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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 19, 1993
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT AUGUST 16, 1993

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

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

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NEW JERSEY REGISTER

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NEW JERSEY REGISTER, MONDAY, OCTOBER 4, 1993

EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR

Governor Jim Florio

Executive Order No. 99(1993)

Project Agreements for Public Works Projects

Issued: September 13, 1993.

Effective: September 13, 1993.

Expiration: Indefinite.

WHEREAS, the United States Supreme Court recently held in the *Boston Harbor* case that state and local governments are permitted under the National Labor Relations Act to enforce project agreements when the government contracting unit acts as a market participant; and

WHEREAS, the Supreme Court commented in that case that the use of project agreements "exemplifies" the purposes of the National Labor Relations Act; and

WHEREAS, New Jersey has a compelling interest in carrying out public works projects at the lowest reasonable cost and the highest degree of quality; and

WHEREAS, New Jersey must ensure that labor disputes are resolved without the disruptions of strikes, lockouts, or slowdowns; and

WHEREAS, project agreements provide legally enforceable guarantees that projects will be carried out in an orderly and timely manner, without strikes, lockouts, or slowdowns; and

WHEREAS, project agreements also provide for peaceful, orderly, and mutually binding procedures for resolving labor issues; and

WHEREAS, the State also has a compelling interest in guaranteeing that public works projects meet the highest standards of safety and quality; and

WHEREAS, a highly skilled workforce ensures lower costs over the lifetime of the completed project for repairs and maintenance; and

WHEREAS, project agreements provide the State with a guarantee that public works projects will be completed with highly skilled workers; and

WHEREAS, project agreements allow public agencies to more accurately predict the actual cost of the project; and

WHEREAS, project agreements facilitate integrated work schedules among different trades on a project site; and

WHEREAS, project agreements also promote harmonious and productive work environments; and

WHEREAS, New Jersey can best accomplish these goals by encouraging agreements between contractors and subcontractors who perform work on State public works projects and the appropriate building and construction trade unions concerning important issues of employment, such as work hours, starting times, overtime rates, and procedures for resolving disputes; and

WHEREAS, project agreements, therefore, advance the interests of efficiency, quality, and timeliness;

NOW, THEREFORE, I, JIM 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. It is hereby the policy of the State of New Jersey that public works projects implemented by any State department, authority, or instrumentality be subject to a project agreement whenever feasible and whenever such agreement substantially advances the interests of costs, efficiency, quality, safety, timeliness and the State's policy regarding minority- and women-owned businesses as set forth in Executive Order No. 84.

2. Every State department, authority, or instrumentality authorized to implement a public works project shall ensure that public works projects, whenever possible, be implemented subject to a project agreement with the applicable building and construction trade union in whose jurisdiction the work is to be performed.

3. In accordance with this Order, a State department, authority, or instrumentality responsible for implementing a public works project shall either (a) in good faith negotiate a project agreement directly with the applicable building and construction trade union or council in whose jurisdiction the project is to be performed, or (b) condition the award of a contract with a project manager or general contractor upon an agreement by the project manager or general contractor to in good faith negotiate a project agreement with the applicable building and construction trade union or council in whose jurisdiction the project is to be performed.

4. Any project agreement reached pursuant to this Order:

(a) shall advance the interests of the State of New Jersey including the interests in cost, efficiency, quality, timeliness, and safety;

(b) shall contain guarantees against strikes, lock-outs, or other similar actions;

(c) shall set forth effective, immediate, and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work; and

(d) shall be made binding on all contractors and subcontractors on the public works project through the inclusion of appropriate bid specifications in all relevant bid documents.

5. In addition, any project agreement made pursuant to this Order shall fully conform to any and all statutes, regulations, and executive orders, including Executive Order No. 84, regarding the implementation of set-aside goals for women- and minority-owned businesses. Moreover, the obligation to comply with Executive Order No. 84 shall be expressly provided in the project agreement.

6. This Order shall take effect immediately and be implemented as soon as practicable in consideration and application of the criteria and policies declared herein.

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Commercial Fertilizer and Soil Conditioners

Proposed Readoption with Amendments: N.J.A.C. 2:69

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

Authority: N.J.S.A. 4:9-15.33.

Proposal Number: PRN 1993-491.

Submit comments by November 3, 1993 to:

Dhun B. Patel, Ph.D., Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5575

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:69, Commercial Fertilizers and Soil Conditioners, expires on November 7, 1993. The Department of Agriculture has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally developed. N.J.A.C. 2:69 was originally promulgated to (1) protect farmers and consumers by determining the manufacturer's compliance with the guaranteed content of these products and (2) reduce the amount of misbranded and deficient products offered for sale, thereby insuring the quality and quantity of these agriculture products grown.

The proposed amendment to N.J.A.C. 2:69-1.8 is to establish that the Department adopts by reference and therefore makes regulatory the standards, terms and requirements contained in the current edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO). The Association standards are recognized by the industry as the most comprehensive and current and are accepted throughout most of the United States. A copy of the AAPFCO publication is on file in the Director's office, Division of Regulatory Services, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be obtained by writing Joel M. Padmore, Treasurer, North Carolina Department of Agriculture, 4000 Ready Creek Road, Raleigh, North Carolina 27607.

