is used in the final product, the label shall clearly state the locations of all sources used.***

(c) Sodium labeling shall be in accordance with 21 CFR 101.9, 21 CFR 101.13, and 21 CFR 105.69. Mineral water and mineralized water labeling requirements shall include a declaration of the total sodium content stated in milligrams per eight fluid ounce serving.

(d) Each container of bottled water shall contain on its principal display panel ***or informational panel as defined under 21 CFR 101.1 and 101.2*** an expiration date of two years from the date the water was bottled. Bottled water can no longer be offered for sale, distributed, or given to the public for consumption after the expiration date.

(e) If a bottled water exceeds any of the chemical standards as set forth in the tables listed under N.J.A.C. 8:21-5.12, such water shall be labeled as outlined in that section.

(f) Label claims of medicinal or health-giving properties are prohibited. In addition, references to bacteriological purity or laboratory examination which may have been made by a governmental agency are also prohibited.

(g) Products which are not in conformance with the above referenced bottled drinking water labeling requirements shall be deemed misbranded within the meaning of N.J.S.A. 24:5-16 and 17.

8:21-5.6 Facilities for the storage, distribution, handling, and bottling of bottled water

(a) The grounds surrounding the plant shall be kept in a condition that will not cause the bottled water to be contaminated and/or adulterated.

1. Equipment storage, litter, waste, and excessive weeds or grass within the immediate vicinity of the plant buildings or structures shall not constitute an attractant, breeding place or harborage for rodents, insects or other pests.

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2. Roads, yards, and other parking lots shall be maintained so that they do not constitute a source of contamination to the bottled water.

3. Areas surrounding the plant shall be properly drained in order to prevent contamination of the bottled water by seepage, by foot-borne filth, or by providing a breeding place for rodents, insects or other pests.

(b) Plant buildings shall be of suitable size, construction, and design to facilitate maintenance and sanitary operations for processing purposes.

1. The bottle filling operations shall be separated from the balance of plant operations and storage areas by tight walls, ceilings, and self-closing doors or other appropriate barriers. No loading or unloading of trucks or other vehicles shall take place within an establishment unless acceptable segregation or isolation is accomplished.

2. Sufficient space shall be provided for such placement of equipment and storage of materials as is necessary for sanitary operations.

3. The plant shall be designed to reduce the potential for contamination of end products, raw materials, or food-packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for contamination may be reduced by any effective means including the separation by location, partition, air flow, enclosed systems or other effective means, of the plant operations to include receiving; raw material storage; processing operations; packaging and packing; finished product storage and shipping; portable equipment and utensil cleaning and sanitizing; and equipment and vehicle maintenance.

4. Floors, walls, and ceilings shall be constructed to be easily cleanable and shall be kept clean and in good repair. Fixtures, ducts, pipes shall be installed in such a manner that drip or condensation does not contaminate the bottled water, raw materials, or product contact surfaces. Aisles or walking spaces between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties without contamination of the bottled water or product contact surfaces.

i. Floors, walls, and ceilings in the bottling room(s) shall be constructed of smooth, nonabsorbing, easily cleanable, light colored surface material and maintained in a clean and sanitary condition at all times.

ii. The floors in the bottling rooms shall be adequately drained in order to prevent pooling of water and to facilitate cleaning procedures. In addition, drain lines from equipment shall not discharge wastewater or product in such a manner as will permit flooding of floors or the flowing of water across working or walking areas or in difficult to clean areas or otherwise create a nuisance. Wastewater disposal shall be provided and have a discharge to a municipal wastewater system or an approved individual wastewater disposal system.

5. Adequate lighting shall be provided throughout the plant to facilitate cleaning and inspection procedures.

i. At least 30 foot candles of light shall be provided in the processing, bottling, equipment, and utensil washing areas. All other areas shall have a minimum of 10 foot candles of light at a distance of 30 inches from the floor surfaces.

ii. Light fixtures which are located in processing, equipment/utensil washing areas or other areas where bottled drinking water may be exposed shall be of the safety type, or otherwise protected to prevent contamination/adulteration in case of breakage.

6. Ventilation in every room of a plant or facility shall be adequate to minimize condensation, odors, vapors, noxious fumes, dust, and other potential airborne contaminants.

(c) Every plant and facility shall be provided with effective screening, rodent proofing, or other protective methods against animals and vermin.

1. No vermin or animal shall be permitted in the areas of a bottled water plant.

2. Effective measures shall be taken to exclude pests from processing areas and to protect against the contamination of the bottled water products.

3. The use of pesticides is permitted only under precautions and restrictions that will prevent contamination of the water. Pesticides shall be applied in an approved manner and by a certified applicator

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in conformance with the New Jersey Department of Environmental Protection Regulations, N.J.A.C. 7:30, Pesticide Control Regulations.

(d) The establishment shall be provided with adequate sanitary facilities and control measures to protect the purity and quality, of the bottled water. Facilities and controls shall include, but not be limited to:

1. The water supply shall be adequate as to quantity, of a safe, sanitary quality, and from a public or private water supply system which is constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., N.J.A.C. 7:10, and local laws, ordinances, and regulations; provided, that if approved by the Department of Environmental Protection, a nonpotable water supply system may be permitted within the establishment for purposes such as air conditioning and fire protection, only if such system complies fully with the above referenced regulations and the nonpotable water supply is not used in such a manner as to bring it into contact, either directly or indirectly, with water processing or handling equipment.

i. Hot and cold running water, under sufficient pressure, shall be provided in all areas where bottled drinking water is processed and filled and where equipment, utensils, or containers are washed.

2. All plumbing shall be sized, installed and maintained in accordance with N.J.A.C. 5:23, New Jersey Uniform Construction Code and shall:

i. Carry adequate quantities of water to required locations throughout the establishment;

ii. Prevent contamination of the water supply;

iii. Properly convey sewage and liquid wastes from the establishment to the sewer or sewage disposal system; and

iv. Not constitute a source of contamination of water, equipment or utensils, or create an unsanitary condition or nuisance.

3. Nonpotable water shall not be connected to water related equipment or have outlets in the water processing areas. The potable water supply piping shall not be directly connected with any nonpotable water supply system whereby the nonpotable water can be drawn or discharged into the potable water supply system, provided, that an exception would be an approved physical connection conforming to N.J.A.C. 7:10-10, Safe Drinking Water regulations. The piping of any nonpotable system shall be adequately and durably identified, such as by a distinctive yellow colored paint, so that it can be readily distinguished from piping which carries potable water; and such piping shall not be connected to equipment or have outlets in the processing and bottling area.

4. All sewage and waste water shall be disposed of by means of:

i. A public sewerage system; or

ii. A disposal system which is constructed and operated in conformance with N.J.A.C. 7:9-2, Standards for the Construction of Individual Subsurface Sewage Disposal Systems, the New Jersey Water Pollution Control Act Regulations, N.J.A.C. 7:14, and local laws, ordinances, and regulations.

5. Each plant shall be provided with adequate, conveniently located toilet facilities accessible to the employees at all times.

i. Toilet facilities and dressing rooms, when provided, shall be installed in accordance with N.J.A.C. 5:23, New Jersey Uniform Construction Code.

ii. Doors to toilet rooms and dressing facilities shall be self-closing and shall not open directly into areas where product is exposed to airborne contamination, except where alternate means have been taken to prevent such contamination.

iii. Toilet facilities and dressing rooms, including toilet rooms and fixtures, shall be kept clean and in good repair and free from objectionable odors.

iv. A supply of toilet tissue shall be provided at each toilet at all times.

v. Handwashing signs stating "Wash Hands Before Resuming Work" shall be posted conspicuously in all toilet rooms and at each separate lavatory facility in a bottling plant.

vi. Easily cleanable receptacles shall be provided for waste materials and such receptacles in toilet rooms for women shall be covered. Such receptacles shall be emptied at least once a day, and more

frequently when necessary, to prevent excessive accumulation of waste material.

vii. Hot or cold or tempered (90 degrees to 105 degrees Fahrenheit) water under pressure shall be provided in toilet facilities.

6. Lavatories shall be adequate in size and number and shall be so located as to permit convenient and expeditious use by all employees.

i. Lavatories shall be installed in accordance with N.J.A.C. 5:23, New Jersey Uniform Construction Code.

ii. Each lavatory shall be designed to provide hot and cold or tempered (90 degrees to 105 degrees Fahrenheit) running water.

iii. An adequate supply of hand cleansing soap, detergent, or other sanitizing solution shall be available at each lavatory. Also, an adequate supply of sanitary towels, or an approved drying device, shall be available and conveniently located near the lavatory. Common towels are prohibited. Where disposable towels are used, waste receptacles shall be located conveniently near the handwashing facilities.

iv. Lavatories, soap dispensers, hand drying devices, and all other components of the handwashing facilities shall be kept clean and in good repair.

8:21-5.7 Production, equipment, and packaging requirements

(a) All bottled water production, including transporting, packaging, and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for undesirable bacterial or other microbiological growth, toxic formations, deterioration or contamination of the processed product, production equipment, and product packaging materials and shall be in conformance with 21 CFR 129.1, 129.20, 129.30, 129.35, 129.37, 129.40, and 129.80, incorporated herein by reference.

(b) All water that is bottled shall receive a final disinfectant treatment that ensures a minimum 0.1 milligram per liter ozone residual or utilize other effective microbial control procedures at time of packaging. Test kits or other appropriate equipment shall be used to measure the disinfectant residual at least daily, or more frequently, if deemed appropriate by the Department.

(c) Water storage tanks shall be designed to exclude all foreign matter and all ports, hatches, and other openings shall be provided with tight fitting covers and shall be vented only through the use of inverted air filters or other approved venting device(s).

(d) Product water pipelines shall be constructed with seams and pipe connections that are smoothly bonded or connected to minimize the accumulation of scale residue or other contaminants.

1. Pipe connections shall be constructed for easy breakdown for inspection and cleaning.

2. Transport pipelines charging the storage tanks and transporting water to the filling lines shall be used only for bottled water products.

(e) All treatment and processing of bottled drinking water by distillation, ion-exchange, filtration, reverse osmosis, mineral addition, and ultraviolet treatment or any other process shall be done in a manner so as to be effective in accomplishing its intended purpose and in conformance with Section 409 of the Federal Food, Drug, and Cosmetic Act.

(f) Filling and closing of bottled water containers shall be done in a sanitary manner by approved mechanical filling and capping equipment*,* provided that other sanitary methods may be approved by the Department.

1. Fillers shall have a charging inlet designed as to prevent the entrance of condensation and contaminants. All filling valves shall be equipped with a condensation diverting apron.

2. All closure hoppers and product reservoirs or filling machines along with any other type of hopper or conveying system used in the production and filling of bottled water products shall be equipped with covers. These covers shall adequately protect closures and bottled water from dust, dirt, and other contaminants and shall be used at all times during and after operations.

3. Fillers and other processing, filling and capping equipment used in the production of bottled drinking water shall be constructed of smooth, impervious, corrosion resistant nontoxic materials. All fillers shall be constructed for ease of cleaning and kept in good repair.

4. Fillers, filling line piping, pumps, and other processing, filling, and capping equipment used in the production of bottled * [drink-

ing]* water may not be used for the production of milk, fruit drinks, and/or any other food products, unless *[an]* adequate ***written*** washing and sanitizing procedure*s* *[has]* ***have*** been established ***and followed that will prevent microbiological contamination or adulteration of the bottled water***. Non-food products shall not be processed, filled, and/or capped on lines used for bottling water products.

5. Only sanitary, nontoxic, food grade lubricants shall be used on container contact surfaces.

(g) Containers and closures for bottled water shall conform to the requirements of 21 CFR 177, incorporated herein by reference.

1. All cleaned bottled water containers and single service containers shall be protected from dust, dirt, insects, debris, and all other forms of contamination while in storage or during the production, filling and capping operations.

2. All closures (screw, snap, or crown caps) shall be new. These closures, while in storage, shall be covered and protected from contamination and/or adulteration at all times.

8:21-5.8 Sanitation and maintenance requirements

(a) All tanks, pipelines, and equipment used to store and transport water shall be inspected, maintained, cleaned, and sanitized. Sanitizing shall be accomplished by one of the following methods followed by a product water flush.

1. Chemical sanitizer shall be equivalent to a chlorine water solution of 50 parts per million for a minimum of two minutes at a temperature of 75 degrees Fahrenheit.

i. If surfaces cannot be reached by the aforementioned soaking treatment, surfaces shall be sprayed with 100 parts per million chlorine water solution at 75 degrees Fahrenheit.

ii. Other chemical sanitizers of equivalent concentration may be used provided they meet the equivalent concentrations as outlined in this subsection.

iii. Steam sanitization in an enclosed system of at least 170 degrees Fahrenheit for at least 15 minutes or 200 degrees Fahrenheit for five minutes.

iv. Hot water in an enclosed system of at least 170 degrees Fahrenheit for at least 15 minutes or at 200 degrees Fahrenheit for at least five minutes.

v. 0.1 parts per million ozone water solution for not less than a five minute contact time period.

(b) The following additional requirements shall apply to the cleaning, sanitizing, and monitoring of equipment.

1. Storage tanks shall be inspected on a monthly basis and shall be kept free of scale, evidence of oxidation, and residue.

i. Tank seams in contact with product water shall be smoothly bonded and maintained to minimize accumulation of possible contaminants.

ii. Tanks shall be cleaned and sanitized before use except that tanks that are used in a continuous production operation shall be cleaned and sanitized on a predetermined schedule with a minimum treatment of at least once a month.

2. Product water pipelines shall be kept free of scale, evidence of oxidation, and residue.

i. Product water pipelines shall be cleaned and sanitized before and after use and sanitizing shall be accomplished according to procedures outlined in this section.

3. Processing equipment, to include water treatment systems, shall be cleaned and sanitized in a manner and at a frequency so as to be effective in accomplishing its intended purpose(s). Cleaned and sanitized equipment and utensils when not in use shall be stored in a location and in a manner that protects product contact surfaces from splash, dust, dirt, and any other type of possible contamination.

i. Water treatment equipment to include ozone mixing tanks and equipment, soft water tanks, and all associated equipment shall be inspected on a monthly basis, disassembled, if necessary; cleaned; and sanitized.

ii. Bottle washing equipment shall be kept free of paper residue and substances which may interfere with the proper operation of the water or air jets. Internal sprays shall be checked on a daily basis to assure proper timing and adequate dispersion of the washing medium to properly clean the containers.

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iii. Fillers shall be kept free from scale, evidence of oxidation and residue, and shall be sanitized before and immediately after use.

(1) The filler reservoir shall be kept adequately covered at all times.

(2) Filling and capping operations shall be conducted as to prevent contamination of the water being bottled.

iv. Cappers shall be kept free of residue and washed, rinsed, and sanitized before and after use.

(1) Capper hoppers shall be kept adequately covered to protect the closures from dust, dirt, and other contaminants and shall be emptied when not in use.

(2) Hopper surfaces in contact with product container closures shall be kept free of residue and sanitized before and after use.

8:21-5.9 Storage and handling of chemicals

(a) The following requirements shall apply to the storage and handling of chemicals:

1. Detergents, sanitizers, and other supplies employed in cleaning and sanitizing procedures shall be free of significant microbiological contamination and shall be safe and effective for their intended use.

2. Only toxic materials that are required to maintain sanitary conditions in laboratory testing procedures, for plant and equipment maintenance and operations or in manufacturing or processing operations shall be used and stored in the facility.

3. Poisonous or dangerous cleaning compounds, sanitizing agents, and pest control chemicals shall be applied, stored, and held in a manner that prevents the raw water, bottled water, or water packaging materials and equipment from being contaminated.

4. These materials shall be identified and used only in the manner and under the conditions that will be safe for their intended use.

8:21-5.10 Personnel requirements

(a) All persons, while working in the processing and bottling of water, shall conform to good hygienic practices while those persons are on duty, to the extent necessary to prevent contamination of bottled water. The methods for maintaining cleanliness shall include, but are not limited to:

1. Wearing clean outer garments;

2. Maintaining a high degree of personal cleanliness;

3. Washing hands and exposed arms thoroughly with soap and warm water before starting work, after each absence from work station, after smoking, eating, drinking, or visiting the toilet room and at any other time when the hands may have become soiled or contaminated;

4. Removing all insecure jewelry and during periods in which the latter is manipulated by hand, removing from hands any jewelry that cannot be adequately sanitized;

5. If gloves are used in water bottling operations, they shall be maintained in a clean and sanitary condition;

6. Wearing hair nets, headbands, caps, beard covers, or other effective hair restraints in an effective manner;

7. No storing of clothing or other personal belongings in bottled water processing areas or in areas used for washing equipment or utensils;

8. No eating of food, drinking of beverages, expectorating, or using tobacco in areas where water is being processed or bottled or in areas used for washing of equipment or utensils; and

9. Taking any other necessary precautions to prevent contamination of bottled water with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines.

(b) No person shall be allowed to live or sleep in any room where bottled water is produced, manufactured, packed, stored, bottled, distributed, or sold.

(c) No person affected by disease in a communicable form or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall knowingly be permitted to work in a bottled water plant in any capacity in which there is a reasonable possibility of finished product water becoming contaminated by such person, or of disease being transmitted by such persons or other individuals.

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8:21-5.11 Sanitizing requirements for multi-use bottles or containers

(a) Mechanical bottle washers shall be provided when multi-use containers are used. In addition, mechanical washers shall be designed and maintained to thoroughly wash and sanitize all surfaces of containers prior to filling.

(b) Multi-use bottles shall be checked prior to washing by a method acceptable to the Department to assure that containers that may have been used for other purposes are not reused for bottled water. Such containers shall be rendered unusable for rebottling.

(c) Before filling, all multi-use containers shall be thoroughly washed in an effective cleansing agent and water solution, having a temperature not less than 120 degrees Fahrenheit, followed by application of a bactericidal solution, and the inside rinsed with product water to remove traces of sanitizing agents.

(d) The bactericidal procedure as a minimum, shall be one of the following:

1. Sanitize with 100 parts per million chlorine water solution at 75 degrees Fahrenheit for not less than 30 seconds;

2. Sanitize with a 2 1/2 percent caustic solution at a minimum temperature of 120 degrees Fahrenheit followed by a rinse containing not less than 10 parts per million free chlorine. (Note: When caustic is discharged by means of high-velocity jets, this procedure shall be considered to satisfy both cleaning and bactericidal requirements);

3. Sanitize with water at an inside bottle temperature not less than 170 degrees Fahrenheit for not less than 15 seconds;

4. Sanitize by exposing all surfaces to a three percent caustic solution at a minimum temperature of 120 degrees Fahrenheit for five minutes by means of automatic bottle washers utilizing high-velocity jets (hydro type) or by means of soaker washers, followed by a rinse containing not less than 10 parts per million free chlorine;

5. As an alternative to the use of a caustic alkali solution, multi-use containers may be cleaned and sanitized prior to refilling by the use of an alkaline detergent cleaner containing a minimum of 0.35 percent active alkalinity at a minimum temperature of 130 degrees Fahrenheit for not less than one minute (if high velocity jets are used), or for not less than three minutes (if a soaker type washer is used), followed by a rinse of at least one minute with a sanitizing solution containing at least 25 parts per million chlorine or 10 parts per million iodine. All bottles and carboys shall be rinsed until free of any detergent or sanitizing solution residue with product water; or

6. Other methods equally protective of public health as the above, when approved by the Department, may be used.

(e) Only sanitizers listed in 21 CFR 178.1010 shall be acceptable.

8:21-5.12 Bulk water requirements

(a) Tank trucks, loading and unloading facilities, storage tanks, and other equipment used to store or transport bulk water shall be maintained in a clean and sanitary condition. All previously cited rules and regulations which pertain to equipment, construction, maintenance, cleaning, and sanitizing shall also apply to transporting and handling of bulk water.

(b) All sources of water for bulk water shipment must be approved by the New Jersey Health Department or the governmental regulatory agency having jurisdiction over the source water location outside the State or in a foreign country. Before bulk water is delivered to any bottling plant, an analysis of the water indicating that it meets bacteriological, chemical, and radiological standards set forth in this subchapter shall be submitted to the plant owner or operator.

(c) Tank trucks previously used to transport toxic substances, petroleum products, or other deleterious substances shall not be used to transport bulk water.

(d) Tank trucks and related equipment used to transport or handle bulk water shall be used for no other purpose and shall be thoroughly cleaned and sanitized prior to filling in accordance with the provisions of N.J.A.C. 8:21-5.8 and shall comply with the following:

1. Storage tanks and tank trucks shall be free of deep pits, excessive scale, dents or poorly welded seams which may tend to hold standing water;

2. Inlets, outlets, piping hose and other appurtenances associated with storage tanks and tank trucks shall be constructed and handled to prevent contamination of product water;

3. All tank trucks shall be tagged identifying the time and place of cleaning and sanitization. These records shall be available at all times for inspection by the regulatory authority; and

4. All hoses, connections and fittings used in conjunction with the coupling of the tank truck to the bulk water delivery line shall be sanitized with 100 parts per million chlorine solution at 75 degrees Fahrenheit or any other approved sanitizer of equivalent concentration. The solution shall be brushed on all exposed parts to assure proper sanitization.

(e) The physical water quality in the tank truck shall be determined in the following manner:

1. At the time of filling of a tank with bulk water for transport, the tank truck shall be visually inspected and initially be filled with approximately 50 gallons of water. The discharge valve shall then be opened and several gallons of water discharged and checked for odor, clarity and particulates. If the water has an unsatisfactory odor, clarity or other detectable problem the tank truck shall be rejected. If satisfactory, the tank truck may be loaded for transport;

2. At time of delivery of bulk water to the bottling plant, the discharge valve of the tank truck shall be opened and several gallons shall be discharged and checked for odor, clarity and particulate matter. If the water has an unsatisfactory odor, clarity or other detectable problem the load shall be rejected;

3. The dome cover shall be opened at the time of filling and discharge of bulk water from the tank truck. The dome ***screen filter*** shall be in place and properly sealed during loading and unloading of tank trucks. Tank trucks shall be loaded and unloaded through the tail pipe discharge valve whenever possible; and

4. The dome cover and tail pipe valve cover and doors shall be closed prior to transport of water.

(f) The Department of Health shall be notified by telephone by the management of the water establishment anytime a tank truck or load of water is rejected at the time of pickup or delivery with the reason for rejection. This notification shall take place no later than the next business day.

8:21-5.13 Recordkeeping requirements

(a) Each bottling plant shall keep true and accurate records of all water processed. Such records shall show:

1. Source, type, and volume of water processed daily; and
2. Records indicating the physical inspection of bulk water delivered.

(b) Each bottling plant shall keep true and accurate records of finished product. Such records shall show:

1. The amount bottled;
2. Dates of bottling; and
3. Expiration date.

(c) Records of the required water analysis on both raw and finished product water as specified in N.J.A.C. 8:21-5.12 and 5.14 shall be forwarded to the Department. Upon completion, the certified laboratory conducting the required tests may, upon written approval of the Department, submit the test results on behalf of the plant owner or operator. The weekly microbiological test results may be consolidated and reported on a monthly basis.

(d) Records shall be kept of the cleaning and sanitizing of multi-purpose fillers and bottle washing equipment, if applicable.

(e) All records shall be maintained at the plant for 30 months from the date of processing of the raw water and shall be available for review by the inspecting agency upon request.

8:21-5.14 Water standards and sampling requirements

(a) Bottled water which is manufactured, distributed, or sold within this State shall comply with the microbiological, physical, chemical, hazardous contaminants, and radiological standards set forth in this section. ***Bottlers and bulk water handling facilities which derive their water from a public community water system as defined under N.J.A.C. 7:10-1.3 are exempt from sampling the source (raw) water.*** Analysis shall be conducted in accordance with procedures

set forth in N.J.A.C. 7:18, Rules Governing Laboratory Certification and Standards of Performance, and the following:

1. Microbiological Standards: A weekly analysis for total coliform is required for finished product water. A weekly analysis for total coliform shall be required for source (raw) water ***[if it is other than water from a public community water supply system]***. Bottled water should be examined for standard aerobic plate count. Standards for total coliform are contained in Table 1 below;

2. Physical Standards: An annual analysis shall be required for both source (raw) and bottled water. Standards for physical quality are contained in Table 2 below;

3. Chemical Standards: An annual analysis shall be required for both source (raw) and bottled water. Standards for chemical quality are contained in Tables 3 and 4 below;

4. Radiological Standards: A radiological analysis shall be required once every four years for both source (raw) and bottled water. Radiological standards are contained in Table 5 below; and

5. Hazardous Contaminant Standards: A semiannual analysis shall be required for selected hazardous contaminants as specified in N.J.A.C. 7:10-14.1, Maximum Contaminant Levels for Hazardous Contaminant Levels. The current list of hazardous contaminants and maximum contaminant levels is contained in Table 6 below. This list may be updated periodically by the New Jersey State Department of Environmental Protection. ***Individual bottlers may petition the Department in writing requesting a reduction in frequency of testing for these selected contaminants from semiannually to annually. In order for the Department to consider this request, the bottler's petition shall include the last three consecutive semiannual analyses which shall not show detectable levels for these contaminants. If a detectable level is identified for any of the selected hazardous contaminants on any subsequent analyses, the requirement for semiannual testing shall be re-instituted by the bottler.***

(b) Samples Exceeding Standards: If any bottled water standard for physical, chemical, radiological quality is exceeded, the product shall be labeled with a statement indicating substandard quality as follows:

1. "Excessively Turbid," "Abnormal Color," and/or "Abnormal Odor;"

2. "Contains Excessive Chemical Substance," if the bottled water fails to meet any of the chemical quality standards set forth in this section. The specific chemical(s) may be declared in lieu of the words "Chemical Substances" in the statement "Contains Excessive Chemical Substances." When a specific chemical is declared, that name by which the chemical(s) is designated in this section shall be used. Example: "Contains Excessive Copper;" and

3. "Excessively Radioactive" if the bottled water fails to meet the requirements of this section;

(c) Bottled water containing a substance at a level considered injurious to health shall be deemed adulterated, regardless of whether or not the bottled water bears a label statement of substandard quality prescribed in this section.

(d) The statement of substandard quality shall appear on the principal display panel or panels and shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the type of bottled water.

(e) The Department may require the owner/operator of the bottled water facility to institute additional treatment in order to meet bottled water standards when a maximum contaminant level is exceeded. If contamination is excessive and the best available treatment will not result in meeting the maximum contaminant level, the water supply shall be deemed adulterated and its use prohibited.

TABLE 1
MICROBIOLOGICAL STANDARDS FOR BOTTLED WATER

DETERMINATION	METHODS	STANDARD
Total Coliform	Membrane Filter (MF)	<1 per 100 milliliters
	Most Probable Number (MPN)	<2.2 per 100 milliliters

TABLE 2
PHYSICAL REQUIREMENTS FOR BOTTLED WATER

DETERMINATION	STANDARD
Color	15 units
Odor	8 threshold odor number
Turbidity	5 nephelometric turbidity units

TABLE 3
CHEMICAL STANDARDS FOR BOTTLED WATER

DETERMINATION	MAXIMUM CONTAMINANT LEVEL
Arsenic	0.05 mg/l
Barium	1.0 mg/l
Cadmium	0.01 mg/l
Chloride	250.05 mg/l
Chromium	0.05 mg/l
Copper	1.0 mg/l
Fluoride	2.2 mg/l
Iron	0.3 mg/l
Lead	0.05 mg/l
Manganese	0.05 mg/l
Mercury	0.002 mg/l
Nitrate	10.0 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Sulfate	250.0 mg/l
Total dissolved solids	500.0 mg/l
Zinc	5.0 mg/l
ABS/LAS (foaming agents)	0.5 mg/l
Total Trihalomethanes	0.1 mg/l
ph	+6.5 to 8.5 units
Sodium	++mg/l

+ Recommended range. *(Not applicable to distilled or purified water.)*

++ Maximum contaminant levels have not been established.

mg/l = milligrams per liter

TABLE 4
ORGANIC CHEMICAL STANDARDS FOR BOTTLED WATER

DETERMINATION	MAXIMUM CONTAMINANT LEVELS
Endrin	0.002 mg/l
Lindane	0.004 mg/l
Methoxychlor	0.1 mg/l
Toxaphene	0.005 mg/l
2,4-D	0.1 mg/l
2,4,5-TP, Silvex	0.01 mg/l

mg/l = milligrams per liter

TABLE 5
RADIOLOGICAL STANDARDS FOR BOTTLED WATER

DETERMINATION	MAXIMUM CONTAMINANT LEVEL
Gross alpha activity including radium 226; excluding radon and uranium	15 pci/l
Combined radium 226 and radium 228	5 pci/l
If two or more beta or photon emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed four millirems per year.	4 mrem/yr.
pci/l	= picocuries per liter
mrem/yr.	= millirems per year

TABLE 6
STANDARDS FOR SELECTED HAZARDOUS CONTAMINANTS IN BOTTLED WATER

DETERMINATION	MAXIMUM CONTAMINANT LEVELS
Trichloroethylene	1.0 ug/l
Tetrachloroethylene	1.0 ug/l
Carbon tetrachloride	2.0 ug/l
1,1,1-trichloroethane	26.0 ug/l
1,2-dichloroethane	2.0 ug/l
Vinyl chloride	2.0 ug/l
Methylene chloride	2.0 ug/l
Benzene	1.0 ug/l
Chlorobenzene	4.0 ug/l
Dichlorobenzenes (S)	
Ortho (O)	600.0 ug/l
Meta (M)	600.0 ug/l
Para (P)	75.0 ug/l
Trichlorobenzene	8.0 ug/l
1,1-Dichloroethylene	2.0 ug/l
1,2-Dichloroethylene	10.0 ug/l
Sis and trans	
Polychlorinated Biphenyls (PCB)	0.5 ug/l
Chlordane	0.5 ug/l
Xylenes	44.0 ug/l

ug/l = micrograms per liter

8:21-5.15 Bulk and bottled water registration (out-of-State) requirements

(a) Every out-of-State or foreign bottling plant and/or bulk water handling facilities that sell or distribute bottled and bulk water in New Jersey shall have a current valid registration issued by the Department.

(b) In order to obtain a valid registration to sell or distribute bottled water the following requirements shall be met:

1. The applicant shall complete a registration form provided by the Department and provide all information requested. The registration application shall be signed by the owner or operator responsible for the facility.

2. A letter of certification shall be submitted from the appropriate regulatory agency having jurisdiction over the operation verifying that the facility has been inspected and approved.

3. A copy of each product label shall be submitted for each size and type of bottled water that will be sold or distributed. This requirement does not apply to bulk water.

4. A complete microbiological, physical, chemical, radiological, and hazardous contaminants analysis as listed in N.J.A.C. 8:21-5.14 above must be performed on each finished bottled water product to be distributed in New Jersey. A copy of the required analyses shall accompany the application and shall be forwarded to the Department at the frequency prescribed in N.J.A.C. 8:21-5.14 except that microbiological sample results need only be submitted every six months.

5. All analyses required shall be conducted at an approved laboratory certified by the New Jersey Department of Environmental Protection in accordance with N.J.A.C. 7:18, Rules Governing Laboratory Certification and Standards of Performance, and the laboratory shall be certified for the specific method for which the water is being analyzed.

6. All analyses shall be performed within six months prior to the date of application for registration.

(c) In order to obtain a valid registration to sell or distribute bulk water, the following requirements shall be met:

1. The applicant shall comply with (a) and (b) above as they relate to bottled water registration;

2. The establishment shall comply with all of the requirements of N.J.A.C. 8:21-5.12;

3. A complete microbiological, physical, chemical, radiological, and hazardous contaminants analysis must be performed on each source of water that is used in accordance with the standards established under N.J.A.C. 8:21-5.14. Sample results must be submitted initially with the application for registration and annually thereafter; and

4. The bulk water establishment shall submit a new registration form to the Department any time there is a change in the source of bulk water. The establishment shall meet all of the criteria of this section before he can resume bulk shipments of water into New Jersey.

(d) A registration will be issued to the bottled water and/or bulk water facility upon submission, review and approval of all the information required.

(e) Failure to comply with the bulk and bottled water registration requirements may result in the prohibition of the distribution, sale, or offering for sale of the bottled water products in New Jersey.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. FROZEN DESSERTS

8:21-7.1 Definitions

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

"Optional ingredients" means Grade A dry milk products, concentrated milk, concentrated fluid milk products, flavors, sweeteners, stabilizers, emulsifiers, acidifiers, vitamins and minerals. Similar ingredients may be added to frozen desserts when approved by the Food and Drug Administration.

"Wholesale frozen desserts manufacturer" means any place, premises or establishment or any part thereof where frozen desserts are assembled, manufactured, processed, frozen or converted in form, for distribution or sale at the wholesale level.

8:21-7.2 Ice cream and frozen custard

(a) Rules concerning descriptions of ice cream and frozen custard are as follows:

1. Ice cream is a food produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients specified in (b) below, and may contain one or more of the optional caseinates specified in (c) below subject to the conditions hereinafter set forth, and other safe and suitable nonmilk-derived ingredients; and excluding other food fats, except such as are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. Ice cream is sweetened with nutritive carbohydrate sweeteners or other sweetening agents approved by the U.S. Food and Drug Administration for use in frozen desserts and may or may not be characterized by the addition of flavoring ingredients.

2.-3. (No change.)

(b) The optional dairy ingredients referred to in (a) above are: cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate and whey and those modified whey products (for example, reduced lactose whey, reduced minerals whey, and whey protein concentrate) that have been determined by the Food and Drug Administration (F.D.A.) to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid. The term "milk" as used in this section means cow's milk. **[And]* **Any* whey and modified whey products used contribute, singly or in combination, not more than 25 percent by weight of the total nonfat milk solids content of the finished food. The modified skim milk, when adjusted with water to a total solids

content of nine percent is substantially free of lactic acid as determined by titration with 0.1N NaOH, and it has a pH value in the range of 8.0 to 8.3.

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

(e) Rules concerning nomenclature of ice cream and frozen custard are as follows:

1. (No change.)

2. If the food contains no artificial flavor, the name on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, for example, "vanilla", in letters not less than one-half the height of the letters used in the words "ice cream".

i. If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the natural flavor predominates, the name on the principal display panel or panels of the label shall be accompanied by the common name of the characterizing flavor, in letters not less than one-half the height of the letters used in the words "ice cream", followed by the word "flavored", in letters not less than one-half the height of the letters in the name of characterizing flavor, for example, "Vanilla flavored", or "Peach flavored", or "Vanilla flavored and Strawberry flavored".

ii. (No change.)

3.-6. (No change.)

(f) (No change.)

8:21-7.3 Ice milk; identity; label statement

(a) (No change.)

(b) The name of the food is "ice milk". Ice milk may be offered for sale, sold or served in properly labeled factory-filled containers, from a dispensing freezer or may be dipped from a factory-filled container.

(c) When ice milk is sold at retail, direct from a frozen dessert dispensing freezer or hand-dipped from a factory-filled container, as provided in (b) above, a sign must be prominently and conspicuously displayed not more than 18 inches above each dispensing freezer, where it can be clearly read by customers under normal condition of purchase, stating "ICE MILK SOLD HERE". The letters on such sign shall be bold face capitals in contrasting color to the background. When ice milk is sold at retail, only in properly labeled factory-filled containers, no such sign shall be required.

1.-2. (No change.)

8:21-7.4 Sherbet; identity; label statement

(a) (No change.)

(b) The optional dairy ingredients referred to in (a) above are: cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate and whey and those modified whey products (for example, reduced lactose whey, reduced minerals whey, and whey protein concentrate) that have been determined by the Food and Drug Administration (F.D.A.) to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid. The term "milk" as used in this section means cow's milk. The modified skim milk, when adjusted with water to a total solids content of nine percent is substantially free of lactic acid as determined by titration with 0.1N NaOH, and it has a pH value in the range of 8.0 to 8.3.

(c)-(i) (No change.)

HEALTH

8:21-7.5 Water ice; identity; label statement

(a) Water ices are the foods each of which is prepared from the same ingredients and in the same manner prescribed in N.J.A.C. 8:21-7.4 for sherbets, except that the mix need not be pasteurized, and complies with all the provisions of N.J.A.C. 8:21-7.4 (including the requirements for label statement of optional ingredients) except that no milk or milk-derived ingredient and no egg ingredient, other than pasteurized egg white, is used.

(b) (No change.)

8:21-7.6 Mellorine; identity; label statement

(a) Rules concerning descriptions of mellorine are as follows:

1.-2. (No change.)

3. When calculating the minimum amount of milkfat and protein required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

(b) Mellorine shall be fortified so that Vitamin A is present in a quantity which will ensure that 40 international units (IU) (8 ug of retinol equivalence), are available for each gram of fat in mellorine, within limits of good manufacturing practice.

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

8:21-7.7 and 7.8 (No change.)

8:21-7.9 Frozen yogurt; identity; label statement

(a) Rules concerning description of frozen yogurt are as follows:

1. Frozen yogurt is the food produced by freezing, while stirring, a mix containing safe and suitable ingredients, including, but not limited to, dairy ingredients, but excluding chemical preservatives. The mix may be homogenized and all of the dairy ingredients shall be pasteurized or ultra-pasteurized. All or a portion of the dairy ingredients shall be cultured with a characterizing live bacterial culture that shall contain the lactic acid-producing bacteria *Lactobacillus bulgaricus* and *Streptococcus thermophilus*, and may contain other lactic acid-producing bacteria. The culturing of all or a portion of the dairy ingredients must take place to the extent that the finished, unflavored mix has an increased titratable acidity, calculated as lactic acid, and a decreased pH as a result of the fermentation process. The titratable acidity of the finished, unflavored frozen yogurt mix shall have been increased by a minimum of 0.15 percent, calculated as lactic acid, as a result of the fermentation process. Food grade acids or other acidogens may not be used for the purpose of raising the titratable acidity of the mix or lowering the pH. The frozen yogurt mix shall contain the characterizing live yogurt culture organisms. Sweetener(s), flavoring(s), color additive(s) and/or other characterizing food ingredients may be added to the mix before or after pasteurization or ultra-pasteurization, provided that any ingredient addition after pasteurization or ultra-pasteurization is done in accordance with good manufacturing practices. Any dairy ingredients added after culturing shall have been pasteurized or ultra-pasteurized. The standard plate count requirement for frozen desserts shall apply only to the dairy ingredients prior to culturing.

2. Frozen yogurt, before addition of bulky characterizing ingredient(s) or sweetener(s) shall contain not less than 3.25 percent milkfat and 8.25 percent milk solids not fat. Frozen yogurt shall contain not less than 1.3 pounds of total solids per gallon, and shall weigh not less than 4.0 pounds per gallon.

(b) The name of the food is "frozen yogurt." The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22.

(c) Each of the ingredients used in the food shall be declared on the label as required by 21 CFR 101.

(d) Frozen yogurt may be sold from a dispensing freezer or may be dipped from a properly labeled bulk container. When frozen yogurt is sold as provided above, a sign shall be displayed in such

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a location as it can be easily read by customers under normal conditions of sale, stating "Frozen Yogurt Sold Here."

1. Such sign shall be in bold face capitals on a contrasting background. In addition, if items containing frozen yogurt are listed on a menu board the statement "Frozen Yogurt Served Here" shall be included on the menu board in reasonable proximity to the items containing frozen yogurt. The letters in such statement shall be bold face capitals at least as large as the letters used in listing items containing frozen yogurt and on a contrasting background.

2. No such sign or menu board declaration shall be required if the only method of advising customers of what items are being offered for sale is a menu furnished to the customer. In such case, the menu shall contain the statement "Frozen Yogurt Served Here." Such statement shall be in reasonable proximity to the menu items containing frozen yogurt and the letters on such statement shall be bold face capitals at least as large as the letters used in listing items containing frozen yogurt. Any menu listing frozen yogurt or items prepared with frozen yogurt shall conform to the provisions of this paragraph.

8:21-7.10 Frozen yogurt or lowfat frozen yogurt; identity; label statement

(a) Frozen lowfat yogurt is the food which is prepared from the same ingredients and in the same manner prescribed in N.J.A.C. 8:21-7.9 for frozen yogurt, and complies with all of the provisions of N.J.A.C. 8:21-7.9, including the requirements for customer notification of product sale by posting, menu board or menu; except that the milkfat level is not less than 0.5 percent nor more than 2.0 percent.

(b) The name of the food is "frozen lowfat yogurt" or, alternatively, "lowfat frozen yogurt".

8:21-7.11 Frozen nonfat yogurt or nonfat frozen yogurt; identity; label statement

(a) Frozen nonfat yogurt is the food which is prepared from the same ingredients and in the same manner prescribed in N.J.A.C. 8:21-7.9 for frozen yogurt, and complies with all the provisions of N.J.A.C. 8:21-7.9, including the requirements for customer notification by posting, menu board or menu; except that the milkfat level is less than 0.5 percent.

(b) The name of the food is "frozen nonfat yogurt" or, alternatively, "nonfat frozen yogurt".

8:21-7.12 through 7.15 (No change.)

8:21-7.16 Non fruit (imitation) sherbet; identity; label statement

(a) (No change.)

(b) The optional dairy ingredients referred to in (a) above are: cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweetcream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate and whey and those modified whey products (for example, reduced lactose whey, reduced minerals whey, and whey protein concentrate) that have been determined by the Food and Drug Administration (F.D.A.) to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid. The term "milk" as used in this section means cow's milk.

(c) (No change.)

(d) In addition to all other required information, the label shall:

1.-4. (No change.)

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5. When a sign is used at the point of purchase to advertise non fruit sherbet, it shall contain the same information as required in 3 and 4 above;

6. When non fruit sherbet is sold other than in properly labeled factory-filled containers, a sign must be conspicuously displayed on the sale premises or vehicle where it can be clearly read by customers under normal conditions of purchase, stating the name of the food and the information required in 3 and 4 above. The letters on such sign shall be bold face capitals in contrasting color to the background;

7. (No change.)

8:21-7.17 Non fruit (imitation) water ice; identity; label statement

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

(c) In addition to all other required information, the label shall:
1.-3. (No change.)

4. The statement required in 3 above shall be followed immediately by the words "contains no fruit or fruit juice" in letters at least half the size of those used in statement 3 above;

5. When a sign is used at the point of purchase to advertise non fruit water ice, it shall contain the same information as required in 3 and 4 above;

6. When non fruit water ice is sold other than in properly labeled factory-filled containers, a sign must be conspicuously displayed on the sale premises or vehicle where it can be clearly read by customers under normal conditions of purchase, stating the name of the food and the information required in 3 and 4 above. The letters on such sign shall be bold face capitals in contrasting color to the background;

7. (No change.)

8:21-7.18 (No change.)

8:21-7.19 Freezer made shake; freezer made milk shake; freezer made lowfat milk shake; identity; label statement

(a) (No change.)

(b) Freezer made lowfat milk shake means the same product as (a) above, except that it shall contain not less than 0.5 percent and not more than 2.0 percent milkfat.

(c) Other freezer made shakes including jumbo shake, thick shake, T.V. shake, or any coined or trade name containing the word "shake" shall meet the requirements of (a) above except that the minimum percent of milkfat may be less than 3.25 percent.

(d) "Shakes" not meeting the requirement for "milk shakes" shall not be advertised, sold or served as milk shake.

(e) When any freezer made milk shake or other freezer made shake purports to be or is represented for any special dietary use, it shall be sold only in a container labeled in accordance with all applicable provisions of the regulations of the Federal Food and Drug Administration.

8:21-7.20 (No change.)

8:21-7.21 Lo-mel; identity; label statement

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

(d) When any Lo-mel purports to be or is represented for any special dietary use, it shall be sold only in a labeled container. The label shall include the name of the food, a complete list of ingredients in accordance with the provisions of 21 CFR 101.4 and nutrition information as required by 21 CFR 101.9.

8:21-7.22 through 7.26 (No change.)

8:21-7.27 Generic frozen dessert; identity; label statement

(a) A generic frozen dessert is a food that in its unfrozen form or state is recognized by consumers by an established common or usual name or, in the absence thereof, by an appropriate descriptive term. The unfrozen food becomes a frozen dessert when it is frozen, with or without agitation, and when the food, in its frozen form, is designed and intended to be consumed in a frozen state. Generic frozen desserts shall be made from safe and suitable ingredients. A generic frozen dessert, whose unfrozen counterpart is subject to a definition and standard of identity, shall comply with that definition and standard of identity, and ingredient provisions, except that safe

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and suitable ingredients may additionally be used that are necessary in the manufacture of the frozen dessert.

(b) The name of the frozen dessert shall be: "Frozen . . .". The blank shall be filled in with the common or usual name of the unfrozen counterpart of the food or, in the absence thereof, an appropriate descriptive term.

(c) The label on packages of generic frozen dessert shall, in addition to all other required information, include a complete list of all ingredients in accordance with the provisions of 21 CFR 101.4 and 101.22.

8:21-7.28 Other standards of identity

Frozen desserts standards of identity as adopted or amended by the U.S. Food and Drug Administration and published in the latest edition of the Code of Federal Regulations (CFR) shall apply in the State of New Jersey.

8:21-7.29 through 8:21-7.30 (Reserved)

8:21-7.31 Plant records

(a) Each licensee shall keep a true and correct record showing the milk and milk products received and the frozen desserts and special dietary foods manufactured. Such record shall show:

1.-2. (No change.)

3. Date and volume of each class of product manufactured; and

4. Results of bacterial analysis of frozen dessert samples.

(b) When applicable the plant shall also maintain records of pasteurization processes and cleaning procedures (CIP charts).

(c) The records shall be legibly written in English and shall be retained at said plant for a period of not less than one year from the date of manufacture and at the plant or other reasonably accessible location for an additional year. Records shall be available at all times for examination by the Department.

8:21-7.32 through 7.36 (No change.)