The procedures used to sample and analyze fertilizers are conducted in accordance with methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists Supplemented by other recognized official procedures. The proposed amendment to N.J.A.C. 2:69-1.7 is to state affirmatively that the Department adopts by reference the methodology set forth in this publication. The current rule at this cite is being deleted because it now becomes redundant. A copy is on file in the Director's office, Division of Regulatory Services, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may also be obtained by writing to AOAC, Fulfillment Coordinator, 2200 Wilson Boulevard, Arlington, Virginia 22201-3301.

Social Impact

The rules in N.J.A.C. 2:69 implement N.J.S.A. 4:9-15.1 et seq. which, although having been altered by revisions, has been substantially the same since 1970. The original law was in response to the growing use and availability of commercial fertilizers to farmers in the 1850's, who faced many products of doubtful value. The law and rules are designed to provide accurate verifiable information so the proper amount and type of fertilizer is used on any particular crop and soil.

Readoption of N.J.A.C. 2:69 will continue to provide a basis for fair competition in the fertilizer and soil conditioner industries as well as to protect farmers and consumers who purchase commodities covered in this chapter.

Both consumers and manufacturers are affected by the testing of commercial commodities. The purpose is to assure adequate and accurate labeling information. The labeling allows the purchase of a product with a known quality and the easy comparison of the product with other similar products on the market. N.J.A.C. 2:69-1.1 through 1.13 will continue to protect purchasers of fertilizers and soil conditions by reducing the amount of misbranding.

Economic Impact

Consumers will realize economic savings through the accurate labeling. Manufacturers will be able to compete on an equal basis through the use of the same standards in formulating their labels. Economy of scale will be realized by the opening up of all markets in the United States to any commercial fertilizer manufacturer through one uniform labeling system. The savings of these economies of scale will then be able to be passed on to the consumer. There is no increased cost on the Department of Agriculture by use of these standards.

If a deficiency is found, the values of the nutrients in the rules are then used in the formula to produce a figure which is compared to the cost of the product by deficiency in the guaranteed analysis. The guaranteed figures are then subtracted and the resulting figure is multiplied by three to find the amount due to the customer or customers, which is then distributed pro rata. If no customer can be identified, the money goes to the State Treasury.

In the 1991-1992 season, 293 official samples were analyzed in the laboratory; of these, 7.2 percent were deficient in nitrogen, 3.5 percent were deficient in available phosphoric acid and 7.5 percent were deficient in soluble potash. As a result, \$6,866 in fines were refunded to consumers and \$9,778 was transmitted to the State Treasurer.

Regulatory Flexibility Analysis

Some commercial fertilizer manufacturers and distributors are small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption will have an economic impact on such businesses, though the Department knows of no less restrictive a system than expressed in the standards. Minimal recordkeeping or reporting requirements in regard to labeling are required under the rules.

The standards discussed in the 1993 publication of the Association of American Plant Food Control Officers are the most universal and accepted rules and provide a "level playing field" for all manufacturers. This should enable small businesses to compete against the larger businesses advertising budgets on the basis of the quality of the products.

Further, there is no way to protect the consumers of these products without a method of guaranteeing compliance with label claims. It is important that consumers be able to rely upon labeling which provides comparable information. It is not possible to exempt small businesses from compliance with these rules, due to an overriding concern for the public welfare. These standards are the most universally recognized, have been used by the Department for years, and provide the least costly and best protection available.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:69.

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

2:69-1.7 [Sampling] General methodology for sampling and laboratory analyses

[(a) Dry materials. Use slotted single or double tube, or slotted tube and rod, with solid cone tip at one end.

1. For sampling of bagged fertilizer, lay bag horizontally and remove core diagonally from end to end. For lots of 10 bags or more, take core from each of 10 bags. When necessary to sample lots of less than 10 bags, take 10 cores but at least one core from each bag present.

2. For bulk fertilizers in trucks or railcars, use a double tube compartmented trier with solid cone tip, effective sampling length not less than four feet and separated compartments not more than six inches long. Draw 10 vertical cores distributed in a standard concentric sampling pattern (Figure 1) of such design that each core represents approximately equal fractions of the lot. Bulk shipments

may be sampled at time of loading or unloading by passing National Plant Food Institute type sampling cup (Figure 2) through entire stream of material as it drops from belt or chute. Make sampling such as to assure not less than 10 equal timed spaced passes throughout transfer operation. Stream samples are not applicable unless uniform continuous flow of fertilizer is maintained for at least three minutes while lot is being sampled.

3. For sampling small packages of fertilizer (ten pounds or less), take one entire package as sample.

4. Bulk fertilizers in storage should be sampled by probing vertically as in Fig. 3. If the bin has been filled from a center location forming a coned or ridged pile, Figure 3 locates the sampling points.

5. Reduce composite to quantity required, preferably by riffing, or by mixing thoroughly on clean oil cloth or paper and quartering. Place all samples in airtight containers.