8:21-7.37 Protection from contamination

(a) Frozen desserts plant operations, equipment, and facilities shall be located and conducted to prevent any contamination of frozen dessert products, ingredients, equipment, containers, and utensils. All frozen dessert products or ingredients which have been spilled, overflowed, or leaked shall be discarded. The processing or handling of products other than frozen desserts in the plant shall be performed to preclude the contamination of such frozen dessert products. The storage, handling, and use of poisonous or toxic materials shall be performed to preclude the contamination of frozen desserts and its ingredients and the product-contact surfaces of all equipment, containers and utensils.

(b) Novelty type frozen desserts which employ the use of non-food grade brine solution as a freezing medium shall add a brilliant blue or green food dye to the brine solution in such quantity that the dye would be observable if the frozen dessert product has become contaminated with brine.

8:21-7.38 Pasteurization and cooling

(a) All mixtures used in the manufacture of frozen desserts, except as noted in the standards of identity above, shall be pasteurized in a plant and in properly designed and operated equipment, to one of the following temperatures and held continuously at or above that temperature for at least the corresponding specified time:

1. To a temperature of at least 155 degrees F for at least 30 consecutive minutes by the batch (vat) process; or

2.-5. (No change.)

(b) (No change.)

8:21-7.39 Bacterial standards

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

(c) During any consecutive six months, each wholesale frozen desserts manufacturer shall collect and have analyzed at least four samples of each frozen desserts product classification as defined in this subchapter. Records of these samples shall be maintained in accordance with N.J.A.C. 8:21-7.31.

8:21-7.40 (No change.)

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8:21-7.41 Plant personnel

(a) No person, while affected with a disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, acute respiratory infection, nausea, vomiting, diarrhea which could cause foodborne diseases such as staphylococcal intoxication, salmonellosis, shigellosis or hepatitis, shall work in any area of a frozen desserts plant in any capacity in which there is a reasonable possibility of such person contaminating food, food ingredients, or food contact surfaces with pathogenic organisms, or transmitting disease to other individuals.

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

8:21-7.42 Supply of milk and fluid milk products

(a) All milk and fluid milk products used in the manufacture of frozen desserts for sale or distribution in New Jersey shall be obtained from milk plants holding permits from the Department of Health; except, frozen dessert plants located outside the geographical boundaries of New Jersey shall receive their dairy ingredients, which are used in the manufacture of frozen desserts, from plants holding a current satisfactory Interstate Milk Shippers rating.

(b) Milk and fluid milk products, including frozen desserts mix, which have overflowed, leaked, been spilled, or improperly handled shall be discarded.

(c) Milk and milk products including frozen desserts mix from damaged, punctured or otherwise contaminated containers, products from out of code containers or packaged milk and milk products which have physically left the control of a milk processing plant shall not be repasteurized for use in frozen desserts mix. However, the repasteurization of milk and milk products shipped in transport tankers which have been pasteurized at another plant and have been handled in a sanitary manner and maintained at 45 degrees Fahrenheit or less is permitted.

8:21-7.43 (No change.)

8:21-7.44 Self service frozen desserts manufacturing machines

(a) Retail frozen desserts manufacturing plants which permit the self service of frozen desserts by the customer shall comply with the following provisions to protect the product from contamination by the public:

1. Hoppers, reservoirs and similar frozen dessert mix holding devices to which the public has easy access shall be secured by a method acceptable to the Department to prevent entry by the public.

2. Dispensing nozzles on dispensing freezers shall be protected from incidental contact by the customer by installation of a barrier or shield in front of the nozzle.

8:21-7.45 Frozen desserts; mobile units

(a) Mobile units shall comply with all applicable provisions of this subchapter exclusive of toilet facilities, pasteurization and storage facilities, and in addition thereto, shall comply with the following:

1.-5. (No change.)

6. A refrigerated box to maintain a temperature of 45 degrees F or below shall be provided. The box shall be of ample capacity, of stainless steel or other noncorrosive material, the floor of which shall be pitched towards a center drain. It shall be provided with metal racks or platforms or shelves on which to store products or ingredients and shall be equipped with an indicating thermometer which is accurate to ± 3 degrees F;

7.-15. (No change.)

8:21-7.46 (No change in text.)

SUBCHAPTER 8. IMITATION MILK, IMITATION LOW FAT MILK AND IMITATION FLUID MILK PRODUCTS

8:21-8.1 through 8.4 (No change.)

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SUBCHAPTER 9. LICENSING OF FOOD AND COSMETIC MANUFACTURING AND WHOLESALE ESTABLISHMENTS

8:21-9.1 Definitions

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

“Wholesale establishment” means any place engaged in the production, preparation, processing, manufacture, packing, storage or handling of food or cosmetics for sale or distribution to any other person other than the ultimate consumer.

8:21-9.2 Scope of regulations

(a) Every wholesale establishment falling within the definitions of N.J.S.A. 24:15-1, must obtain a license from the Department except as hereinafter exempted.

(b) A separate license shall be obtained for each wholesale food and cosmetic establishment operated within the State.

8:21-9.4 License requirement

(a) Every person owning or operating a wholesale food or cosmetic establishment within the State shall apply annually for a license to operate such establishment on forms provided by the Department.

(b) (No change.)

8:21-9.5 License fees

(a) The Department shall collect from each applicant for a license, under the provisions of these rules, an annual fee in the following amounts:

1. For each wholesale food or cosmetic establishment with a gross annual business not in excess of \$100,000, \$100.00;

2. For each wholesale food or cosmetic establishment with a gross annual business in excess of \$100,000 but not in excess of \$500,000, \$300.00;

3. For each wholesale food or cosmetic establishment with a gross annual business in excess of \$500,000, \$500.00.

8:21-9.6 (No change.)

8:21-9.7 Revocation of license

(a) Upon evidence duly ascertained by the Department or furnished to the Department by any local board of health, that the licensee licensed under the provisions of this Act is violating any of the rules, regulations or statutes as hereinbefore provided, the Department shall upon hearing and proof of allegation, revoke the license of such licensee. The hearing 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)-(c) (No change.)

SUBCHAPTER 10. DESIGNATED FLUID MILK PRODUCTS

8:21-10.1 Definitions and product standards

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The following standards of identity conform to the Code of Federal Regulations for milk and cream (21 CFR 131).

“Eggnog” means:

1. Description. Eggnog is the food containing one or more of the optional dairy ingredients specified in paragraph 2 below, one or more of the optional egg yolk-containing ingredients specified in paragraph 3 below and one or more of the optional nutritive carbohydrate sweeteners specified in paragraph 4 below or other sweetening agents approved by the U.S. Food and Drug Administration for use in milk or fluid milk products. One or more of the optional ingredients specified in paragraph 5 below may also be added. All ingredients used are safe and suitable. Eggnog contains not less than six percent milkfat and not less than 8.25 percent milk solids not fat. The egg yolk solids content is not less than one percent by weight of the finished food. The food shall be pasteurized or ultra-pasteurized and may be homogenized. Flavoring ingredients and

color additives may be added after the food is pasteurized or ultra-pasteurized.

2. Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

3. Egg yolk-containing ingredients. Liquid egg yolk, frozen egg yolk, dried egg yolk, liquid whole eggs, frozen whole eggs, dried whole eggs, or any one or more of the foregoing ingredients with liquid egg white or frozen egg white.

4. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

5. Other optional ingredients.

i. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food; provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

ii. Salt.

iii. Flavoring ingredients.

iv. Color additives that do not impart a color simulating that of egg yolk, milkfat, or butterfat.

v. Stabilizers.

6. Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

i. Milkfat content—"Fat-Official Final Action."

ii. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

7. Nomenclature. The name of the food is "eggnog." The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring, as specified in 21 CFR 101.22.

*[1.]**i.* The following term shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

(1) The word "ultra-pasteurized" if the food has been ultra-pasteurized.

ii. The following terms may appear on the label:

(1) The word "pasteurized" if the food has been pasteurized.

(2) The word "homogenized" if the food has been homogenized.

8. Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Frozen yogurt mix" means the unfrozen fluid mixture from which frozen yogurt is made by freezing and shall contain not less than 3.25 percent milkfat and 8.25 percent milk solids not fat prior to the addition of bulky characterizing ingredients or sweeteners. In addition, the mix shall meet the requirements of N.J.A.C. 8:21-7.9 regarding culturing, titratable acidity and live yogurt culture organisms.

"Frozen lowfat yogurt mix" means the unfrozen fluid mixture from which frozen lowfat yogurt is made by freezing and shall contain not less than 0.5 percent milkfat nor more than 2.0 percent milkfat. In addition, the mix shall meet the requirements of N.J.A.C. 8:21-7.9 regarding culturing, titratable acidity and live yogurt culture organisms.

"Frozen nonfat yogurt mix" means the unfrozen fluid mixture from which frozen nonfat yogurt is made by freezing and shall contain not more than 0.5 percent milkfat. In addition, the mix shall meet the requirements of N.J.A.C. 8:21-7.9 regarding culturing, titratable acidity and live yogurt culture organisms.

"Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than

2.5 percent milkfat and not less than 7.5 percent milk solids not fat. Goat milk shall be produced according to the sanitary standards of these rules. The word "milk" shall be interpreted to include goat milk.

"Homogenized milk" means milk which has been treated to insure breakup of the fat globules to such an extent that, after 48 hours of quiescent storage at 45 degrees Fahrenheit (7 degrees Celsius), no visible cream separation occurs on the milk, and the fat percentage of the top 100 milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than 10 percent from the fat percentage of the remaining milk as determined after thorough mixing.

"Lowfat yogurt" means:

1. Description. Lowfat yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph 3 below with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. One or more of the other optional ingredients specified in paragraphs 2 and 4 below may also be added. When one or more of the ingredients specified in subparagraph 4i below are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Lowfat yogurt, before the addition of bulky flavors, contains not less than 0.5 percent nor more than two percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf-life of the food, lowfat yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

2. Vitamin addition (optional).

i. If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units (400 µg of retinol equivalence) thereof, within limits of good manufacturing practice.

ii. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 µg) thereof within limits of good manufacturing practice.

3. Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

4. Other optional ingredients.

i. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food; provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii. Flavoring ingredients.

iv. Color additives.

v. Stabilizers.

5. Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

i. Milkfat content—"Fat-Official Final Action".

ii. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

iii. Titratable acidity—"Acidity—Official Final Action."

6. Nomenclature. The name of the food is "lowfat yogurt." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the

food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22.

i. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(1) The phrase "...% milkfat," the blank to be filled in with the fraction 1/2 or multiple thereof closest to the actual content of the food.

(2) The word "sweetened" if nutritive carbohydrate sweetener is added without the addition of characterizing flavoring.

(3) The parenthetical phrase "(heat treated after culturing)" shall follow the name of the food if the dairy ingredients have been heat treated after culturing.

(4) The phrase "vitamin A" or "vitamin A added," or "vitamin D" or "vitamin D added," or "vitamins A and D added," as appropriate. The word "vitamin" may be abbreviated "vit."

ii. The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

7. Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

... "Nonfat yogurt" means:

1. Description. Nonfat yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph 3 below with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. One or more of the other optional ingredients specified in paragraphs 2 and 4 below may also be added. When one or more of the ingredients specified in subparagraph 4i below are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Nonfat yogurt, before the addition of bulky flavors, contains less than 0.5 percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf-life of the food, nonfat yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

2. Vitamin addition (optional).

i. If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units (400 ug of retinol equivalence) thereof within limits of good manufacturing practice.

ii. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 ug) thereof within limits of good manufacturing practice.

3. Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

4. Other optional ingredients:

i. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food; provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii. Flavoring ingredients.

iv. Color additives.

v. Stabilizers.

5. Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

i. Milkfat content—"Fat—Official Final Action".

ii. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

iii. Titratable acidity—"Acidity—Official Final Action."

6. Nomenclature. The name of the food is "nonfat yogurt". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22.

i. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(1) The word "sweetened" if nutritive carbohydrate sweetener is added without the addition of characterizing flavoring.

(2) The parenthetical phrase "(heat treated after culturing)" shall follow the name of the food if the dairy ingredients have been heat treated after culturing.

(3) The phrase "vitamin A" or "vitamin A added," or "vitamin D" or "vitamin D added," or "vitamins A and D added," as appropriate. The word "vitamin" may be abbreviated "vit."

ii. The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

7. Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

... "Pasteurization," "pasteurized", and similar terms shall mean the process of heating every particle of milk or milk product in properly designed and operated equipment, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time:

Temperature	Time
+145 degrees F (63 degrees C)	30 minutes
+161 degrees F (72 degrees C)	15 seconds
191 degrees F (89 degrees C)	1.0 second
194 degrees F (90 degrees C)	0.5 second
201 degrees F (94 degrees C)	0.1 second
204 degrees F (96 degrees C)	0.05 second
212 degrees F (100 degrees C)	0.01 second

+If the fat content of the milk product is 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5 degrees F (3 degrees C). Provided, that eggnog shall be heated to at least the following temperature and time specifications:

Temperature	Time
155 degrees F (69 degrees C)	30 minutes
175 degrees F (80 degrees C)	25 seconds
180 degrees F (83 degrees C)	15 seconds

Provided further, that nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the Food and Drug Administration to be equally efficient and which is approved by the State Health Department.

... "Yogurt" means:

1. Description. Yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph 3 below with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. One or more of the other optional ingredients specified in paragraphs 2 and 4 below may also be added. When one or more of the ingredients specified in subparagraph 4i below are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Yogurt, before the addition of bulky flavors, contains not less than 3.25 percent milkfat and not less than 8.25 percent

milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf-life of the food, yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

2. Vitamin addition (optional).

i. If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units (400 ug of retinol equivalence) thereof within limits of good manufacturing practice.

ii. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 ug) thereof within limits of good manufacturing practice.

3. Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

4. Other optional ingredients.

i. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food; provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii. Flavoring ingredients.

iv. Color additives.

v. Stabilizers.

5. Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

i. Milkfat content—"Fat—Official Final Action".

ii. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

iii. Titratable acidity—"Acidity—Official Final Action."

6. Nomenclature. The name of the food is "yogurt". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22.

i. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(1) The word "sweetened" if nutritive carbohydrate sweetener is added without the addition of characterizing flavoring.

(2) The parenthetical phrase "(heat treated after culturing)" shall follow the name of the food if the dairy ingredients have been heat treated after culturing.

(3) The phrase "vitamin A" or "vitamin A added", or "vitamin D" or "vitamin D added", or "vitamins A and D added", as appropriate. The word "vitamin" may be abbreviated "vit."

ii. The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

7. Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

8:21-10.2 (No change.)

8:21-10.3 Inspection of dairy farms and milk plants

Each dairy farm, milk plant, receiving station, and transfer station whose milk and fluid milk products are intended for consumption within New Jersey or its police jurisdiction and each milk hauler who

collects samples of raw milk for pasteurization for bacterial, chemical or temperature standards and hauls milk from a dairy farm to a milk plant, transfer station or receiving station and his bulk milk pickup tanker and its appurtenances shall have an approved inspection prior to the issuance of a permit.

1.-2. (No change.)

3. The health authority shall take immediate action to prevent further processing of milk or milk product when violations of critical processing element(s) have been identified. Should correction of such critical processing elements not be accomplished immediately, the health authority shall take prompt enforcement action. The following will be considered critical processing element violations:

i. Improper pasteurization, whereby every particle of milk or milk products may not have been heated to the proper temperature and held for the required time in properly designed and operating equipment;

ii. A cross connection exists whereby direct contamination of pasteurized milk or milk product is occurring; or

iii. Conditions exist whereby direct contamination of pasteurized milk or milk product is occurring.

4. In the case of dairy plants producing aseptically processed milk and milk products, when an inspection of the dairy plant and its records reveal that the process used has been less than the required scheduled process, it shall be considered an imminent hazard to public health and the health authority shall immediately take enforcement action to abate the hazard.

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

8:21-10.4 Examination of milk and fluid milk products

(a) (No change.)

(b) During any consecutive six months, at least four samples of raw milk for pasteurization shall be collected in at least four separate months from each producer and at least four samples of raw milk for pasteurization, ultra-pasteurization or aseptic processing, shall be collected in at least four separate months, from each milk plant after receipt of the milk by the milk plant and prior to pasteurization, ultra-pasteurization or aseptic processing. During any consecutive six months, at least four samples of heat-treated milk products, from plants offering such products for sale, shall be collected in at least four separate months. During any consecutive six months, at least four samples of pasteurized milk, flavored milk, flavored lowfat milk, flavored skim milk, each fat level of lowfat milk and at least four samples of defined fluid milk product except aseptically processed, shall be collected in at least four separate months from every milk plant. Samples of milk and fluid milk products shall be taken while in the possession of the producer or distributor at any time prior to delivery to the store or consumer. Samples of milk and fluid milk products from dairy retail stores, food service establishments, grocery stores, and other places where milk and fluid milk products are sold shall be examined periodically as determined by the health authority; and the results of such examination shall be used to determine compliance with standards, labeling and cooling requirements. Proprietors of such establishments shall furnish the health authority, upon request, with the names of all distributors from whom milk or fluid milk products are obtained.

(c) (No change.)

(d) Whenever two of the last four consecutive bacteria counts (except those for aseptically processed milk and milk products), somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk and/or milk products, the health authority or a representative so designated shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. Any additional sample shall be taken within 21 days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit and/or court action shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determinations, cooling temperatures, or somatic cell counts. The Department shall offer to the person concerned a hearing pursuant to N.J.S.A. 24:10-57.8. The hearing shall be conducted pursuant to

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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.

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

(g) Whenever a test indicates that milk from a producer is unsafe due to an antibiotic, the permit holder or Department shall immediately notify and suspend the producer for two days. The Department shall offer to the producer concerned a hearing pursuant to N.J.S.A. 24:10-57.8. A test shall be made of the subsequent milking after suspension, and it must be free of antibiotic before offering that milk for sale. The hearing 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.

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

8:21-10.5 Animal health

(a) (No change.)

(b) All milk for pasteurization shall be from herds under a brucellosis eradication program which meets one of the following conditions:

1.-3. (No change.)

4. Participating in a milk ring testing program at least four times per year, at approximately 90-day intervals, with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test; or

5. (No change.)

(c) (No change.)

8:21-10.6 Standards for milk and fluid milk products

(a) (No change.)

(b) No process or manipulation other than pasteurization, ultra-pasteurization or aseptic processing methods integral therewith, and appropriate refrigeration shall be applied to milk and fluid milk products for the purpose of removing or deactivating microorganisms; provided, that in the bulk shipment of cream, skim milk, or lowfat milk, the heating of the raw milk, one time, to temperatures greater than 125 degrees Fahrenheit (52 degrees Celsius) but less than 161 degrees Fahrenheit (72 degrees Celsius) for separation purposes is permitted when the resulting bulk shipments of cream, skim milk, and/or lowfat milk are labeled heat-treated.

(c) The chemical, bacteriological, and temperature standards for milk and fluid milk products are as follows:

1. Raw milk for pasteurization, ultra-pasteurization or aseptic processing.

i. Temperature—Cooled to 45 degrees Fahrenheit (seven degrees Celsius) or less within two hours after milking, provided that the blend temperature after the first and subsequent milkings does not exceed 50 degrees Fahrenheit (10 degrees Celsius).

ii. Bacterial limits—Individual producer milk not to exceed 100,000 per ml. prior to commingling with other producer milk.

iii. Not exceeding 300,000 per ml. as commingled milk prior to pasteurization.

iv. Antibiotics—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method.

v. Somatic Cell Count—Individual producer milk not to exceed 1,000,000 per ml.

2. Pasteurized milk and fluid milk products.

i. Temperature—Cooled to 45 degrees Fahrenheit (seven degrees Celsius) or less and maintained thereat at the plant. A maximum of 45 degrees Fahrenheit (seven degrees Celsius) on delivery vehicles.

ii. Bacterial limits (not applicable to cultured products)—Milk and fluid milk products—20,000 per ml.—At processor level prior to delivery.

iii. Coliform limits—Not exceeding 10 per ml. prior to delivery; provided, that in the case of bulk milk transport tank shipments, shall not exceed 100 per ml.

iv. Phosphatase (not applicable to bulk shipped, heat-treated milk products)—Less than 1 ug phenol per ml. by Scharer Rapid Method (or equivalent by other means).

v. Antibiotics—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method.

3. Aseptically processed milk and fluid milk products.

i. Temperature—None.

ii. Bacterial limits—No growth by test specified in N.J.A.C. 8:21-10.4.

iii. Antibiotics—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method.

4. Pasteurized mixes for frozen desserts.

i. Temperature—Same as pasteurized milk and fluid milk products above.

ii. Bacterial limits (not applicable to cultured products)—50,000 bacteria per gm.

iii. Coliform limits—Not exceeding 10 per gm.

iv. Phosphatase—Less than 1 ug phenol per ml. by Scharer Rapid Method (or equivalent by other means).

(d) Sanitation requirements for raw milk for pasteurization, ultra-pasteurization or aseptic processing are as follows:

1. Item 1r.—Abnormal Milk: Cows which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgement of the health authority, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the health authority may direct.

i. (No change.)

ii. Whenever a herd milk sample exceeds any of the following screening test results, a confirmatory count, using a Direct Microscopic, Electronic or Optical Somatic Cell counting technique, shall be made on that sample and the results of this count shall be the official result:

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

(3) Wisconsin mastitis test—18 mm.

iii. (No change.)

2. Item 2r.—Milking Barn, Stable, or Parlor Construction: A milking barn, stable, or parlor shall be provided on all dairy farms in which cows being milked shall be housed during milking operations. The areas used for milking purposes shall:

i. Have floors constructed of concrete or equally impervious material; provided, convalescent (maternity) pens located in milking areas of stanchion-type barns may be used when they comply with the guidelines specified in Appendix B.V. of the Grade A Pasteurized Milk Ordinance (1978) (United States Public Health Service—FDA Publication 229);

ii.-vii. (No change.)

3.-13. (No change.)

14. Item 14r.—Milking, Flanks, Udders, and Teats: Milking shall be done in the milking barn, stable, or parlor. The flanks, udders, bellies, and tails of all milking cows shall be free from visible dirt and clipped as necessary. All brushing shall be completed prior to milking. The udders and teats of all milking cows shall be cleaned and treated with a sanitizing solution just prior to the time of milking, and shall be wiped dry before milking. Wet hand milking is prohibited.

15.-21. (No change.)

(e) Sanitation requirements for pasteurized, ultra-pasteurized and aseptically processed milk and fluid milk products.

1.-6. (No change.)

7. Item 5p.—Separate Rooms: There shall be separate rooms for:

i.-v. (No change.)

vi. Designated areas or rooms shall be provided for the receiving, handling and storage of returned packaged milk and milk products.

8.-18. (No change.)

19. Item 17p.—Cooling of Milk: All raw milk and fluid milk products shall be maintained at 45 degrees Fahrenheit (seven degrees Celsius) or less until processed. All pasteurized milk and milk products, except those to be cultured, shall be cooled to a temperature of 45 degrees Fahrenheit (seven degrees Celsius) or less immediately in approved equipment prior to filling and packaging. All pasteurized milk and fluid milk products shall be stored at a temperature of 45 degrees Fahrenheit (seven degrees Celsius) or less. On delivery vehicles, the temperature of milk and fluid milk products shall not

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exceed 45 degrees Fahrenheit (seven degrees Celsius). Every room or tank in which milk or fluid milk products are stored shall be equipped with an accurate thermometer. Provided, that aseptically processed milk and milk products to be packaged in hermetically sealed containers shall be exempt from the cooling requirements of this item. 20.-24. (No change.)

8:21-10.7 Transferring; delivery containers; cooling

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

(c) It shall be unlawful to sell or serve any pasteurized milk or fluid milk product which has not been maintained at a temperature of 45 degrees Fahrenheit (seven degrees Celsius) or less. If containers of pasteurized milk or fluid milk products are stored in ice, the storage container shall be properly drained.

8:21-10.8 through 10.10 (No change.)

8:21-10.11 Future dairy farms and milk plants

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

(c) The certified industry inspector or Department shall review these plans and respond accordingly within 30 days of the date of submission. The certified industry inspector shall send a copy of the plans for any milk house, milking barn, stable or parlor to the Department after approval is granted.

(d) (No change.)

8:21-10.12 Dating of milk and fluid milk products

(a) All packages or containers of:

1. White whole milk, Vitamin D milk, homogenized milk, lowfat milk, protein fortified lowfat milk, skim milk, protein fortified skim milk, nonfat milk*[,] *and* protein fortified nonfat milk *[and flavored milks]* shall be legibly marked with a "shelf-life expiration date" which shall be no later than *[nine]* *10* days following the date of pasteurization; except, when the above products are ultra-pasteurized the dating shall comply with (a)2 below.

2. (No change.)

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

8:21-10.13 Temporary marketing permit

Any person holding a current New Jersey milk plant license who wishes to manufacture a fluid milk product for which a standard of identity has not been promulgated, may make application to the Department for a temporary marketing permit to market such a product. The application shall be on a form furnished by the Department and shall contain such information as the Department may require, including, but not limited to: name, address, and telephone number of applicant; brand name of product; estimated amount of product to be produced; product description and specific difference(s) between the standardized fluid milk product and the product for which the temporary marketing permit is being requested. Such permit shall be for a period not to exceed one year; however it may be renewed pending action by the Department.

SUBCHAPTER 11. DENTED CANS; SALVAGE OR DISTRESSED FOODS, ALCOHOLIC AND NONALCOHOLIC BEVERAGES AND INDUSTRIAL MISHANDLING

8:21-11.1 Scope

The following rules shall be met by all establishments used in the production, preparation, manufacture, packaging, storage, transportation or handling of food intended for sale or distribution at the wholesale or retail levels.

Recodify existing N.J.A.C. 8:21-11.1 through 11.4 as 11.2 through 11.5 (No change in text.)

8:21-11.5 Salvage of food, drugs, devices or cosmetics associated with natural or local disasters or distressed food conditions or industrial mishandling

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

(d) Rules concerning malt, fermented or distilled alcoholic beverages are as follows:

1. (No change.)

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2. Whiskeys and liquors shall only be salvaged for redistillation to commercial grade alcohol. (See N.J.A.C. 8:21-11.5(a)1, 4, 5 and 6.)

3. Contaminated containers of alcoholic beverages shall be retained under embargo whenever possible in order to provide an opportunity for the owner to seek possible tax reimbursement.

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

8:21-11.6 (No change in text.)

SUBCHAPTER 12. MANUFACTURING, STORAGE, DISTRIBUTION, AND HANDLING OF NONALCOHOLIC BEVERAGES AND BOTTLED WATER

(AGENCY NOTE: The Department is proposing to repeal this subchapter and is simultaneously proposing new regulations for the handling of bottled water under subchapter 5 of this proposal. The regulation governing nonalcoholic beverages are being incorporated as amendments to subchapter 13.)

SUBCHAPTER 13. RULES GOVERNING WHOLESALE FOOD ESTABLISHMENTS

8:21-13.1 Scope

The following rules shall apply to all wholesale food establishments, including establishments bottling nonalcoholic beverages. For the purpose of these rules, the term "food" used throughout these rules shall also include "nonalcoholic drink" as defined under N.J.S.A. 24:12-1.

8:21-13.2 (No change in text.)

8:21-13.3 Definitions

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

...
"Color additive" means a material which is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and when added or applied to a food, drug, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that the term does not include any material which the Commissioner, by regulation, determines is used (or is intended to be used) solely for a purpose or purposes other than coloring and nothing herein contained shall be construed to apply to any pesticide chemical, soil, or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. The term "color" includes black, white, and intermediate grays.

...
"Food" means:

1. Articles used for food or drink for man or other animals;
2. Chewing gum; and
3. Articles used for components of any such article.

The term also includes any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part of food.

...
"Local Health Authority" means the local board or local board of health of any municipality or the boards, body, or officers in such a municipality lawfully exercising any of the powers of the local board of health under the laws governing such municipality, and includes any consolidated board of health, local or county board of health created and established pursuant to law.

"Lot" means a collection of primary containers or units of the same size, type, and style containing a finished product produced under conditions as nearly uniform as possible and designated by a

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common container, code, or marking; and, in any event, "lot" means no more than one day's production or 24 hours.

"Nonalcoholic drink" means beverages as defined under N.J.S.A. 24:12-1.

"Nontoxic materials" means materials for food contact surfaces utilized in the transporting, processing, storing, or packaging of food which are free of substances which may render the food injurious to health or which may adversely affect the flavor, color, odor, or bacteriological quality of the food.

"Person" means an individual, a firm, partnership, company, corporation, trustee, association, or any public or private entity.

"Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, storage, processing, packaging, labeling, or handling of food and nonalcoholic drinks which is not sold or distributed directly to the ultimate consumer (retail).

"Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs, or foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.

8:21-13.4 Facilities and procedures for the storage, distribution, handling, and processing of food and nonalcoholic drink
(a)-(b) (No change)

Recodify existing N.J.A.C. 8:21-13.4 and 13.5 as 13.5 and 13.6 (No change in text.)

8:21-13.7 Equipment and procedures

(a) General: All plant equipment and utensils shall be suitable for their intended use, so designed and of such material and workmanship as to be adequately cleanable and properly maintained. The design, construction, and use of such equipment and utensils shall preclude the adulteration of food with lubricants, fuel metal fragments, contaminated water, or any other contaminants. All equipment shall be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces.

1-10. (No change.)

11. Equipment used to bottle, cap, and sanitize multiuse containers in a nonalcoholic drink bottling plant shall conform to the requirements set forth under N.J.A.C. 8:21-5.7(f) and (g), and N.J.A.C. 8:21-5.11.

Recodify existing N.J.A.C. 8:21-13.7 through 13.9 as 13.8 through 13.10 (No change in text.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Renal Disease Services

Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage Renal Disease Services

Adopted Repeal and New Rule: N.J.A.C. 8:33F-1.1

Adopted Amendments: N.J.A.C. 8:33F-1.2 and 1.6

Proposed: August 20, 1990 at 22 N.J.R. 2494(a).

Adopted: October 19, 1990 by Frances J. Dunston, M.D.,

M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board)

Filed: October 24, 1990 as R.1990 d.566, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8

Effective Date: November 19, 1990.

Expiration Date: November 16, 1994.

(CITE 22 N.J.R. 3578)

Summary of Public Comments and Agency Responses:

Comments were received from the Trans-Atlantic Renal Council.

COMMENT: The Trans-Atlantic Renal Council requested the retention of the requirement for impact statements from approved transplant centers (N.J.A.C. 8:33F-1.2(a)iv) so that the Department would be aware of the activity of existing transplant providers.

RESPONSE: The requirement for impact statements from approved transplant centers has been retained in the new rules being established for organ transplantation services at N.J.A.C. 8:33Q-1 (Certificate of Need: Services for the Transplantation of Human Kidneys, Hearts, Livers and Pancreata), specifically at N.J.A.C. 8:33Q-1.3(b)3, Performance standards, adopted elsewhere in this issue of the New Jersey Register.

COMMENT: The Trans-Atlantic Renal Network Council stated that its new name (or Network #3) should be used in place of its previous name, that of the New Jersey Renal Network Council.

RESPONSE: All references to Network #3 have been changed from New Jersey Renal Network Council to the Trans-Atlantic Renal Council in the rules as proposed. One reference was omitted, however, at N.J.A.C. 8:33F-1.2(a)iii(3), and is being corrected at this time as a non-substantive, technical change.

COMMENT: The Trans-Atlantic Renal Network provided a copy of its goals and questioned whether the goals of the State Health Plan (referred to in the text of the renal rule) would be consistent with those of Network #3.

RESPONSE: The goals of the Trans-Atlantic Renal Council are consistent with goals that have historically been included in the State Health Plan (that is, self care training, home dialysis, vocational rehabilitation, uniform data collection). It should be noted that the Department relies on the data collection effort of the Trans-Atlantic Renal Council in an effort to avoid duplicative reporting responsibilities.

Summary of Changes made between Proposal and Adoption:

The Department has corrected a recodification error in the proposal at N.J.A.C. 8:33F-1.2.

The Department has also recodified N.J.A.C. 8:33F-1.7, combining the rule with N.J.A.C. 8:33F-1.6 for clarity. Additionally, text originally at N.J.A.C. 8:33F-1.7(a)6 has been deleted on adoption, due to the clinical progress that has been made in the delivery of renal dialysis services since this provision was originally promulgated in 1977.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from adoption shown in brackets with asterisks *[thus]*).

8:33F-1.1 Adoption of Federal regulations by reference

(a) The Department incorporates herein by reference the following Federal regulations regarding renal disease services:

1. 42 CFR 405.2100 through 2184; and
2. 42 CFR 410.52.

(b) Copies of the Federal regulations may be obtained by contacting the Department.

8:33F-1.2 Utilization standards

(a) The following minimum utilization rates shall apply for the initiation of new ESRD services***[.]****:

[2.]**1. Hospital ESRD dialysis center:

i.-ii. (No change.)

iii. Each plan must contain minimally:

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

(3) Documentation of participation in at least one organ procurement program within the ESRD Network ***[32]**#3*** area.

iv.-vi. (No change.)

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

[4.]**3. Self-dialysis facilities/services:

i. (No change.)

ii. Each applicant for a certificate of need from an ESRD approved facility which proposes to offer a self-dialysis service must provide written evidence of:

(1)-(3) (No change.)

(4) Plans to meet the self-care level of the goals proposed in the State Health Plan;

(5)-(6) (No change.)

iii. (No change.)

4. Self-care and home dialysis training:

i. Each application for a certificate of need from an approved ESRD facility which proposes to offer self-care and home dialysis

training for all forms of chronic hemodialysis and chronic peritoneal dialysis, including continuous ambulatory peritoneal dialysis (CAPD) must provide written evidence of:

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

(3) Plans to meet the self-care level of the goals proposed in the State Health Plan; and

(4) (No change.)

ii. (No change.)

Recodify existing 6.-8. as 5.-7. (No change in text.)

(b) Existing renal services have two years from October 25, 1977 to meet the minimum utilization rates contained herein. For Certificates of Need issued after October 25, 1977, approved services will have two years from the date of initiation of service(s) to meet the utilization standards defined herein. If the minimum utilization rates defined herein have not been attained within the aforementioned time periods, the Commissioner of Health may cancel an approved application. Prior to rendering such a decision, the Commissioner of Health will notify the institution and the appropriate local health planning agency that such action is under consideration. The Commissioner will request a recommendation from the appropriate local health planning agency in this regard. The Commissioner will take into account substantive data provided to the department by the institution and/or the local health planning agency.

8:33F-1.6 Planning standards

(a) (No change.)

[8:33F-1.7 General criteria]

*[(a)]****(b)*** As part of the application for provision of regional end-stage renal disease services, each applicant must meet each of the following minimum general criteria:

1. Provide written documentation of need as expressed by minimum proposed patient caseload.

2.-5. (No change.)

[6. Provide assurance that special consideration shall be given to the needs of medical education. The review of applications for a new service or for additional units shall include consideration of views offered by major medical education institutions in the State, except where possible conflicts of interest exist.]

*[7.]**6.* Provide written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that the applicant shall not directly or indirectly refuse referrals on the basis of the patient's race, religion, sex, age or ability to pay.

*[8.]**7.* Commissioner's Advisory Committee: The Commissioner of Health will call together an advisory committee to review this regulation. The advisory committee will make its recommendations to the Commissioner within three years of adoption of the regulation and amendments thereto.

*[9.]**8.* Provide written assurances that facilities will follow the patient's rights policy as adopted by the Transatlantic Renal Disease Network and guarantee that it will obtain the informed consent of patients subjected to medical experiments. Patients, proposed to be subject of medical experimentation, who do not give informed consent, may not be refused treatment or continued care if the facility has the medical capacity to perform such care or treatment.

Recodify existing 10.-11. as *9.-10.* (No change in text.)

*[12.]**11.* Department of Health approved hospital ESRD dialysis centers and ESRD dialysis facilities, as well as those non-ESRD approved facilities performing chronic back-up dialysis, and/or acute dialysis either alone or as part of an Inter-Hospital Hemodialysis Outreach Program, are required to report utilization data on a quarterly basis directly to the Department of Health's Health Systems Review Unit.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Services for the Transplantation of Human Kidneys, Hearts, Livers and Pancreata

Adopted New Rule: N.J.A.C. 8:33Q-1

Proposed: August 20, 1990 at 22 N.J.R. 2496(a).

Adopted: October 19, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: October 24, 1990 as R.1990 d.567, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: November 19, 1990.

Expiration Date: November 19, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

A change upon adoption has been made at N.J.A.C. 8:33Q-1.2(a), replacing the term "cardiology residencies" with "cardiology fellowships." The latter term is correct in matters concerning post-graduate education as contemplated in the rules.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

CHAPTER 8:33Q TRANSPLANTATION SERVICES

SUBCHAPTER 1. ORGAN TRANSPLANTATION SERVICES

8:33Q-1.1 Purpose and scope

The purpose of this subchapter is to set forth certificate of need requirements for new and existing kidney, heart, liver or pancreas transplantation services in the State of New Jersey, in accordance with Federal and State law and policy. The requirements were developed by the Department, in accordance with recommendations made by the New Jersey Advisory Council on Organ Transplantation, for the purpose of assuring the orderly development of needed organ transplant services of the highest quality, efficiently provided and utilized.

8:33Q-1.2 General criteria

(a) Applicants for organ transplantation services shall have a formal graduate medical education program with accredited residencies and/or fellowships already in place for internal medicine and general surgery. Heart transplant centers shall have cardiology *[residencies]* *fellowships* and preference will be given to those who also have a cardio-thoracic fellowship program. The applicant shall document the ability to implement a program of continuing education and training for the following groups: nurses, technicians, service personnel, and other hospital staff.

(b) A new transplantation program shall achieve and maintain institutional membership in the national Organ Procurement and Transplantation Network currently operating as the United Network for Organ Sharing (UNOS) within one year of Certificate of Need approval.

(c) New programs will be reviewed by the Department of Health within two years of Certificate of Need approval. If minimum performance standards of this subchapter are not met within one additional year, the certificate of need may be rescinded.

(d) Priority consideration will be given to applicants that propose to provide organ transplantation service within the facility's current capacity.

8:33Q-1.3 Performance standards

(a) The applicant for a kidney, heart, liver or pancreas transplant service shall have an institutional plan with the capability and com-

mitment to perform the following minimum transplant procedures annually by the end of the second full year of operation:

1. Kidney: a minimum of 25 procedures;
2. Heart: a minimum of 12 procedures;
3. Liver: a minimum of 15 procedures; and
4. Pancreas: a minimum of 15 procedures.

(b) Each institutional plan for a transplantation service must contain, at a minimum:

1. The basis for projecting the performance rate to be achieved by the end of the second year of operation that is considered reasonable by the Department of Health, which shall include, but not be limited to, availability of donor organs and patient needs;
2. The number of transplants performed during the previous 12 months at similar centers in the local region of the Organ Procurement and Transplantation Network and New York State; and
3. Impact statements on the quality, cost, access and organization of existing transplantation services of the type being applied for in the local region of the Organ Procurement and Transplantation Network and New York State, describing anticipated effects of the proposed service on such existing programs.

8:33Q-1.4 Personnel

(a) The transplant program shall have on site at least one transplant surgeon and one transplant physician who are clinical members of the National Organ Procurement Transplantation Network, currently operating as the United Network for Organ Sharing (UNOS), for the applicable organ, who are qualified as follows:

1. The transplant surgeon shall have a minimum of one year formal training or equivalent experience during residency, and one year of experience at a transplant program meeting UNOS membership criteria in the area of transplantation in which he or she plans to practice. In lieu of one year formal training and one year of experience, three years of experience with a transplant program meeting criteria for institutional membership in UNOS is acceptable. For kidney transplantation, the surgeon shall have certification by either the American Board of Surgery, the American Board of Urology or its equivalent. For liver and pancreas transplantation, the surgeon, shall have American Board of Surgery certification or its equivalent. For heart transplantation, the surgeon shall be certified by the American Board of Thoracic Surgery or its equivalent. The transplant surgeon must have been the primary surgeon on a minimum of 10 transplants performed within the past two years.

2. The transplant physician shall be a physician with an M.D. or D.O. degree, or equivalent degree from another country, who is licensed to practice medicine in New Jersey and has been accepted on the medical staff of the applicant hospital. He or she shall be Board Certified in internal medicine or pediatrics. He or she shall have at least one year of specialized formal training in transplantation medicine or a minimum of two years documented experience in transplantation medicine with a transplant program that meets the qualifications for membership in UNOS. For renal transplantation, the transplant physician shall be Board Certified or Board Qualified in the subspecialty of nephrology. In general, a transplant physician shall be Board Certified or Board Qualified in the subspecialty of the transplanted organ. However, a transplant physician with extensive experience in transplantation of one organ may qualify as a transplant physician for another organ if organ-specific subspecialists also participate in patient selection and post-transplant patient care.

(b) The applicant shall have on-site a full-time transplant coordinator who has one year of related experience in a transplant program.

8:33Q-1.5 Certification of nondiscriminatory practices

(a) The applicant shall provide written certification of compliance with nondiscriminatory practices to the effect that patients for transplants and all associated services will not be subject to discrimination on the basis of race, sex, or ability to pay.

(b) The applicant shall establish written procedures for selecting transplant candidates and distributing organs in a fair and equitable manner. Selection criteria shall incorporate and comply with national Organ Procurement and Transplantation Network organ allocation priorities that are based on objective medical criteria, including medical urgency and time on the waiting list. These criteria shall be included in the certificate of need application.

8:33Q-1.6 Physical requirements

(a) The transplant beds shall be located in an environment that will afford the patient privacy, quiet, and protection from infection while providing visual access. An isolation room, designed to minimize infection hazards of or from the patient shall be made available for each transplant patient. Each isolation room shall contain only one bed and shall comply with acute-care patient room standards (Guidelines for Construction and Equipment of Hospitals and Medical Facilities, 1987 edition, American Institute of Architects), incorporated herein by reference as well as the following:

1. Room entry shall be through a work area that provides for aseptic control, including facilities that are separate from patient areas for hand washing, gowning, and storage of clean and soiled materials;

- i. Separate enclosed anteroom(s) for isolation rooms are not required as a minimum but, if used, viewing panel(s) shall be provided for observation of each patient by staff from the anteroom;

- ii. One separate anteroom may serve several isolation rooms; and

2. Toilet, bathtub (or shower), and hand washing facilities shall be provided for each isolation room. These shall be arranged to permit access from the bed area without the need to enter or pass through the work area of the vestibule or anteroom.

8:33Q-1.7 Institutional commitment

(a) Applicants shall document that the following services will be provided by the hospital in such numbers and types to adequately meet the objectives of the proposed transplantation service:

1. Applicants shall demonstrate in the application the allocation of sufficient operating and recovery room resources, intensive care resources, surgical beds and personnel to the transplant program;

2. Each applicant shall show evidence that the following ancillary health support services, that include board certified physicians, nurses and technicians, are available on-call 24-hours daily:

- i. Pediatrics, where younger recipients may be involved;

- ii. Infectious disease;

- iii. Nephrology with approved end stage renal disease dialysis capability;

- iv. Pulmonary medicine with respiratory therapy support;

- v. Pathology;

- vi. Immunology;

- vii. Anesthesiology;

- viii. Physical therapy;

- ix. Pharmacology;

- x. Radiology; and

- xi. Nutrition;

3. Each center shall have access to the services of a laboratory certified under the National Organ Transplant Act, or a written agreement that such services will be available within 90 days of certificate of need approval;

4. The applicant shall have immediate access on site, or by contract, within 90 days of certificate of need approval, to laboratory facilities capable of virology, cytology, microbiology and monitoring of immunosuppressive drugs;

5. The applicant shall document blood bank support with the capacity to supply blood components for the number of transplants that are projected, the ability to irradiate blood components, and to ensure the availability of a blood separator and central blood repository;

6. The applicant shall document the availability on site or by contractual arrangement of the psychiatric and social support services essential for the total care of transplant recipients and for helping families cope with the transplant experience; and

7. As part of the hospital's quality assurance program, the transplantation service shall present and implement a system for evaluating the quality and appropriateness of patient care and patient outcomes, including survival rates and any complications.

8:33Q-1.8 Compliance

(a) Certificate of need applicants for new transplantation services shall document ability to meet minimum standards and criteria contained in this subchapter within three years from the initiation of the service. Failure to achieve the minimum level by the end of the second year of operation will result in notification of Department of Health

intention to rescind Certificate of Need approval and move for licensing sanctions that may include closure of the service. The inability to achieve minimum utilization levels during the third year of operation or thereafter may result in rescission of the certificate of need or licensing sanctions.

(b) Existing transplantation services shall meet the minimum criteria and standards contained in this subchapter. Existing providers failing to achieve the minimum utilization standards specified in this subchapter *[within one year following the effective date of this subchapter]* ***by November 19, 1991*** and each year thereafter will be subject to licensing or reimbursement sanctions that may include closure of the service.

8:33Q-1.9 Performance data reports

(a) Because transplant activity and outcome data for each center will be a means of determining continuing certification, each service shall maintain performance reports for submission to the Department of Health annually.

(b) Minimum data maintained should describe transplants performed, including, but not limited to:

1. Age, race, sex, and ability to pay of those on the waiting list;
2. Numbers and types of procedures;
3. Patient and graft survival rates over varying periods of time by age, sex and race;
4. Patient charges; and
5. Source(s) of payment.

8:33Q-1.10 Advisory Council on Organ Transplantation

(a) An advisory council of 15 members shall be established under the authority of the Commissioner to:

1. Review State standards and criteria for services relating to transplantation at least annually; and
2. Develop public policy recommendations to facilitate human organ and tissue donation and to ensure the accessibility and quality of retrieval and transplantation services.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Residential Health Care Facilities

Standards for Licensure

Readoption: N.J.A.C. 8:43

Proposed: August 20, 1990 at 22 N.J.R. 2499(a).

Adopted: October 19, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: October 24, 1990 as R.1990 d.568 **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: October 24, 1990.

Expiration Date: November 19, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Because the current Standards for Licensure of Residential Health Care Facilities, N.J.A.C. 8:43, are scheduled to expire on January 21, 1991, pursuant to the "sunset" provisions of Executive Order No. 66(1978), the Department proposed to readopt this chapter for an additional one-year period (see 22 N.J.R. 2499(a)), in order to allow time for a comprehensive revision of the rules. However, in response to concerns expressed by members of the Residential Health Care Advisory Committee who are assisting with the revision of the chapter, the Department has agreed to initiate a study of the economic impact of the proposed new rules. The Department has, therefore, determined it necessary to readopt the chapter for a two-year period following publication on November 19, 1990. This extension will allow sufficient time for the completion of the study of the full economic impact of the proposed revisions. Readoption for a two-year period will avert the scheduled January 21, 1991, expiration of the licensure rules and will also ensure that the revised rules are responsive to the needs of both residents and providers of residential health care.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43.

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

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

Proposed: April 16, 1990 at 22 N.J.R. 1214(b).

Adopted: October 17, 1990 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: October 24, 1990 as R.1990 d.569, **with portions of the proposal not adopted and portions of the proposal not adopted but still pending.**

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

Effective Date: November 19, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received concerning the products affected by this notice of adoption.

The following products and their manufacturers were **adopted**:

Erythromycin topical soln 2%	PharmBasics
Isoproterenol inhalation 0.5%	Dey

The following products and their manufacturers were **not adopted**:

Isoetharine inhalation 0.08, 0.17, 1%	Dey
Metaproterenol inhal. 5%	Dey
Racinephrine inhalation 2.25%	Dey
Sodium polystyrene sulfonate powder	PharmBasics

The following products were **not adopted but are still pending**:

Acetylcysteine solution 10%, 20%	Hollister-Stier
Albuterol tabs 2, 4 mg	Mylan
Atenolol tabs 50, 100 mg	Cord
Cephalexin for susp. 125/5 ml	Squibb
Clemastine fumarate syrup 0.5 mg/5 ml	Copley
Fenopropfen tabs 600 mg	Mutual
Griseofulvin ultramicro. tabs 165, 330 mg	Sidmak
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Methyldopa/HCTZ tabs 250/15, 250/25	Lederle
Nifedipine caps 20 mg	Cord
Potassium Cl ER tabs 8 mEq	Mylan, Upsher-Smith
Sulindac tabs 150, 200 mg	Lederle, Mylan
Theophylline soln 80 mg/15 ml	Ferndale
Triamterene/HCTZ caps 50/25	Cord
Triamterene/HCTZ tabs 37.5/25	Cord
Valproic acid syrup 250 mg/5 ml	Copley

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 22 N.J.R. 2162(b) and 3149(a).

(c)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

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

Proposed: February 20, 1990 at 22 N.J.R. 596(a).

Adopted: October 17, 1990, by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: October 24, 1990 as R.1990 d.570, **with portions not adopted but still pending.**

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

Effective Date: November 19, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received concerning the products affected by this notice of adoption.

HEALTH

The following products and their manufacturers were **adopted**:

Lithium citrate syrup 8 mEq/5 ml	PharmBasics
Nifedipine caps 10 mg	Chase
Prednisone oral soln 5 mg/5 ml	PharmBasics
Trazodone tabs 50, 100 mg	Cord

The following products were **not adopted but are still pending**:

Albuterol tabs, 2, 4 mg	Barr
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Betamethasone valerate cream, oint 0.1%	Pharmafair
Betamethasone valerate lotion 0.1%	Pharmafair
Butalbital/APAP tabs	Pharmafair
Cyclobenzaprine tabs 10 mg	Cord
Erythromycin base EC/ER tabs 250	Barr
Erythromycin ethylsucc. susp 200/5.400/5	Barr
Flurazepam caps 15, 30 mg	Cord
Hydrochlorothiazide tabs 50 mg	Pharmafair
Hydroxyzine pamoate caps 25, 50, 100 mg	Cord
Nifedipine caps 10 mg	Cord
Propoxyphene napsylate/APAP 100/650	Cord
SMZ/TMP susp 200/40	Barr
Sulindac tabs 150, 200 mg	Cord
Sulindac tabs 150, 200 mg	Lemmon
Tolmetin sodium caps 400 mg	Purepac

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 22 N.J.R. 1597(b) and 2163(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

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

Proposed: August 20, 1990 at 22 N.J.R. 2501(a).

Adopted: October 17, 1990, by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: October 24, 1990 as R.1990 d.571, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: November 19, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

Regarding quinidine gluconate:

COMMENT: Mutual Laboratories commented that their product had been previously rejected, despite being closer to the brand in bioequivalency than were other manufacturers' products.

RESPONSE: The Council agreed and added Mutual's product to the Formulary.

Concerning theophylline tablets:

COMMENT: Schering Laboratories opposed the addition of Sidmak's theophylline tablets to the Formulary, as did several physicians and two asthma associations, citing the critical nature of theophyllines and the need to consistently use just the branded product.

Sidmak commented that the negative comments were anecdotal, unsentimental, and not pertinent to the Council's decision criteria for determining bioequivalency.

RESPONSE: The Council agreed with Sidmak that their theophyllines meet the usual bioequivalency guidelines and thus added them to the Formulary.

Concerning levothyroxine injection:

COMMENT: Boots Pharmaceuticals commented that this product is primarily used in hospitals, thus is unsuitable for generic substitution in retail pharmacies.

RESPONSE: The Council agreed and rejected this product.

The following products and their manufacturers were **adopted**:

Amoxapine tabs 25, 50, 100, 150 mg	Watson Labs
Benzoyl peroxide gel 2.5%, 5%, 10%	Syosset

Butalbital, codeine, ASA caps
 Carbinoxamine/pseudoephedrine/DM drops
 Carbinoxamine/pseudoephedrine/DM syrup
 Clonidine tabs 0.1, 0.2, 0.3 mg
 Erythromycin soln 2%
 Iodinated glycerol elixir 60 mg/5 ml
 Iodinated glycerol/DM liquid
 Iodochlorhydroxyquin 3%/HC 1% cream
 Isometheptene/dichloralphen./APAP caps
 Naldecon Ped. syrup substitute
 Naldecon Ped. drops substitute
 Naldecon syrup substitute
 Nifedipine caps 20 mg
 Organidin elixir substitute
 Organidin soln substitute
 Phenazopyridine tabs 100, 200 mg
 Pilocarpine HCl 0.5% ophth sol
 Polyvitamins/F sol'n 0.25, 0.5 mg
 Potassium chloride ER caps 10 mEq
 Promethazine & codeine syr.
 Propoxyphene HCl/APAP tabs 65/650
 Propranolol tabs 60, 90 mg
 Quinidine gluconate ER tabs 324 mg
 Quinine Sulfate tabs 260 mg
 Rynatan tabs formula
 Salsalate tabs 500, 750 mg
 Salsalate tabs 500, 750 mg
 Selenium sulfide lotion 2.5%
 Theophylline tabs ER 100, 200, 300 mg
 Theophylline/guaifenesin 150/90/15 ml
 Timolol Maleate tabs 5, 10, 20 mg
 Triamcinolone oint 0.025, 0.1, 0.5%
 Trimethobenzamide HCl suppos 100, 200 mg
 Tussi-Organidin DM substitute
 Vitamins ADC/Fluoride 0.25, 0.50 soln

J. Stevens
 Tri-Med Labs
 Tri-Med Labs
 Lederle
 Syosset
 Halsey
 Silax Pharm
 Syosset
 Biopharm., J. Stevens
 Hi-Tech
 Hi-Tech
 Hi-Tech
 Purepac
 Hi-Tech
 Hi-Tech
 Able Labs
 Optotics
 Tri-Med Labs
 Adria Labs
 Halsey
 Cord
 Watson Labs
 Mutual
 Mutual Pharm
 Biopharm.
 Able Labs
 Chelsea Labs
 Syosset
 Sidmak Labs
 Halsey
 Mylan Pharm
 Syosset
 Able Labs
 Hi-Tech
 Esquire, Tri-Med

The following products and their manufacturer were **not adopted**:

Cafergot-PB tabs substitute
 Comhist LA caps substitute
 Hydrocortisone suppositories
 Iodinated glycerol tabs 30 mg
 Iodinated glycerol tabs 30 mg
 Levothyroxine inj 200, 500 mcg
 Lidocaine HCl inj 1%, 2%
 Morphine Sulfate ER tabs 30 mg
 Neostigmine methylsulfate inj 1:1000
 Neostigmine methylsulfate inj 1:2000
 Orphenadrine Citrate inj 30 mg/ml
 Phenylephrine/PPA/guaifenesin liq
 Podophyllum resin 25%
 Prochlorperazine edisylate 5 mg/ml
 Tropicamide ophth soln 0.5, 1.0%
 Urised formula
 Verapamil tabs 80, 120 mg

Anabolic
 Time-Cap
 Able Labs
 Able Labs
 Biopharm.
 Steris
 Steris Labs
 Roxane
 Steris Labs
 Steris Labs
 Steris Labs
 Silax Pharm
 Syosset
 Steris Labs
 Optotics
 Able Labs
 Lederle

The following products were **not adopted but are still pending**:

Albuterol sulf tabs 2, 4 mg
 Albuterol sulf 2, 4 mg tabs
 Amiloride/HCTZ tabs 5/50
 Carbamazepine 100 mg chewable tabs
 Chlorpropamide tabs 100, 250 mg
 Clonidine 0.1, 0.2, 0.3 mg tabs
 Clorazepate tabs 3.75, 7.5, 15 mg
 Digoxin tabs 0.125, 0.25 mg
 Digoxin tabs 0.125, 0.5 mg
 Doxepin HCl caps 10, 25, 50 mg
 Doxycycline caps 50, 100 mg
 Doxycycline tabs 100 mg
 Erythromycin ER tabs 250, 333 mg
 Erythromycin ethylsuccinate tabs 400 mg
 Fenopropfen caps 200, 300 mg
 Fenopropfen tabs 600 mg
 Indomethacin 25, 50 mg caps
 Leucovorin 2 mg tab
 Loperamide 2 mg caps

Purepac
 W-C
 Cord
 W-C
 Lederle
 W-C
 W-C
 Zenith Labs
 Pioneer
 Purepac
 Interpharm
 Interpharm
 Abbott Labs
 Abbott Labs
 W-C
 W-C
 W-C
 W-C
 Lemmon, W-C

Lorazepam 0.5, 1, 2 mg tabs	W-C
Methyldopa/HCTZ tabs 500/30, 500/50	W-C
Methyldopa tabs 125, 250, 500 mg	Roxane
Methyldopa/HCTZ tabs 250/15, 250/25	W-C
Minocycline 50, 100 mg tabs	W-C
Probenecid tabs 500 mg	Zenith
Propranolol tabs 10, 20, 40, 60, 80 mg	W-C
Propranolol tabs 10, 20, 40, 60, 80 mg	W-C
Propranolol HCTZ 40/25, 80/25 tabs	W-C
Sulindac tabs 150, 200 mg	Purepac
Sulindac tabs 150, 200 mg	W-C
Tetracycline 250, 500 mg caps	W-C
Timolol maleate tabs 5, 10, 20 mg	W-C
Tolmetin sodium caps 400 mg	Cord, W-C
Tolmetin tabs 200 mg	W-C
Verapamil HCl tab 40 mg	Cord, Purepac

TREASURY-GENERAL

(a)

GOVERNOR'S COUNCIL ON ALCOHOLISM AND DRUG ABUSE

Governor's Council on Alcoholism and Drug Abuse Rules

Adopted New Rules: N.J.A.C. 17:40

Proposed: July 16, 1990 at 22 N.J.R. 2120(a).

Adopted: October 16, 1990 by the Governor's Council on

Alcoholism and Drug Abuse, Joseph P. Miele, Chairman.

Filed: October 17, 1990 as R.1990 d.549, **without change**.

Authority: N.J.S.A. 26:2BB-1 et seq., specifically 26:2BB-4j.

Effective Date: November 19, 1990.

Expiration Date: November 19, 1995.

Summary of Public Comments and Agency Responses:

The Council held three public hearings and received written comments. The comments and Council responses follow, arranged by tape and date of comment.

Comments from the Morristown Public Hearing, August 1, 1990

COMMENT 1: Morris County Alliance Coordinator had questions regarding whether a letter of notification or intent will be issued for the alliance grant initiative.

RESPONSE: When N.J.A.C. 17:40 and any amendments receive final adoption, the Council will present a funding formula at a public meeting and forward this intent to the counties.

COMMENT 2: The same person asked about the timelines (N.J.A.C. 17:40-1.4(a)5) and, in view of the fact that no letter of intent was issued, many counties are at differing points in their preparation of alliance grants. Some county governments have not issued Request for Funding (RFP's) without such a letter. Will the timeline take into consideration the variations within the counties?

RESPONSE: A new deadline for submission of RFP and County Alliance Plans will be forwarded to the counties and published in form of a public notice in the New Jersey Register.

COMMENT 3: A Morris County Freeholder commented on the long delay between the legislation initiating the grant program and its implementation.

RESPONSE: The final adoption of these rules and the adoption of a rule promulgating a funding formula will be necessary prior to initiating the program.

COMMENT 4: A commenter from Millburn Township does not like having the number of arrests as a criteria for awarding funds.

RESPONSE: This comment will be taken into consideration as the Council adopts a funding formula at public meeting. It is Council's intention to adopt an emergency rule and concurrent proposal. Comments will be solicited at that time.

COMMENT 5: The founder of the Essex County Local Advisory Council on Alcoholism and Drug Abuse (LACADA) comments that the rules apparently leave out the LACADA as a body in the county alliance plans, referring rather to the County Alliance Steering Subcommittee (CASS).

RESPONSE: This agency views the County Alliance Steering Subcommittee as an extension or part of the LACADA. Municipal programs will be reviewed and, if needed, enhanced by the technical assistance of the CASS and the Alliance Coordinator (see N.J.A.C. 17:40-3.3(c)). The inclusion of the LACADA is assured by its association to the CASS. The flow of municipal alliance monies will also insure the inclusion of the county government, county coordinators and LACADA's in the awards process (see N.J.A.C. 17:40-3.3(j)).

COMMENT 6: The Chief of the Madison Police Department asked (a) whether the Drug Abuse Resistance Education (DARE) program is acceptable as a prevention program in the Alliance context and (b) is money from the Municipal Alliance in or out of the municipal "cap"?

RESPONSE: (a) The DARE program is an acceptable way for a municipality to use its alliance monies, if it so chooses. Further the salaries of officers involved with DARE can be used as the in kind match in the RFP. Caution is given that, pursuant to N.J.A.C. 17:40-3.5(a), Alliance funds can not supplant existing programs, that is, if a DARE program is currently being supported with municipal monies, Alliance monies can be used only to expand that program. It is further thought by this agency that a municipal alliance basing its entire program and resources in one area, such as DARE program, in and of itself would not be fulfilling the purpose and scope outlined in N.J.A.C. 17:40-2.1.

(b) The Council has received an interpretation from the office of the Attorney General, which is on file, that Alliance monies will be outside the "cap."

COMMENT 7: A Mount Olive police officer and member of his LACADA asked what assurance municipalities have on receiving Alliance monies and how much Alliance money will be distributed in CY 1991.

RESPONSE: Refer to N.J.A.C. 17:40-3.3(g)-(h). The determination of annual amount will be made after these rules and any amendments are finalized, the Council presents a funding formula at an open public hearing, and that formula is adopted.

COMMENT 8: A commenter involved with public housing in the Morristown area had two comments: (a) that the criteria for involvement in alliances should be broad enough to involve all aspects of New Jersey communities; and (b) that county and municipalities should be required to embrace existing grass roots organizations.

RESPONSE: (a) This agency feels the criteria outlined in N.J.A.C. 17:40 is sufficient to include all interested parties; and (b) N.J.A.C. 17:40-2.4 allows for inclusion of a representative of the local housing authority or other local organization.

COMMENT 9: The Bergen County Alliance Coordinator comments that Bergen Municipal Alliances have moved forward with RFP's, have a countywide Alliance plan prepared, and are very concerned that any readjustment of the timeline would disrupt motivation in Bergen County.

RESPONSE: Refer to the response to Comment 2.

COMMENT 10: A volunteer of the Chatham Borough Municipal Alliance asked about what was entailed by "matching grants" and what type of 100 percent funding is required of municipal alliances.

RESPONSE: N.J.A.C. 17:40-3.5(d), specifically (d)1-3 and 8, indicate types of in-kind services that could be used as match. Hard and soft match were frequently mentioned throughout the public hearings. The fiscal requirements promulgated throughout the State indicated that municipalities would be required to match the alliance grant 100 percent. This match, as indicated in the fiscal requirements page of the RFP, was to be in the form of 25 percent cash (hard) match and 75 percent in-kind (soft) match. Due to public comment, the council has decided to waive, for the first year, the hard match requirement. Municipalities that document that they have already raised their hard match and plan to use it this year can deduct the equivalent amount from their hard match in subsequent grant cycles. No rule change is required for this (see N.J.A.C. 17:40-3.5(b)).

COMMENT 11: The Alliance Coordinator from Passaic County wanted to know: (a) if the State was issuing a tax deductible form for Alliance donations from businesses and (b) will municipal alliances be required to carry extra insurance coverage.

RESPONSE: (a) Any tax deductible status for a municipality shall be the determination of the municipality. (b) Extra insurance will not be required if the Municipal Alliance remains an extension of the municipal government.

COMMENT 12: A Municipal Alliance member from Madison would like: (a) the wording in N.J.A.C. 17:40-2.4(c) to be changed from "may include" to "shall include," to insure representation of the police department and school system; and, (b) felt that N.J.A.C. 17:40-2.5(d)2 was

redundant, since Department of Education rules covering the same area were already in effect.

RESPONSE: (a) The language reads "may" rather than "shall" to provide as much local control as possible on the Alliance program. The CASS, LACADA, and, ultimately, the Council have a responsibility to oversee the formation of Municipal Alliances and to ensure that representation adheres to the spirit and scope of the legislation and rules. (b) In N.J.A.C. 17:40-2.5(d)2, the word "developing" can be read to mean "enhancing." For that reason, the requirements do not duplicate Department of Education requirements, but enhance such requirements.

COMMENT 13: A question was asked if the transcripts of the public hearings will be made available.

RESPONSE: Cost factors preclude any type of massive reproduction of transcripts, but they are available for examination at 116 West State Street, Trenton, N.J., along with written comment received by the Council.

COMMENT 14: A resident of Morristown public housing and a volunteer in Morristown asked if persons from public housing will be welcome to join in the Alliance process.

RESPONSE: See the previous response to Comment 8.

COMMENT 15: A policeman from West Milford Township asked two questions: (a) are Municipal Alliances required to act under provisions of the Sunshine Act and (b) what provisions are in place to assure continuation of programs after the first year.

RESPONSE: (a) Municipal Alliances shall conform to provisions outlined in the Sunshine Act. County Alliance Coordinators will be supplied with these provisions. (b) All programs in State government are reviewed on a year by year basis and have no guarantee of continuation.

Comments from the Atlantic City Public Hearing, September 16, 1990

COMMENT 16: The Health Officer for Atlantic City was concerned that the rules mention only State and county funding formulas and do not address local funding sources or provide for the financial participation of local school boards or municipalities. He also commented that the make-up of the Municipal Alliance outlined in N.J.A.C. 17:40-2.4(c) is excellent.

RESPONSE: The enacting legislation neither provides for or intends for the Council to have authority over any other funding source. The comment about N.J.A.C. 17:40-2.4(c) is appreciatively noted.

COMMENT 17: The same person, in addition, noted that attitudes regarding the selling of drugs have changed and that the selling of drugs has become more acceptable to many young persons in recent years. He also commented with regard to the overabundance of alliances of late and that many overlap.

RESPONSE: The need for localized municipal efforts rests with the fact that attitudes change so quickly—not only from year to year, but from community to community. This agency feels many alliances already formed address problems that are a result of alcoholism and drug abuse and would work well with Municipal Alliances.

COMMENT 18: The alcohol and drug abuse county coordinator for Atlantic County noted broad based support for the Alliance program and commented that fiscal oversight could be expanded at the county and State levels simply by using the same system of contracts and sub-contracts that is presently used in the Division of Alcoholism and Drug Abuse for 531 monies.

RESPONSE: This agency acknowledges and appreciates the support in Atlantic County. Much of the oversight and monitoring will be done by The Alliance coordinator in conjunction with the CASS/LACADA (see N.J.A.C. 17:40-3.3(c), (e)), with much of the contract/subcontract system remaining the same (see N.J.A.C. 17:40-3.3(j)).

COMMENT 19: The chairperson of the South Toms River Alliance asked two questions: (a) Is it alright to set up non-profit corporations as alliances to expedite their responsiveness? and (b) If local groups begin fund raising activities in advance of the formal adoption of a Municipal Alliance, where should that money go?

RESPONSE: (a) Non-profit corporations will be acceptable under these rules. It is felt, however, that non-profit corporations will have a tendency to pull away from the purpose and scope of the program by distancing themselves from the municipal government. Municipal government will be an active participant in this program or an alliance isn't truly formed. There will also be inherently different fiscal compliance requirements associated with non-profit status. (b) Local groups should not defer fund raising efforts while waiting for formal adoption of the rules. There is no legal culpability for responsible fund raising and the placement of results in an appropriate place or account.

COMMENT 20: A person associated with the Atlantic County Mental Health Center commented on: (a) the lack of recognition in the rules for the Professional Advisory Committee on Alcohol and Drug Abuse (PACADA), (b) the increased need for prevention, especially in Atlantic City, due to the negative impact of the Casino Industry on Atlantic City youth, (c) the need to take into consideration the transient population of areas such as Atlantic County and (d) the Council should give more recognition and assistance to compulsive gambling.

RESPONSE: The agency recognizes the importance of the PACADA as an integral part of the county-wide formulation of alcohol and drug abuse policy. (b) The concept of Municipal Alliances was built on the need for individual communities to tailor their specific prevention requirements to their municipality. (c) The Council will take this comment into consideration when finalizing a funding formula at a public meeting; refer to response #4. (d) N.J.A.C. 17:40-1.4(a)8 requests that the Council determine the need to include gambling within its scope. The Council has done this, and the Gambling Subcommittee of the Policy, Planning and Review Committee of the Council is an integral part of the Council's planning process.

COMMENT 21: The alcoholism and drug abuse coordinator for Cape May County applauded the rules and the Council for three reasons: (a) The funding process, which takes advantage of existing funding mechanisms already in place within the county (see N.J.A.C. 17:40-3.3(g)); (b) That the program stresses prevention rather than treatment; (c) That the program is community based. Comments of concern included a request to have a southern New Jersey resident appointed to the Council and that the funding formula take into consideration the swelling of tourist and transient populations on oceanside counties during the summer months.

RESPONSE: The Council appreciates the supportive comments. The comment regarding a Southern New Jersey Council member will be forwarded to the Governor for determination at the appropriate time. The Council will review the concerns of all geographical areas when it establishes its funding formula.

COMMENT 22: A citizen from Red Bank feels her town will be unable to acquire the hard match portion of the alliance grant, suggesting it be waived for the initiating year, or many towns will not be able to comply.

RESPONSE: Refer to response 10.

Comments from the Trenton Public Hearing, September 6, 1990.

COMMENT 23: A representative of Signs of Sobriety, Inc., was concerned about the lack of treatment facilities for the deaf and wanted to ensure that the deaf community was represented as the Municipal Alliances were being formulated.

RESPONSE: The Alliance Committee of the Council has met with the directors of Signs of Sobriety and other agencies involved with the deaf community regarding obstacles to the inclusion of this community in the alliance program. A representative of Signs of Sobriety, Inc. has been extended an invitation to join the Alliance Committee.

COMMENT 24: A representative of the South Toms River alliance comments that her municipal government is confused as to where the alliance money should go.

RESPONSE: An earlier response indicated that the alliance monies would be outside of the municipal "cap." Given this, a separate account exclusively for alliance funds could be set up at the discretion of the municipal supervisor(s). The responsibility for the final determination of the amount of municipal alliance grant awards rests with the county government after approval of the County Alliance Plan by the Council and the Councils' approval of a funding formula. (See N.J.A.C. 17:40-3.3(g)).

COMMENT 25: The Monmouth County Alliance Coordinator requests that if the alliance moneys are outside the "cap", something should be available to document this agreement.

RESPONSE: Refer to Response 6.

COMMENT 26: A Municipal Alliance Chairperson from Middlesex County commented that some counties are promulgating funding formulas that would fund alliances through a competitive awards system, which seems to detract from the spirit of cooperation within a county's Municipal Alliances.

RESPONSE: In an effort to allow as much local control and latitude to this program as possible, counties will be responsible for the development of county-wide funding formulas for awards to municipalities and the Council will be responsible for a State-wide funding formula to the counties.

COMMENT 27: A volunteer in an alcohol/drug abuse community program in Morris County indicated that this meeting was the first he had heard of an Alliance plan.

RESPONSE: At this time, all 21 counties have Alliance Coordinators in place, but this has been a long process. Information and current lists of County Alliance Coordinators is available by contacting the Council at (609) 777-0526 or writing John Kriger, State Alliance Coordinator at 116 West State Street, CN 345, Trenton, NJ.

COMMENT 28: The Alliance Coordinator of Monmouth County asked about rumors she had heard that alliance moneys are going to non-profit organizations, rather than through the municipalities.

RESPONSE: Refer to response 19. The legislation or rules do not bar a municipality from having a non-profit organization as its alliance; however, it must conform to the spirit, purpose, and scope of these rules and, by definition, would require different fiscal compliance standards.

COMMENT 29: The Alliance Coordinator for Passaic County asked when County Alliance Plans can be forwarded to the Council.

RESPONSE: At any time after the completion of the plan, as outlined by these rules.

COMMENT 30: A police officer asked if DARE officers could be trained with Alliance funds. Additionally, the coordinator for Morris County wanted to know if DARE could be included in a plan, if a municipality had a DARE program already started.

RESPONSE: Refer to response 6(a). DARE programs definitely fit the criteria of a prevention program, and are acceptable within the confines of these rules, but there is a strong and clear message against supplantation. (See N.J.A.C. 17:40-3.5(a).)

COMMENT 31: The alliance coordinator from Passaic County asked if the budget page of the RFP could be amended to reflect an additional "total" column.

RESPONSE: The Council will take this suggestion under advisement.

Written Comment; August 16, 1990

COMMENT 32: The National Council on Alcoholism of Monmouth County, Inc. had two areas of concern. They wanted to know (a) what the Council's interpretation of "seed money" is; whether this is start up money and, if so, for what length of time will it be funded, and (b) N.J.A.C. 17:40-3.3, (a) through (f), indicate an oversight role for the County Alliance Steering Subcommittee over the Local Advisory Council on Alcoholism and Drug Abuse.

RESPONSE: (a) Refer to response 15(b). (b) Refer to response 5. The Council anticipates the CASS to position itself as a traditional subcommittee, and not to have an overview or a leadership role with the LACADA.

Written Comment; September 13, 1990

COMMENT 33: The Freeholders of Somerset County reviewed the proposed rules and offered comment.

Areas of concern to Somerset County include (a) in N.J.A.C. 17:40-2.2, the language should read "may include" rather than "shall include." (b) N.J.A.C. 17:40-2.2(c) should provide terms of office for CASS members. (c) The rules do not sufficiently identify the county as the entity responsible for the Alliance Programs. (d) N.J.A.C. 17:40-3.3, especially (g)-(i), give too much responsibility to the CASS. (e) The rules do not designate who will provide monitoring of sub-contracts to municipalities. (f) N.J.A.C. 17:40-2.4 indicates 16 possible representatives of Municipal Alliance Committee who "may" be represented. The Somerset Freeholders feel the language should be changed to "shall" and that the representatives should be specified. (g) N.J.A.C. 17:40-2.5(d)2 and 3 give authority to the CASS for determination for the alcohol and drug abuse policy within local school systems. (h) Will Alliance monies be rolled over in the county budget to finance the following year's Alliance program?

RESPONSE: (a) The language "shall" and "may" are legislative mandates and reflect the wishes of the enacting legislators. (b) The control over terms for the CASS shall be decided by the LACADA. (c) The identification of the county agency with ultimate responsibility for county Alliances is included in N.J.A.C. 17:40-3.3(j), "The county agency or individual designated by the governing body," . . . "is authorized to receive the Governor's Council's moneys made available under the RFP process." (d) The CASS, by definition, is a subcommittee of the LACADA. (e) The counties and The Governor's Council will share responsibilities. (f) Refer to prior Response 12(b). The enacting legislation preceding these rules was written prior to Department of Education mandated curriculum for alcoholism and drug abuse. (g) The CASS role would be supportive for Local school initiatives. (h) Alliance moneys would roll-over towards the following year.

Full Text of the adoption follows:

CHAPTER 40 RULES OF THE GOVERNOR'S COUNCIL ON ALCOHOLISM AND DRUG ABUSE

SUBCHAPTER 1. GENERAL PROVISIONS

17:40-1.1 Scope

This chapter shall constitute the Governor's Council on Alcoholism and Drug Abuse's rules governing the establishment of the Alliance to Prevent Alcoholism and Drug Abuse, Local Advisory Committees on Alcoholism and Drug Abuse, County Alliance Steering Subcommittees, and Municipal Alliance Committees. These rules shall also govern the distribution of grants to counties and municipalities for alcohol and drug abuse programs established under the Alliance to Prevent Alcoholism and Drug Abuse.

17:40-1.2 Construction

This chapter shall be liberally construed to permit the Council, the Alliance, LACADAs, County Alliance Steering Subcommittees and Municipal Alliance Committees to discharge their Statutory functions under N.J.S.A. 26:2BB-1 et seq. and N.J.S.A. 2B:2B-32 et seq.

17:40-1.3 Definitions

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

"Alcoholism" means the chronic, habitual, or periodic consumption of alcohol beverages to the extent that such use substantially and progressively injures the health, interferes with social or economic functioning in the community or results in the loss of self-control with respect to the use of such beverages.

"Alliance" means the Alliance to Prevent Alcoholism and Drug Abuse created in the Governor's Council on Alcoholism and Drug Abuse.

"Alliance coordinator" means the individual designated by the county to coordinate all activities of the County Alliance Steering Committee.

"Council" means the Governor's Council on Alcoholism and Drug Abuse (GCADA).

"County Alliance Steering Subcommittee" means the subcommittee established by each Local Advisory Committee on Alcoholism and Drug Abuse pursuant to N.J.S.A. 26:2BB-8.

"DEDR Funds" means the Mandatory Drug Enforcement and Demand Reduction Penalties established by N.J.S.A. 2C:35-15 et seq.

"Drug abuse" means the regular use of a controlled dangerous substance and/or licit psychoactive substances that affect the central nervous system resulting in persistent or recurrent psychological, physical, social, legal, or occupational problems.

"LACADA" means the Local Advisory Committee on Alcoholism and Drug Abuse established pursuant to N.J.S.A. 26:2B-33.

"Matching funds" means a percentage or designated amount of funds required as a cost sharing for grants awarded by the Council.

"Municipal Alliance Committee" means the committee established by the governing body of a municipality pursuant to N.J.S.A. 26:2BB-9.

"RFP" means the Request For Proposal process described in this chapter.

17:40-1.4 Duties and Responsibilities of the Governor's Council on Alcoholism and Drug Abuse

(a) The Council shall:

1. Review and coordinate all State departments' efforts in regard to the planning and provision of treatment, prevention, research, evaluation, and education services for, and public awareness of, alcoholism and drug abuse;

2. Prepare by July 1 of each year, the State government component of the Comprehensive Statewide Alcoholism and Drug Abuse Master Plan for the treatment, prevention, research, evaluation, education and public awareness of alcoholism and drug abuse in this State, which plan shall include an emphasis on prevention, community awareness, and family and youth services;

3. Review each County Alliance Annual Plan and the recommendations of the Division of Alcoholism and Drug Abuse in the Department of Health for awarding the Alliance grants and, by October 1 of each year, return the plan to the Local Advisory Committee on Alcoholism and Drug Abuse with the Council's proposed recommendations for awarding Alliance grants;

4. Submit to the Governor and the Legislature by December 1 of each year the Comprehensive Statewide Alcoholism and Drug Abuse Master Plan, which shall include recommended appropriate allocations to State departments, local governments and local agencies and service providers of all State and federal funds for the treatment, prevention, research, evaluation, education and public awareness of alcoholism and drug abuse in accordance with the regular budget cycle, and shall incorporate and unify all State, county, local and private alcohol and drug abuse initiatives;

5. Distribute grants, upon the recommendation of the Executive Director of the Council, by August 1 of each year to counties and municipalities for alcohol and drug abuse programs established under the Alliance to Prevent Alcoholism and Drug Abuse;

6. Evaluate the existing funding mechanisms for alcoholism and drug abuse services and recommend to the Governor and the Legislature any changes which may improve the coordination of services to citizens in this State;

7. Encourage the development or expansion of employee assistance programs for employees in both government and the private sector;

8. Evaluate the need for, and feasibility of, including other addictions, such as smoking and gambling, within the scope and responsibility of the Council; and

9. Collect from any State, county, local governmental entity or any other appropriate source data, reports, statistics or other materials which are necessary to carry out the Council's functions.

SUBCHAPTER 2. ALLIANCE TO PREVENT ALCOHOLISM AND DRUG ABUSE

17:40-2.1 Purpose and scope

(a) Pursuant to N.J.S.A. 26:2BB-7a, an Alliance to Prevent Alcoholism and Drug Abuse was created in the Council. The purpose of the Alliance is to create a network, comprised of all the communities in New Jersey, which is dedicated to a comprehensive and coordinated effort against alcoholism and drug abuse.

(b) The Alliance shall be a mechanism both for implementing policies to reduce alcoholism and drug abuse at the municipal level, and for providing funds, including moneys from mandatory penalties on drug offenders, to member communities to support appropriate county and municipal-based alcohol and drug abuse education and public awareness activities.

(c) The Alliance shall be comprised of all LACADAs, County Alliance Steering Subcommittees and Municipal Alliance Committees established under N.J.S.A. 26:2BB-1 et seq., N.J.S.A. 26:2B-32 et seq., and this chapter.

(d) Alliance members, in accordance with N.J.S.A. 26:2BB-1 et seq., 26:2B-32 et seq. and this chapter, may be awarded grants by the Governor's Council for the purpose of developing:

1. Organized and coordinated efforts involving schools, law enforcement, business groups and other community organizations for the purpose of reducing alcoholism and drug abuse;

2. In cooperation with local school districts, comprehensive and effective alcoholism and drug abuse education programs in grades K through 12;

3. In cooperation with local school districts, procedures for the intervention, treatment and discipline of students abusing alcohol or drugs;

4. Comprehensive alcoholism and drug abuse education, support and outreach efforts for parents in the community; and

5. Comprehensive alcoholism and drug abuse community awareness programs.

17:40-2.2 County Alliance Steering Subcommittees; membership; meetings

(a) Each LACADA established pursuant to N.J.S.A. 26:2B-33 shall establish a County Alliance Steering Subcommittee.

(b) Each County Alliance Steering Subcommittee shall include broad representation from the county. The members of the Subcommittee shall include, but shall not be limited to, private citizens and representatives of the following:

1. The LACADA;
2. The county Human Services Advisory Council;
3. The county superintendent of schools;
4. The existing county council on alcoholism, if any;
5. The county prosecutor's office;
6. Family Part of the Chancery Division of the Superior Court;
7. The Youth Services Commission;
8. The county school board association;
9. The county health agency;
10. The county mental health agency;
11. Local businesses;
12. The county affiliate of the New Jersey Education Association;
13. The Parent-Teacher Association (PTA) or Parent-Teacher Organization (PTO); and
14. Other service providers.

(c) The county LACADA shall be responsible for appointing members to the County Alliance Steering Subcommittee. There is no limitation on the number of members who may be appointed to the Subcommittee by the LACADA. Members should be appointed for specific terms. Officers may be appointed by the LACADA or elected by the Subcommittee. A complete list of Steering Committee members, with their addresses, shall be annually provided to the Council.

(d) The County Alliance Steering Subcommittee shall hold meetings regularly with an annual calendar of meetings established at the Subcommittee's organizational meeting. Minutes must be kept of all Subcommittee meetings and a quorum of Subcommittee members is needed for action to be taken by the Subcommittee. A quorum shall be 50 percent of the Subcommittee membership plus one.

17:40-2.3 Functions of the County Alliance Steering Subcommittee

(a) The functions of the County Alliance Steering Subcommittee shall include:

1. Development and submission of a County Annual Alliance Plan for the expenditure of DEDR funds;

2. Development of programs and fiscal guidelines consistent with Council directives for the awarding of funds to counties and municipalities for drug and alcohol Alliance activities;

3. Identification of a network of community leadership for the expansion, replication and development of successful community model programs throughout the county;

4. Coordination of projects among and within municipalities to assure cost effectiveness and avoid fragmentation and duplication;

5. Establishment of a cooperative relationship with the County Youth Services committee in regard to the development of Municipal Alliances;

6. Provision of ongoing training to both itself and municipal-member alliance committees; and

7. Development of a County Alliance Plan incorporating the Municipal Alliance Committee Requests for Proposals for submission by October of each year to the Governor's Council on Alcoholism and Drug Abuse.

(b) The County Alliance Steering Subcommittee shall ensure that funds dedicated to education pursuant to N.J.S.A. 54:32C-3.1 do not duplicate the Alliance effort.

17:40-2.4 Municipal Alliance Committees; membership; bylaws; meetings

(a) Municipalities, in compliance with the standards set forth herein, may become members of the Alliance effort and may become eligible to receive State funds to assist the programs developed in their community.

(b) The governing body of each municipality may appoint a Municipal Alliance Committee, or join with one or more municipalities to appoint a Municipal Alliance Committee.

(c) Members of the Municipal Alliance Committee may be appointed by the governing body of the municipality. Each Committee shall include broad representation from the local community. Membership may include, but is not limited to:

1. The governing body's appointed representative;
2. The chief of police;
3. The President of the school board;
4. The superintendent of schools;
5. A student assistance coordinator;
6. A representative of the Parent-Teacher Association;
7. A representative of the local bargaining unit for teachers;
8. A representative of the Chamber of Commerce;
9. A representative from the local court system;
10. A representative of local civic associations;
11. Representatives of local religious groups;
12. Individuals who have been impacted by alcoholism and/or drug abuse, including individuals who have been directly affected by their own, or family's member's abuse or addictions;
13. Representatives of labor unions;
14. Representatives of the media;
15. Private citizens with interest or experience in issues concerning alcohol and/or drug abuse; and/or
16. Representatives of public and private organizations involved in treatment of alcohol and drug related problems.

(d) There shall be no limitation on the number of members who may be appointed to the Municipal Alliance Committee by the Mayor or governing body. Fifty percent of the members, however must reside in the municipality. Members shall be appointed for specific terms. Officers may either be appointed by the governing body, or elected by the Committee. A complete list of Municipal Alliance Committee members, with their addresses, shall be annually provided to the Council.

(e) Municipal Alliance Committees shall be established by municipal ordinance or resolution. Thereafter, a letter from the local governing body shall be submitted to the County Alliance Steering Committee, along with a copy of the ordinance and a membership list, requesting acknowledgement of the municipality as an Alliance member. The County Alliance Steering Committee shall acknowledge all Municipal Alliance Committees which meet the requirements of this chapter and shall promptly advise the municipality and the Council in writing when acknowledgement is issued.

(f) Bylaws should be adopted by each Municipal Alliance Committee. Committee meetings shall be held regularly, with an annual calendar of meetings established at the Committee's organizational meeting. Minutes shall be kept of all Committee meetings, and a quorum of Committee meetings shall be required for action to be taken by the Committee. A quorum shall be 50 percent of the Committee membership plus one.

17:40-2.5 Functions of the Municipal Alliance Committee

(a) The Municipal Alliance Committee, in consultation with the Local (County) Advisory Committee on Alcoholism and Drug Abuse, shall identify alcoholism and drug prevention, education, and community needs.

(b) The Municipal Alliance Committee shall implement the Alliance programs formulated pursuant to N.J.S.A. 26:2BB-8.

(c) The Municipal Alliance Committee may apply for funding through the procedures described in this chapter.

(d) The Municipal Alliance Committee shall also be responsible for:

1. Organizing and coordinating efforts involving schools, law enforcement, business groups and other community organizations for the purpose of reducing alcoholism and drug abuse;
2. In cooperation with local school districts, developing comprehensive and effective alcoholism and drug abuse education programs in grades K through 12;
3. In cooperation with local school districts, developing procedures for the intervention, referral to treatment and discipline of students abusing alcohol or drugs;
4. Developing comprehensive alcoholism and drug abuse education support and outreach efforts for parents in the community;
5. Developing comprehensive alcoholism and drug abuse community awareness programs;
6. Creating a network of community leaders, private citizens, and representatives of public and private human service agencies who will make a comprehensive and coordinated effort to promote and sup-

port drug and alcohol prevention and education programs and related activities with an emphasis on youth;

7. Conducting an assessment of their community to determine the needs of the community in relation to alcoholism and drug abuse issues;

8. Identifying existing efforts and services acting to reduce alcoholism and drug abuse;

9. Coordinating projects within the municipality to avoid fragmentation and duplication;

10. Developing programs to be implemented at the municipal level or participating in regionally-developed programs that accomplish the purpose of the Alliance effort and the purposes of the Municipal Alliance Committee;

11. Assisting the municipality in acquiring funds for Alliance programs, including the establishment of a permanent, standing subcommittee on fundraising;

12. The Municipal Alliance Committee shall keep such records and provide such information to the Governor's council as may be required for fiscal audit; and

13. Cooperating with the Governor's Council on Alcoholism and Drug Abuse and the Alliance Steering Subcommittee of the County Local Advisory Committee on Alcoholism and Drug Abuse to provide municipal data, reports or other information which may be required for the County Alliance Plan or needed to assist the Alliance effort.

17:40-2.5 Development of the Municipal Alliance Network

Cooperative relationships are necessary to effectively develop the Municipal Alliance Network, to maximize coordination and avoid duplication of efforts, and to assure effective use of resources, including volunteers and funds. Therefore, each municipality should determine how best to work with and/or join municipal groups, such as drug and alcohol task forces, municipal youth services commissions, youth task forces or other groups compatible with the purposes and functions of the Alliance. These interrelationships may involve shared memberships, joint subcommittees or joined groups.

SUBCHAPTER 3. FUNDING FOR ALLIANCE PROGRAMS

17:40-3.1 Overview of the funding process

(a) Mandatory drug enforcement and demand reduction (DEDR) penalties imposed in drug-related offenses are collected by the courts, Probation and the Department of Corrections. These monies are then forwarded to the State Department of Treasury and are deposited in a fund known as the DEDR Fund. The funds may then be appropriated by the Legislature to the Governor's Council on an annual basis for the purposes of funding the Alliance to Prevent Alcoholism and Drug Abuse and other alcohol and drug abuse programs.

(b) DEDR funds may be released by the Governor's Council on Alcoholism and Drug Abuse to counties, contingent upon submission and approval of a County Annual Alliance Plan. Following the establishment of a Municipal Alliance Committee, a municipality may apply for these funds through the Request for Proposal (RFP) process initiated annually through the County Local Advisory Committee on Alcoholism and Drug Abuse/Alliance Steering Subcommittee. Funds will be released to municipalities only upon approval of the proposal by the Council.

(c) It is the Council's intention that the DEDR funds be used primarily for programs in municipalities which are members of the Alliance and for the County Alliance Coordinator established by this chapter.

17:40-3.2 Request for Proposal contents

(a) The RFP application form shall be developed annually by the Council and shall include the following:

1. Program Description and Guidelines:
 - i. Background and purpose;
 - ii. Biopsychosocial disease model;
 - iii. Allowable use of funds;
 - iv. Suggested program models; and
 - v. Criteria for selection.

2. Application for Funding:
 - i. Applicant description;
 - ii. Statement of assurances;
 - iii. Statement of need;
 - iv. Program description;
 - v. Goals and objectives;
 - vi. Activity plan (applicant cites activities, dates of completion);
 - vii. List of participating/affiliated agencies;
 - viii. Evaluation (applicant cites method and manner);
 - ix. Budget; and
 - x. Matching funds.

17:40-3.3 Request for Proposal process

(a) The Council shall develop the RFP and distribute it to the LACADA Alliance Steering Subcommittee each year.

(b) The LACADA Alliance Steering Subcommittee shall distribute the RFP forms to the Municipal Alliance Committees.

(c) The LACADA Alliance Steering Subcommittee, in conjunction with the Alliance Coordinator, shall provide technical assistance and monitoring to the Municipal Alliance Committees in the completion of the RFP forms.

(d) In order to be considered for approval, the Municipal Alliance Committee must complete and return the RFP form to the LACADA Alliance Steering Subcommittee.

(e) The LACADA Alliance Steering Subcommittee, in conjunction with the Alliance Coordinator, shall review the RFPs submitted by Municipal Alliance Committees for compliance with the requirements of the RFP process, this chapter, and the governing law (N.J.S.A. 26:2BB-1 et seq.). The LACADA Alliance Steering Committee, in conjunction with the Alliance Coordinator, shall then develop a county plan incorporating the Municipal Alliance Committees' RFPs for submission to the Governor's Council on Alcoholism and Drug Abuse.

(f) Upon receipt of the LACADA Alliance Steering Subcommittee's plan, it and the RFPs contained therein shall be reviewed by the Governor's Council and its staff. Additional information may be requested by the Council from the LACADA Alliance Steering Subcommittee or the Municipal Alliance Committee as needed.

(g) The Governor's Council will annually develop a formula for funding for the purpose of granting funds appropriated each year to the LACADA Alliance Coordinator and the Municipal Alliance Committees. The formula shall be adopted by the Council at a public meeting and shall thereafter be promulgated as a separate rule.

(h) To the extent the Legislature makes appropriation therefor, DEDR funds shall be granted by the Council, upon the recommendation of its Executive Director, to the LACADA Alliance Coordinator for the purpose of training and coordination and to Municipal Alliance Committees and member municipalities within the county which successfully complete the RFP and have it approved by the Council.

(i) The Governor's Council shall issue its determinations for the distribution of DEDR funds to LACADA Alliance Coordinators and Municipal Alliance Committees.

(j) The county agency or individual designated by the governing body of each county pursuant to N.J.S.A. 26:2B-33 is authorized to receive from the Governor's Council moneys made available under the RFP process. The designated county agency shall establish a separate fund for the receipt and disbursement of these moneys and such disbursement shall be made as directed by the Council for approved grants only.

17:40-3.4 Acceptance of grants through the RFP process

(a) In accepting a grant of DEDR funds from the Governor's Council, the grantee (municipality) must agree to abide by the following conditions:

1. The grantee agrees to repay to the Council's fund any portion of the amount granted which is not used for purposes of the grant at the end of the contract term;

2. The grantee shall submit detailed and accurate accounting, in a form prescribed by the Council, of all expenditures made under the grant;

3. The grantee shall submit periodic reports, in a form prescribed by the Council, of the progress made in accomplishing the purpose of the grant; and

4. The grantee shall be prohibited from using the grant funds to undertake any activity not in accordance with the purpose of the grant as approved by the Council.

(b) At the end of the fiscal year in which the grant falls, the grantee must submit an audited financial statement explaining its use and provide such other information as may be prescribed by the Council.

17:40-3.5 Matching funds

(a) Funds disbursed by the Council to grantees shall not supplant local funds that would have otherwise been available for alcoholism and drug abuse initiatives.

(b) Each Municipality Alliance Committee receiving DEDR funds from the Council shall develop a comprehensive plan to provide matching funds equivalent to the amount of the grant award, with a minimum to be established by the Governor's Council on an annual basis as part of the RFP process.

(c) Each Municipal Alliance Committee shall establish a fundraising subcommittee, which shall meet at least quarterly during the project period.

(d) The comprehensive plan for providing matching funds may include, but is not limited to, the following:

1. The donation of the use of municipal property at a fair market value to the project;

2. Time, as reflected by salary and wages, of municipal and private sector employers who perform services in accord with the project;

3. Complimentary (public service) advertising on local media, such as newspapers, radio and cable television, above the level of standard public service requirements;

4. Organized community benefits focused on the Alliance, which utilize celebrities, sports figures or experts in the field of addictions, who donate their services;

5. Door-to-door types of fund raising;

6. Solicitations to business and industry for donations;

7. Activities to raise funds which have the potential for bringing a significant number of community persons together, such as runs, walks, bake sales, and car washes; and

8. The donation of printing and other mass reproductions of materials to carry the anti-alcohol and drug abuse message to the community.

(e) The quality of the plan for matching grant funds received shall be a major factor in the Council's consideration of the Municipal Alliance Committee's RFP application.

(f) The participating municipal government shall have the duty of ensuring that the match requirement is met and shall be responsible for any failure to do so. The County Alliance Coordinator, under guidelines established by the Governor's Council, shall be responsible for monitoring the municipal government's compliance with the match requirement and shall submit such reports on the progress of the municipal government in meeting this requirement as the Council may require. The Council shall make the final determination on whether the municipal government has met its match requirement.

(g) The grantee shall submit periodic reports to the Council on its progress in obtaining matching funds.

(h) If, at the end of the contract period, the grantee fails to generate sufficient matching funds, the grantees must provide the Council with a detailed explanation of its failure. In the discretion of the Council, a grantee which fails to generate the required matching funds, may be required to return all, or a portion of, the grant funds received by it.

(a)

**GOVERNOR'S COUNCIL ON ALCOHOLISM AND
DRUG ABUSE**

N.J.A.C. 17:40

**Notice of One-Time Extension of Deadline for
Applications for County Alliance Plans**

Take notice that the Governor's Council on Alcoholism and Drug Abuse has extended the Deadline for County Alliance Plans submitted in accordance with N.J.A.C. 17:40 (see adopted rules elsewhere in this issue of the New Jersey Register).

For this year only, County Alliance Plans may be submitted by January 15, 1991.

Inquiries may be addressed to:

John Kriger
State Alliance Coordinator
Governor's Council on Alcoholism and Drug Abuse
CN 345
Trenton, N.J. 08625
609-777-0526

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Home Energy Assistance Handbook

Eligibility Requirements; Income Eligibility Guidelines

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:89-2.2 and 2.3

Emergency Amendment Adopted: October 17, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): October 23, 1990.

Emergency Amendment Filed: October 30, 1990 as R.1990 d.590.
Authority: N.J.S.A. 30:4B-2.

Concurrent Proposal Number: PRN 1990-607.

Emergency Amendments Effective Date: October 30, 1990.

Emergency Amendments Operative Date: November 1, 1990.

Emergency Amendments Expiration Date: December 30, 1990.

Submit comments by December 19, 1990 to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent proposal follows:

Summary

The Home Energy Assistance (HEA) Program is a Federal block grant program authorized by the Low Income Home Energy Assistance Act of 1981, Title XXVI of P.L. 97-35. The purpose of the program is to assist low income households meet the costs of home heating and medically necessary cooling.

A major issue of concern for the upcoming HEA Program is program funding. Although New Jersey has been experiencing decreases in Federal funding over the past few years, it is expected that there will be no reduction from the Fiscal Year (FY) 90 Federal allocation of \$54.1 million for FY 91 and that the \$19 million available in Oil Overcharge Funding will be used.

Due to delays experienced in the receipt of Federal funding over the last several years and the subsequent programmatic and fiscal issues, the first HEA benefit payments (automatic and special energy assistance) will be made in early December instead of November. Applications for special assistance will, however, continue to be accepted beginning on November 1. As a result of this change, emergency energy assistance (EEA) is to be made available each year beginning in mid-December instead of December 1st. For FY 91, EEA will be available beginning December 17, 1990.

In addition to maintaining benefit levels, the Department is proposing to continue utilizing the allowable 150 percent of the current Federal Poverty Level as the income eligibility guideline, and, thus, continue to make assistance available to the maximum number of households throughout the entire winter heating season.

Since the Federal Poverty Level was updated in February, 1990, to account for last year's increase in prices as measured by the Consumer Price Index, the Department is proposing to adjust the income eligibility guidelines for New Jersey's HEA Program to coincide with the updated Federal Poverty Level.

The proposed amendments include the following:

N.J.A.C. 10:89-2.2(a)3 corrects an incorrect reference.

N.J.A.C. 10:89-2.2(a)4 raises the amount of the monthly income exemption used in the determination of the amount an illegal alien must add to the household income. The proposed amendment is in response to an increase in the poverty income guidelines. The monthly amount is raised from \$255.00 to \$268.00.

N.J.A.C. 10:89-2.3(g) adjusts the monthly allowable gross income limits to continue to be based on 150 percent of the current Federal Poverty Level.

Social Impact

The proposed amendments are in keeping with an ongoing effort on the part of the Department's Division of Economic Assistance to provide expeditious and appropriate disbursement of HEA benefits to New Jersey's low income population. The proposed amendments are in response to Federal compliance requirements and will serve to maintain uniformity with regulations. Additionally, the upward adjustment in the monthly allowable gross income limit for HEA program eligibility is expected to increase the number of households served.

Economic Impact

There will be no direct impact upon New Jersey taxpayers since the entire cost of the assistance and administration of the HEA program is federally funded. There will be an indirect benefit to the public as a whole since there will be an influx of Federal dollars into the State's economy. The direct beneficiaries of the program will be those households eligible to receive HEA benefits in FY 1991.

Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The amended rules govern a public assistance program designed to certify eligibility for the Home Energy Assistance program to a low-income population by a governmental agency rather than a private business establishment.

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

10:89-2.2 Eligibility requirements

(a) The household members shall be residents of New Jersey.

1.-2. (No change.)

3. Strikers and households that include striking members are ineligible for Home Energy Assistance benefits, in accordance with N.J.A.C. 10:81-3.47(a) and N.J.A.C. 10:87-[3.19(a)7] **10.16(a)**.

4. Illegal aliens are ineligible for Home Energy Assistance benefits. In cases where an illegal alien resides within an applicant household, the alien must be excluded from the HEA household size. If the illegal alien has monthly income in excess of [\$255.00] **\$268.00**, the amount in excess of [\$255.00] **\$268.00** shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

5. (No change.)

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

10:89-2.3 Income eligibility

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

EMERGENCY ADOPTION**HUMAN SERVICES**

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limits
1	\$ [748] 785
2	[1003] 1053
3	[1258] 1321

4	[1513] 1589
5	[1768] 1857
6	[2023] 2125
7	[2278] 2393
8	[2533] 2661
9	[2788] 2929
10	[3043] 3197
Each Additional Member	[+255] +268

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Cape May County Water Quality Management Plan

Take notice that on October 12, 1990, pursuant to the provisions of the 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 adopts a Middle Township Wastewater Management Plan (WMP). This WMP delineates existing sewerage areas and proposed sewer service areas with treatment to be provided at either the Seven Mile Beach/Middle Region Wastewater Treatment Facility, the Wildwood/Lower Regional Wastewater Treatment Facility, both being facilities of the Cape May Municipal Utilities Authority, or the Lower Township Sewage Treatment Plant, a facility of the Lower Township Municipal Utilities Authority. The remainder of the municipality is designated as a ground water discharge area utilizing on-site ground water disposal facilities for uses permitted under current zoning and individual subsurface systems. Existing and proposed on-site ground water disposal facilities are mapped.

Comments were received during the public comment period, and are summarized below with the Department's response.

COMMENT: The proposed amendment does not address changes to the flow projections contained in the approved 208 and 201 Plans for this service area. The amendment should clarify if additional wastewater flow allocations are required due to the proposed mapping revisions.

RESPONSE: Concerning the flow projections in the Cape May County Water Quality Management Plan (208 Plan), the Bureau of Water Quality Planning does not require that specific flow breakdowns be provided for each regional system pump station or force main within the WQMP amendment.

COMMENT: The presentation of the amendment is not entirely clear as to what new areas are to be served by the Regional sewer system. The areas for the "proposed facilities" and "existing permitted facilities" as shown on the tax maps accompanying the text are in some cases within the "proposed sewerage areas" and in some cases are not within the crosshatched areas.

RESPONSE: The proposed sewerage areas are to be served by one of three regional facilities. The facilities are NJPDES permitted facilities in Middle Township, these facilities are either proposed or existing treatment facilities which treat and discharge their sewage on-site or the regional plant (numbers 9 and 10). The on-site facilities shown in a proposed sewerage area are required to tie into the sewer system when and if sewers become available. If a NJPDES permitted facility is not within a proposed sewer service area as designated in the Middle Township WMP, they are required to meet NJPDES standards for discharging sewage.

COMMENT: Additional areas have been included in the "sewerable area" designation for South Court House, however, the proposed amendment is silent on the necessity for a flow increase in that tributary section of Middle Township over the flow projections contained in the approved 201 Plan. Since the WQMP amendment also modifies the 201 Plan, the precise flow projection for the South Court House area should be delineated. If the overall wastewater flow projections are not to change for those portions of Middle Township serviced by the Seven Mile/Beach Middle Regional Wastewater Treatment Facility, then an increase in any isolated tributary area should be offset by an equal decrease in other tributary areas. This information is necessary for proper sizing of the regional pumping stations and force mains.

RESPONSE: The 201 Facilities Plan projects a total of 1.79 MGD (Cape May Courthouse and Middle Township) for the year 2020, the WMP projects 1.40 from this area for the year 2008. Therefore, the changes in the service area to include areas zoned at a density requiring sewers do not result in a conflict in the flow projections. Middle Township has not projected an increased flow in this WQMP amendment. Also, the Cape May County WQMP does not address pump stations or force mains. A force main realignment, relocation of a pump station or change in the size of a pump station and/or force main would be considered

to be not addressed by the Cape May County WQMP. A finding of not addressed has the same effect as a finding of consistent.

COMMENT: The Department's Southern Bureau of Regional Enforcement has recently indicated that the CMCMUA must sign an Administrative Consent Order (ACO) to extend the Regional system and provide service in the Seven Mile Beach/Middle Region south to the Garden Lakes mobile home park. As a requirement of the ACO, the CMCMUA must maintain a schedule for construction of the necessary transmission facilities or be assessed daily monetary penalties. A key element of this schedule is the timing for the approval of the subject WQMP amendment and whether another WQMP amendment will be needed for the necessary revision to the regional conveyance system alignment and the revised pump station sites and sizes to accommodate the subject WQMP amendment.

RESPONSE: In regards to the Garden Lake Mobile Home Park, an amendment is not necessary to connect the Garden Lake Mobile Home Park into the Seven Mile Beach/Middle Region Treatment Facility. The Garden Lake Mobile Home Park is presently located in a proposed sewer service area in the Cape May County WQMP. Therefore, the Middle Township WMP does not need to be adopted before this facility can connect to the regional system. Again, the pump station sizes, locations and alignments are considered to be not addressed by the Cape May County WQMP and an amendment would not be necessary.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Lower Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt the Woodstown Borough Wastewater Management Plan (WMP). The Woodstown Borough WMP proposes to upgrade and expand the existing Woodstown Sewage Treatment Plant (STP). In addition, the WMP proposes to expand the sewer service area of the Woodstown Sewerage Authority STP to include the entire Borough of Woodstown, the seven buildings presently served by the Salem County Vo-Tech School Treatment Plant in Mannington Township, the Salem County Roads Department garage and office in Pilesgrove Township and the proposed Salem County Correctional Facilities in Mannington Township. The existing Salem County Vo-Tech School Treatment Plant will be abandoned and replaced by a pump station and force main. The WMP identifies all areas of Pilesgrove Township which presently receive sewer service from the Woodstown STP. No additional sewer service to Pilesgrove or Mannington Townships, except as listed above, is proposed.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Delaware WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held,

PUBLIC NOTICES

the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One Time Only Moratorium on the Acceptance of Certificate of Need Applications for Autologous and Allogeneic Bone Marrow Transplant Services by the New Jersey State Department of Health

Take notice that the Department of Health, in conjunction with the Health Care Administration Board (HCAB) and the Statewide Health Coordinating Council (SHCC), is removing from consideration for one time only applications for autologous and allogeneic bone marrow transplant services. No health care services other than proposed autologous and allogeneic bone marrow transplant services are affected by this proposed action.

The Department of Health is establishing this moratorium in response to a recent action by the Health Care Administration Board to defer consideration of a proposed rule regarding allogeneic bone marrow transplantation until such time as a proposed rule is developed for autologous bone marrow services. A workgroup of the New Jersey Advisory Council on Organ Transplantation is currently in the process of drafting criteria for autologous bone marrow transplantation to comply with the requests of both the Statewide Health Coordinating Council and the Health Care Administration Board.

The purpose of this moratorium is to allow sufficient time for the Department, with the assistance of the New Jersey Advisory Council on Organ Transplantation, to establish a coordinated Statewide policy regarding the orderly development of autologous and allogeneic bone marrow transplant services. The time period will also allow extensive public review of bone marrow transplant policy during the State's health planning and rule-making processes.

This moratorium will become effective November 19, 1990 and will end with the January 15, 1992 certificate of need review cycle. Should autologous and allogeneic bone marrow transplant review criteria be adopted prior to the end of this time period, the moratorium will be shortened accordingly.

Any inquiries should be sent to:

Theodore C. Seamans, Director
Organ Transplantation Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

(b)

DIVISION OF EPIDEMIOLOGY AND DISEASE CONTROL

Availability of Grants

Jersey City Preschool Immunization Project

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, ch. 7), the Department of Health hereby publishes notice of the availability of the following grant:

A Name of Grant Program: Grant Program No. 91-84-IMM, Jersey City Preschool Immunization Project.

Purpose for which the Grant Program Funds Will Be Used: Two year demonstration project to provide immunization services to preschool-age children in Jersey City who are recipients of AFDC benefits and other social service programs. Clinic services would be provided through the establishment of four sites staffed by nurses, clerks and social outreach personnel who will identify, immunize and track children aged zero to five to ensure that they receive the recommended childhood immunizations at the proper time.

Amount of Money in the Grant Program: The availability of funds this program is contingent on appropriation of funds to the department.

LAW AND PUBLIC SAFETY

Contact the person identified on this notice to determine whether the funds have been awarded and to receive further information.

Groups or Entities Which May Apply for the Grant Program: Local government agencies, State agencies, non-profit corporations, licensed ambulatory care facilities and hospitals.

Qualifications Needed by an Applicant to Be Considered for a Grant: Experience with community health and dealing with the health needs of inner-city children in Jersey City. Ability to offer immunization clinic services at sites in non-medical settings in targeted areas of need. A licensed health care facility with professional staff which can provide these services in accord with State and Federal guidelines. Ability to work with State Health and Human Services agencies.

Procedures for Eligible Entities to Apply for Grant Funds: Prepare and submit a Health Service Grant Application.

For Information Contact:

Director
Communicable Disease and Injury Control Service
New Jersey State Department of Health
CN 369
Trenton, New Jersey 08625-0369
609-588-7539

Deadline by which Applications Must Be Submitted: December 3, 1990

Date by which Applicant Shall Be Notified Whether They Will Receive Funds: December 17, 1990

LAW AND PUBLIC SAFETY

(c)

DIVISION OF CONSUMER AFFAIRS

Notice of Action on Petition for Rulemaking Prescription Drug Pricing

N.J.A.C. 13:45A

Petitioner: New Jersey Pharmaceutical Association.

Authority: N.J.S.A. 24:6E-2; N.J.S.A. 45:14-12(g).

Take notice that on August 21, 1990, petitioner filed a petition with the Director of the Division of Consumer Affairs requesting promulgation of a rule to prohibit predatory pricing of prescription drugs by pharmacies. The petition stated that such a rule is needed to meet "the problem of predatory, below-cost pricing of prescription drugs, which is harmful to smaller competitors and, in the long run, harmful to the delivery of necessary pharmacy services in the various communities throughout the state." Petitioner submitted suggested text for the proposed new rule (see 22 N.J.R. 3166(b)).

The Division has requested guidance from the Attorney General's Office as to legal issues involved in the requested rulemaking. Petitioner will be informed of the results of such legal review and a summary will be published in the Register.

(d)

DIVISION OF MOTOR VEHICLES

Notice of a Application for Contract Carrier Permit

Take notice that Col. Clinton L. Pagano, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11 hereby lists the name and address of an applicant who has filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER):

D. Reper, Inc.
RD #2, Box 299
Hirams Grove Rd.
Branchville, NJ 07826

Protest in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, N.J. 08666, within 20 days (December 9, 1990) following the publication of an application.

PUBLIC UTILITIES**(a)****BOARD OF PUBLIC UTILITIES****Notice of Public Hearings****Availability of the Draft 1990 New Jersey Energy Master Plan**

Take notice that the Energy Master Plan Committee (Committee) announces the availability of the Draft 1990 New Jersey Energy Master Plan (Plan) for review and public comment. The Committee is chaired by the President of the Board of Public Utilities and is composed of the heads of the following principal departments or their designees: Community Affairs; Environmental Protection; Health; Human Services; Transportation; and Treasury. Pursuant to N.J.S.A. 52:27F-14(c), the Committee will hold a series of two public hearings to receive written and oral testimony on the Plan. The hearings will be held:

Tuesday, December 4, 1990 at 10:00 A.M.

New Jersey Board of Public Utilities

Two Gateway Center

Newark, New Jersey 07102

and

Thursday, December 6, 1990 at 1:00 P.M.

The War Memorial

Corner of West Lafayette and Willow Streets

Trenton, New Jersey 08625

The Committee reserves the right to schedule additional hearings as may be required. Upon completion of the public hearings, the Committee shall convene further meetings to consider the testimony presented and thereafter shall adopt the Plan with any appropriate additions, deletions or revisions.

Written testimony may be submitted through December 14, 1990. Requests to present oral testimony should indicate the name of the individual, organization represented and hearing location intended for presentation of the testimony. All communication pertaining to the hearings including the submission of testimony, requests to testify, or for copies of the Plan should be submitted to: Dr. Cameron Johnson, Office of the Economist, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102, (201) 648-3860.

TRANSPORTATION**(b)****DIVISION OF SYSTEMS PLANNING****BUREAU OF ACCESS AND DEVELOPMENT IMPACT ANALYSIS****Notice of Designation of Transportation Development District****Atlantic County****Tilton Road Corridor****Administrative Order Number 3**

Take notice that on September 19, 1990 under the provisions of the New Jersey Transportation Development District Act of 1989, P.L. 1989 c.100 (N.J.S.A. 27:1C), Thomas M. Downs, Commissioner of Transportation, ordered that the Tilton Road Corridor located in Atlantic County, be designated as a Transportation Development District (TDD), and delineated its boundaries as set forth below.

The western boundary begins from the northernmost point of the TDD at the intersection of U.S. Route 40, Tilton Road, and Washington Avenue, commonly referred to as the "Cardiff Circle."

The boundary then continues in a southerly direction encompassing those lots which abut Tilton Road to the east. The western boundary then continues southwest parallel to the Garden State Parkway and includes all parcels which abut Fire Road to the east. The westernmost point of the TDD boundary includes Block 367-C, Lot 6 at the intersection of Fire and Mill Roads in Egg Harbor Township. The boundary then continues in a northerly direction along the property lines of those lots in Egg Harbor Township which abut Fire Road to the west. The western boundary then runs in a southerly direction parallel to Tilton Road for a distance of approximately 3,525 feet. Included in the TDD are those properties abutting Tilton Road to the east. The western boundary then runs approximately 1,455 feet to the west down Burton Avenue. The western boundary then continues southward along the western property lines of Lots 12, 13, and 14 in Block 42 in the City of Northfield until meeting the southern terminus of the TDD which is U.S. Route 9.

The eastern boundary then begins in a northerly direction parallel to Tilton Road and includes those lots which abut Tilton Road to the west. At a point near the City of Northfield/Egg Harbor Township border, the eastern boundary continues along the northern property lines of Block 373-C, Lots 3 and 4, then along the western property lines of Block 373-C, Lots 5, 6, and 7, omitting Lot 8. The boundary continues along the western property lines of those lots in Block 373-C which abut Egg Harbor Road until terminating at Church Street. The eastern boundary then continues northward along the easternmost property lines of those lots in Blocks 380-C and 392-C. The boundary continues northward crossing the Black Horse Pike and Washington Avenue and includes those lots to the west. The eastern boundary continues along the eastern property lines of those lots abutting Washington Avenue in Blocks 184-A, 179-A, 169-A, 166-A, 165-A, 164-A, and 163-A, terminating at the "Cardiff Circle".

Excluded from the Tilton Road TDD are Block 372, Lots 2, 6, and 8 in Egg Harbor Township.

TREASURY-TAXATION**(c)****DIVISION OF TAXATION****Petroleum Products Gross Receipts Tax****Notice of Extension of Time for Filing and Payment**

Take notice that taxpayers required to pay the New Jersey Petroleum Products Gross Receipts Tax will receive an automatic one month extension before the first return and payment is due. These returns, originally due on or before October 20, 1990, must now be filed on or before November 20, 1990. The extension was granted pursuant to the general powers of the Director under N.J.S.A. 54:50-1 and 54:15B-8.

As a result of the recently enacted tax package, many existing tax forms had to be revised, new tax forms had to be designed, and information had to be developed and distributed to taxpayers.

The Division was unable to provide taxpayers affected by this new tax with the returns and information they needed well in advance of the first return's due date. Recognizing the difficulty this delay could cause, the Division is granting an automatic one month extension for filing this return only. The next quarterly return must be filed on or before its normal due date of January 20, 1991.

To help taxpayers understand and satisfy their tax liability under the new tax, the Division will be sending draft tax regulations to all companies who had returns mailed to them.

Taxpayers who did not receive their first quarterly return, which was mailed by the Division on October 12, 1990, or who have questions about the tax should call the Division of Taxation's Tax Hotline at 1-800-323-4400.

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 October 1, 1990 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT SEPTEMBER 17, 1990

NEXT UPDATE: SUPPLEMENT OCTOBER 15, 1990

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
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989	22 N.J.R. 1807 and 1964	June 18, 1990
21 N.J.R. 3813 and 3986	December 18, 1989	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 1291 and 1408	May 7, 1990	22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 1409 and 1648	May 21, 1990		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
1:1-3.2, 14.10	Interlocutory appeal for review of hearing location	22 N.J.R. 3278(a)		
1:1-3.3, 9.6, 12.1, 14.4, 14.7, 14.14, 18.4, 19.2	Scheduling, processing, and conclusion of contested cases	22 N.J.R. 3278(b)		
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:6A-18.3	Special Education hearings: administrative correction			22 N.J.R. 3478(a)
1:10-8.1	Transmission of Economic Assistance cases	22 N.J.R. 2389(a)		
1:10-18.2	Economic Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)		
1:10B-18.2	Medical Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
1:13-14.4	Motor Vehicle cases: failure to appear	22 N.J.R. 3278(b)		
1:13A-14.1	Lemon Law hearings: failure to appear	22 N.J.R. 3278(b)		
1:30	Agency rulemaking	22 N.J.R. 3281(a)		

Most recent update to Title 1: TRANSMITTAL 1990-5 (supplement September 17, 1990)

AGRICULTURE—TITLE 2

2:1-2, 3	Department organization and rules of practice	22 N.J.R. 2865(a)	R.1990 d.579	22 N.J.R. 3478(b)
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:16	Plant certification	22 N.J.R. 3285(a)		
2:19-2	Rose mosaic disease control	22 N.J.R. 2069(a)	R.1990 d.494	22 N.J.R. 3146(a)
2:20-2	White pine blister rust control	22 N.J.R. 2070(a)	R.1990 d.495	22 N.J.R. 3146(b)
2:48	Dairy industry rules	22 N.J.R. 2625(a)		
2:76-6.2, 6.5, 6.6, 6.9-6.12, 6.15-6.17	Farmland preservation program	22 N.J.R. 1244(a)	R.1990 d.529	22 N.J.R. 3359(a)

Most recent update to Title 2: TRANSMITTAL 1990-7 (supplement August 20, 1990)

BANKING—TITLE 3

3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)	Expired	
3:7	Safe and sound methods of banking	22 N.J.R. 2205(a)	R.1990 d.497	22 N.J.R. 3213(a)
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)	Expired	
3:18-10.5	Secondary mortgage licensees	22 N.J.R. 2868(a)		
3:27	Mortgage loans by savings and loan associations	22 N.J.R. 2206(a)	R.1990 d.498	22 N.J.R. 3213(b)
3:29-1.1-1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
3:38-1.5	Secondary mortgage licensees	22 N.J.R. 2868(a)		
3:41	Cemetery Board rules	22 N.J.R. 2627(a)	R.1990 d.537	22 N.J.R. 3363(a)

Most recent update to Title 3: TRANSMITTAL 1990-5 (supplement July 16, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

4A:3-5.2, 5.5	Overtime compensation	22 N.J.R. 2627(b)	R.1990 d.552	22 N.J.R. 3481(a)
4A:4-2.4	Promotional examinations	22 N.J.R. 2628(a)	R.1990 d.554	22 N.J.R. 3482(a)
4A:4-5.5	Working test period	22 N.J.R. 2629(a)	R.1990 d.553	22 N.J.R. 3482(b)
4A:8-2.2	Employee layoff rights	22 N.J.R. 2629(b)	R.1990 d.555	22 N.J.R. 3482(c)

Most recent update to Title 4A: TRANSMITTAL 1990-4 (supplement August 20, 1990)

COMMUNITY AFFAIRS—TITLE 5

5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)	R.1990 d.544	22 N.J.R. 3363(b)
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:23-1.1, 3.1, 3.11B	Uniform Construction Code: underground storage tank systems	22 N.J.R. 2629(c)	R.1990 d.562	22 N.J.R. 3482(d)
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)	R.1990 d.558	22 N.J.R. 3483(a)
5:23-3.4, 3.5, 3.8A, 3.10, 3.11, 3.11A, 3.14-3.18, 3.20, 4A.8	Uniform Construction Code: subcodes	22 N.J.R. 2208(a)	R.1990 d.507	22 N.J.R. 3214(a)
5:23-4.17	Uniform Construction Code: appropriation of municipal fees	22 N.J.R. 1871(a)	R.1990 d.489	22 N.J.R. 3147(a)
5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)	R.1990 d.490	22 N.J.R. 3148(a)
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.10, 1.11	Mobile home park conversion or retirement from rental market	22 N.J.R. 2214(a)	R.1990 d.508	22 N.J.R. 3218(a)
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)		
5:80-5.1, 5.2, 5.3, 5.8, 5.9, 5.10	Housing and Mortgage Finance Agency: transfer of ownership interests	22 N.J.R. 1971(a)	R.1990 d.504	22 N.J.R. 3220(a)
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 1974(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)	R.1990 d.540	22 N.J.R. 3364(a)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		

Most recent update to Title 5: TRANSMITTAL 1990-9 (supplement September 17, 1990)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

6:3-1.11, 1.12, 1.24	Teacher preparation and certification	22 N.J.R. 1873(a)	R.1990 d.510	22 N.J.R. 3240(a)
6:3-7	Education of homeless children and youth	22 N.J.R. 2630(a)		
6:5-2	Organization of Department	Exempt	R.1990 d.561	22 N.J.R. 3484(a)
6:11	Teacher preparation and certification	22 N.J.R. 1873(a)	R.1990 d.510	22 N.J.R. 3240(a)
6:20-1.1, 1.2, 4.1-4.4, 4.7-4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:24	Controversies and disputes	22 N.J.R. 2841(a)		
6:28-2.3, 3.1	Special education: administrative corrections			22 N.J.R. 3365(a)
Most recent update to Title 6: TRANSMITTAL 1990-6 (supplement September 17, 1990)				
ENVIRONMENTAL PROTECTION—TITLE 7				
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5	Matching Grants Program for Local Environmental Agencies	22 N.J.R. 2392(a)	R.1990 d.577	22 N.J.R. 3505(a)
7:7-2.3	Waterfront development	22 N.J.R. 2361(a)	R.1990 d.503	22 N.J.R. 3222(a)
7:7-2.3	Waterfront development: extension of comment period	22 N.J.R. 2669(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:9	Water pollution control	22 N.J.R. 3297(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)	R.1990 d.548	22 N.J.R. 3508(a)
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)	R.1990 d.548	22 N.J.R. 3508(a)
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)	Expired	
7:18-6.6	Certification of laboratories for water analysis: administrative correction			22 N.J.R. 3365(b)
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)		
7:25-18.1	Taking of striped bass	22 N.J.R. 3078(a)		
7:25-18.5-18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:26	Hazardous waste management	22 N.J.R. 2882(a)	R.1990 d.578	22 N.J.R. 3514(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.2	Hazardous waste exclusions: administrative correction			22 N.J.R. 3148(b)
7:26-8.3	Hazardous waste from small quantity generators: administrative correction			22 N.J.R. 3366(a)
7:26-8.15	Hazardous waste listing: administrative correction			22 N.J.R. 3227(a)
7:26-8.19	Listing of hazardous wastes	22 N.J.R. 3299(a)		
7:26-8.21	Hazardous constituents for groundwater monitoring: administrative correction			22 N.J.R. 3366(b)
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-10.6	Surface impoundments: administrative correction			22 N.J.R. 3227(b)
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)	Expired	
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)	R.1990 d.538	22 N.J.R. 3367(a)
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)		
7:28-19.12	Radiologic technologists: licensure and renewal fees	22 N.J.R. 1975(b)	R.1990 d.511	22 N.J.R. 3227(a)
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)	R.1990 d.559	22 N.J.R. 3516(a)
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:38	Wild and Scenic Rivers System	22 N.J.R. 1317(a)	R.1990 d.505	22 N.J.R. 3229(a)

Most recent update to Title 7: TRANSMITTAL 1990-9 (supplement September 17, 1990)

HEALTH—TITLE 8

8:7	Licensure of persons for public health positions	22 N.J.R. 1977(a)	R.1990 d.502	22 N.J.R. 3545(a)
8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)	R.1990 d.542	22 N.J.R. 3547(a)
8:18-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)		
8:21	Food and drugs	22 N.J.R. 2465(a)	R.1990 d.563	22 N.J.R. 3559(a)
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-App. VI	Computation of reasonable direct patient care costs: administrative correction	_____	_____	22 N.J.R. 3229(b)
8:33F-1.1, 1.2, 1.6, 1.7	Renal disease services	22 N.J.R. 2494(a)	R.1990 d.566	22 N.J.R. 3578(a)
8:33Q-1	Organ transplantation services: certificate of need requirements	22 N.J.R. 2496(a)	R.1990 d.567	22 N.J.R. 3579(a)
8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1, 41.3	Licensure of long-term care facilities	22 N.J.R. 1889(a)	R.1990 d.513	22 N.J.R. 3230(a)
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)		
8:43	Licensure of residential health care facilities	22 N.J.R. 2499(a)	R.1990 d.568	22 N.J.R. 3581(a)
8:43A-12	Ambulatory care facilities: surgical and anesthesia services	22 N.J.R. 1496(a)	R.1990 d.543	22 N.J.R. 3392(b)
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)	R.1990 d.512	22 N.J.R. 3232(a)
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a))	22 N.J.R. 1214(b)	R.1990 d.569	22 N.J.R. 3581(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products	22 N.J.R. 2501(a)	R.1990 d.571	22 N.J.R. 3582(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)		

Most recent update to Title 8: TRANSMITTAL 1990-9 (supplement September 17, 1990)

HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)	R.1990 d.546	22 N.J.R. 3370(a)
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)	R.1990 d.545	22 N.J.R. 3371(a)
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)	R.1990 d.547	22 N.J.R. 3371(b)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)	R.1990 d.556	22 N.J.R. 3485(a)
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)	R.1990 d.557	22 N.J.R. 3485(b)

Most recent update to Title 9: TRANSMITTAL 1990-6 (supplement August 20, 1990)

HUMAN SERVICES—TITLE 10

10:6	Administrative hearings	22 N.J.R. 3115(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:37	Community Mental Health Services Act rules	22 N.J.R. 2915(a)		
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:47	Private licensed facilities for mentally retarded	22 N.J.R. 2915(b)		
10:48	Developmental Disabilities: appeal procedure; viral hepatitis and legal poisoning control programs	22 N.J.R. 3192(a)		
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)		
10:51	Pharmacy Manual	22 N.J.R. 2217(a)	R.1990 d.530	22 N.J.R. 3372(a)
10:60	Home Care Services Manual	22 N.J.R. 3116(a)		
10:65	Medical Day Care Services Manual	22 N.J.R. 3327(b)		
10:65-2.1	Medical day care reimbursement	22 N.J.R. 2604(a)	R.1990 d.524	22 N.J.R. 3372(b)
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)		
10:71	Medicaid Only Manual	22 N.J.R. 3357(a)		
10:71-4.5-4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-4.7	Medicaid eligibility: transfer of resources	22 N.J.R. 2604(a)	R.1990 d.524	22 N.J.R. 3372(b)
10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1-14.8, 14.10-14.15, 14.17, 14.19-14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)		
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11-11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)	R.1990 d.541	22 N.J.R. 3373(a)
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)		
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)	R.1990 d.565	22 N.J.R. 3486(a)
10:89-2.2, 2.3	Home Energy Assistance: eligibility criteria	Emergency (expires 12-30-90)	R.1990 d.590	22 N.J.R. 3590(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)		
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)		

Most recent update to Title 10: TRANSMITTAL 1990-9 (supplement September 17, 1990)

CORRECTIONS—TITLE 10A

10A:3-9.3	Transport of maximum custody inmates	22 N.J.R. 2223(a)	R.1990 d.536	22 N.J.R. 3379(a)
10A:17-3	Volunteers in Parole Program	22 N.J.R. 1981(a)	R.1990 d.488	22 N.J.R. 3149(b)
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)	R.1990 d.564	22 N.J.R. 3488(a)
10A:21-5	Reporting unusual incidents or events within facilities	22 N.J.R. 3304(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 1895(a)		
10A:32-4.2	Transfer of juvenile under State sentence: public hearing	22 N.J.R. 2224(a)		
Most recent update to Title 10A: TRANSMITTAL 1990-8 (supplement September 17, 1990)				
INSURANCE—TITLE 11				
11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)	Expired	
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)		
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)		
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)	Expired	
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:2-32	Custodial deposits	22 N.J.R. 2640(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-3.37, 14.8	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(a)		
11:3-7.2, 7.4, 7.5, 14.2, 14.5, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.9	Automobile Coverage Selection Form and Buyer's Guide	22 N.J.R. 1681(a)	R.1990 d.580	22 N.J.R. 3488(b)
11:3-8.2-8.7, App. A and B	Nonrenewal of automobile policies	22 N.J.R. 2224(b)		
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	22 N.J.R. 2231(a)		
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App.	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)		
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	22 N.J.R. 2086(a)		
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	22 N.J.R. 2108(a)		
11:3-35	Private passenger automobile insurance: underwriting rules	22 N.J.R. 2233(a)		
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	22 N.J.R. 2111(a)		
11:3-38	Automobile towing and storage fee schedule	22 N.J.R. 2455(a)		
11:3-38	Automobile towing and storage fee schedule: extension of comment period	22 N.J.R. 3195(a)		
11:4	Actuarial services	22 N.J.R. 1689(a)		
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)	Expired	
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		

Most recent update to Title 11: TRANSMITTAL 1990-7 (supplement September 17, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
LABOR—TITLE 12				
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1991 rates	22 N.J.R. 3885(a)		
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46-12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:55-1	Payroll deductions for mass transportation: administrative correction			22 N.J.R. 3499(a)
12:56	Wage and hour	22 N.J.R. 2235(a)	R.1990 d.520	22 N.J.R. 3379(b)
12:57	Wage orders for minors	22 N.J.R. 2240(a)	R.1990 d.521	22 N.J.R. 3382(a)
12:58	Child labor	22 N.J.R. 2241(a)	R.1990 d.522	22 N.J.R. 3383(a)
12:196-1.10	Dispensing of retail gasoline: signs	22 N.J.R. 3306(a)		
12:235-1.6	Workers' Compensation: 1991 maximum rates	22 N.J.R. 2886(a)		

Most recent update to Title 12: TRANSMITTAL 1990-8 (supplement September 17, 1990)

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

Most recent update to Title 12A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

LAW AND PUBLIC SAFETY—TITLE 13

13:1-4.6	Physical conditioning instruction at police academies	22 N.J.R. 1435(a)	R.1990 d.477	22 N.J.R. 3151(a)
13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:1A-2.11	Legislative agents: annual fee	22 N.J.R. 1810(a)	R.1990 d.506	22 N.J.R. 3236(a)
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:18-4.2-4.6, 4.9, 4.14-4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)		
13:20	Motor Vehicles enforcement service	22 N.J.R. 3307(a)		
13:20-10	Automatic vehicle identification system for toll collection	22 N.J.R. 2133(a)	R.1990 d.491	22 N.J.R. 3151(b)
13:21	Motor Vehicles licensing service	22 N.J.R. 3311(a)		
13:21-1.3, 1.4, 1.5	Commercial driver licenses: disclosure and use of social security numbers	22 N.J.R. 2134(a)	R.1990 d.514	22 N.J.R. 3236(b)
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:27-5.8	Architectural services: certificate of authorization for general business corporations	22 N.J.R. 3314(a)		
13:29-1.13	Accountancy: sponsors of continuing professional education	22 N.J.R. 3314(b)		
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)	R.1990 d.525	22 N.J.R. 3384(a)
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)		
13:36-9.3	Mortuary practice: administrative correction			22 N.J.R. 3384(b)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:38	Board of Optometrists rules	22 N.J.R. 1866(a)	R.1990 d.476	22 N.J.R. 3153(a)
13:39-2.2, 2.8	Board of Pharmacy: application for NABPLEX examination	22 N.J.R. 2395(b)	R.1990 d.551	22 N.J.R. 3499(b)
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)	R.1990 d.478	22 N.J.R. 3153(b)
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:40-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)		
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:45A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)		
13:48	Charities Registration and Investigation Section	22 N.J.R. 3108(b)		
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)	R.1990 d.574	22 N.J.R. 3499(c)
13:70-3.44	Thoroughbred racing: public telephones at tracks	22 N.J.R. 2402(a)	R.1990 d.533	22 N.J.R. 3385(a)
13:70-13.8	Thoroughbred racing: protest by jockey	22 N.J.R. 2402(b)	R.1990 d.532	22 N.J.R. 3385(b)
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)	R.1990 d.576	22 N.J.R. 3499(d)
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	22 N.J.R. 1716(b)	R.1990 d.485	22 N.J.R. 3154(a)
13:70-19.23	Thoroughbred racing: declaring race official	22 N.J.R. 2403(a)	R.1990 d.534	22 N.J.R. 3385(c)
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-6.1	Harness racing: employee compensation insurance	22 N.J.R. 1717(a)	R.1990 d.573	22 N.J.R. 3500(a)
13:71-22.1	Harness racing: public telephones at tracks	22 N.J.R. 2403(b)	R.1990 d.535	22 N.J.R. 3385(d)
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)	R.1990 d.575	22 N.J.R. 3500(b)
13:71-23.8	Harness racing: administering medication to respiratory bleeders	22 N.J.R. 1718(a)	R.1990 d.486	22 N.J.R. 3155(a)
13:75-1.12	Violent Crimes Compensation Board: attorney fees	22 N.J.R. 2260(a)	R.1990 d.501	22 N.J.R. 3237(a)

Most recent update to Title 13: TRANSMITTAL 1990-8 (supplement September 17, 1990)

PUBLIC UTILITIES—TITLE 14

14:0	Energy conservation: preproposal and public hearing	22 N.J.R. 1692(a)		
14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-5.1	Closure or relocation of utility office	22 N.J.R. 2404(a)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	22 N.J.R. 2887(a)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
14:18-3.2	Cable television: requests for service	22 N.J.R. 2890(a)		
14:18-3.5	Cable television: outage credit	22 N.J.R. 2890(b)		
14:18-3.13	Cable television: restoration standards	22 N.J.R. 2891(a)		
14:18-3.16	Cable television: notice of rate change	22 N.J.R. 2892(a)		
14:18-3.23	Cable television: reimbursement	22 N.J.R. 2892(b)		
14:18-3.24	Cable television: late fees and charges	22 N.J.R. 2893(a)		
14:18-5.1	Cable television: location	22 N.J.R. 2894(a)		
14:18-7.5	Cable television: use of PEG channels	22 N.J.R. 2894(b)		
14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)		
14:18-12.2	Cable television: pole plant rearrangement verification	22 N.J.R. 2897(a)		

Most recent update to Title 14: TRANSMITTAL 1990-3 (supplement August 20, 1990)

ENERGY—TITLE 14A

14A:2	Energy emergency	22 N.J.R. 2950(a)		
14A:3	Energy conservation	22 N.J.R. 3315(b)		
14A:7	Submission and handling of information	22 N.J.R. 2649(a)		
14A:21	Home Energy Savings Program (HESP)	22 N.J.R. 2956(a)		

Most recent update to Title 14A: TRANSMITTAL 1990-2 (supplement August 20, 1990)

STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:1	Records management	22 N.J.R. 2243(a)	R.1990 d.496	22 N.J.R. 3155(b)
16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:20A-4.4	Right-of-way acquisition (county and municipal aid): relocation assistance	22 N.J.R. 2900(a)		
16:20B-4.3	Right-of-way acquisition (municipal fund): relocation assistance	22 N.J.R. 2901(a)		
16:21B	Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act rules	22 N.J.R. 2901(b)		
16:22	Urban revitalization, special demonstration and emergency projects	22 N.J.R. 3196(a)		
16:28-1.8, 1.27	Speed limit zones along Route 159 in Morris and Essex counties, Route 183 in Morris and Sussex counties	22 N.J.R. 2244(a)	R.1990 d.492	22 N.J.R. 3156(a)
16:28-1.22, 1.30	Speed limit zones along Route 109 in Cape May and Route 70 in Medford Township	22 N.J.R. 3111(a)		
16:28-1.72	Speed limit zones along U.S. 206 in Sussex County	22 N.J.R. 3112(a)		
16:28-1.72	Speed limit zones along U.S. 206 in Somerset, Morris, and Sussex counties: administrative correction	_____	_____	22 N.J.R. 3156(b)
16:28-1.97, 1.167	Speed limit zones along Route 77 in Cumberland, Salem and Gloucester counties, and Route 181 in Morris and Sussex counties	22 N.J.R. 3113(a)		
16:28-1.106, 1.132	Speed limit zones along Route 31 in Hunterdon County and Route 47 in Cape May County	22 N.J.R. 2245(a)	R.1990 d.493	22 N.J.R. 3157(a)
16:28-1.123	Speed limit zones along U.S. 9W in Bergen County	22 N.J.R. 3196(b)		
16:28A-1.1, 1.23	No stopping or standing zones along U.S. 1 in South Brunswick and Route 33 in Hightstown	22 N.J.R. 2904(a)		
16:28A-1.7, 1.15	Restricted parking and stopping along U.S. 9 in Freehold and Route 23 in Jefferson Township	22 N.J.R. 3319(a)		
16:28A-1.7, 1.21, 1.24, 1.105	Restricted parking and stopping along U.S. 9 in Little Egg Harbor, Route 34 in Colts Neck, Route 54 in Hammonton, and U.S. 30 in Berlin	22 N.J.R. 2905(a)		
16:28A-1.8, 1.9, 1.33, 1.41, 1.104	Restricted parking and stopping along Route 10 in Livingston, Route 47 in Vineland, Route 17 in Upper Saddle River, U.S. 40-322 in Atlantic City, and Route 77 in Bridgeton	22 N.J.R. 2906(a)		
16:28A-1.14, 1.38, 1.41, 1.46, 1.111	Restricted parking and stopping along U.S. 22 Alternate in Warren County, Route 71 in Monmouth County, Route 77 in Cumberland County, U.S. 130 in Burlington County, and Route 184 in Middlesex County	22 N.J.R. 3197(a)		
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16:28A-1.41	Restricted stopping and standing along Route 77 in Cumberland County: administrative correction	_____	_____	22 N.J.R. 3158(a)
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16:29-1.47, 1.68, 1.69, 1.70	No passing zones along Route 15 in Sussex County, Route 7 in Hudson, Bergen and Essex counties, Route 10 in Essex County, and Route 50 in Cape May	22 N.J.R. 2909(a)		
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