(b) For sampling liquid fertilizer, (in absence of free ammonia) flush delivery line and faucet on storage tank and collect enough sample in glass or polyethylene container. Alternatively, lower sample container into material through port in top of tank and let fill. Seal container tightly to prevent evaporation.

(c) For sampling suspension fertilizers, following agitation for several minutes and flushing any valves and lines by:

1. Directly from the petcock at the bottom of tank(s).

2. From the hose on the storage, nurse, or applicator tank(s) after the lines have been thoroughly flushed. Caution should be exercised to see that all valves other than one from tank(s) being sampled have been securely "cut off".

3. By dip tube of not less than 1/2 inch I.D. Seal container tightly to prevent evaporation.

(d) The methods of sampling can be altered by the State Chemist to conform to publications such as those of the Association of Official Analytical Chemists.]

(a) The Department of Agriculture adopts as a rule and incorporates herein by reference the general methods for sampling and laboratory analyses set forth in the 15th (1990) edition of the Official Publication of the Association of Analytical Chemists, Inc., as amended and supplemented.

(b) A copy of the 15th (1990) edition of the official methods of the Association of Official Analytical Chemists (AOAC) is on file in the Director's Office, Division of Regulatory Services, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be procured by writing to AOAC, Fulfillment Coordinator, 2200 Wilson Boulevard, Arlington, Virginia 22201-3301.

2:69-1.8 [Definitions of fertilizer terms] **General rules regarding fertilizers**

(a) [Fertilizer terms used shall be those contained in the current edition] The Department of Agriculture adopts as a rule and herein incorporates by reference each annual edition, in turn, of the Official Publication of the Association of American Plant Food Control Officials, Inc.[1]

(b) A copy of the current edition of the Official Publication of the American Plant Food Control Officials is on file in the Director's Office, Division of Regulatory Services, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be procured by writing to Joel M. Padmore, North Carolina Department of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607.

[Copy filed with Director, Division of Regulatory Services, N.J. Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be procured by writing to Robert C. Rund, Department of Biochemistry, Lafayette, Indiana 47906.]

2:69-1.10 Penalties

When an official analysis shows that a commercial fertilizer or soil conditioner is deficient in one or more of its guaranteed secondary or micro nutrients beyond the investigational allowance as established by [Regulation #3] N.J.A.C. 2:69-1.3 a penalty of \$20.00 shall be assessed by the State Chemist against the licensee plus \$5.00 per ton or fraction thereof. All penalties assessed under this regula-

tion shall be pro-rated to the purchaser(s), or to a consumer(s) who thereafter received possession of a lot represented by the sample analyzed, within 60 days after the date of notice from the State Chemist to the licensee. Receipts shall be obtained and forwarded promptly to the State Chemist by the licensee. If the purchaser(s) or consumer(s) cannot be found, the amount of the penalty shall be paid to the State Treasurer.

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Capital

Proposed New Rule: 3:4-1.6

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

Authority: N.J.S.A. 17:1-8.1; 17:9A-17.1 Note; and 17:16M-9.

Proposal Number: PRN 1993-552.

Submit comments by November 3, 1993 to:

Rule Comments

Attn: Steve Szabatin

Deputy Commissioner

Department of Banking

CN 040

Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Banking proposes to adopt a new rule regarding the capital required by a depository institution to charter flip as an interim step to facilitate an acquisition or merger.

Recent legislative changes permit institutions to flip from an association to a savings bank to a commercial bank, or vice versa. N.J.S.A. 17:9A-17.1 et seq; and 17:16M-1 et seq. To qualify for such a conversion, a depository institution must meet all capital maintenance requirements. For depository institutions which are converting as an interim step to facilitate a merger or acquisition, the Department proposes to set the capital requirement at two percent, provided that the resulting depository institution after the merger or acquisition will have a ratio of Tier 1 capital to assets of at least four percent.

Social Impact

The proposed new rule will facilitate mergers and acquisitions with institutions which are below four percent Tier 1 capital. This will have the public benefit of providing another alternative for an institution to come compliance with capital requirements set by the Department and federal regulators.

Economic Impact

The fees charged for conversion are not affected by the proposed rule. To the extent that the proposed rule facilitates mergers or acquisitions, it may have a positive economic impact on the institutions involving by reducing costs and promoting efficiency.

Regulatory Impact Statement

About one-half of depository institutions are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, these rules facilitate conversions, and do not impose any new reporting, recordkeeping or compliance requirements. Accordingly, no differentiation in business size is necessary.

Full text of the proposed new rule follows:

3:4-1.6 Capital for interim conversion

(a) Notwithstanding any rule to the contrary, a depository institution with a ratio of Tier 1 capital to assets in excess of two percent shall be deemed to be adequately capitalized to qualify for a conversion to a bank, savings bank, capital stock savings bank, capital stock association or mutual association pursuant to N.J.S.A. 17:9A-17.1 et seq and/or N.J.S.A. 17:16M-1 et seq., provided that:

1. The conversion is an interim step toward a merger or acquisition with another institution; and

2. After the merger or acquisition, the resulting depository institution will have a ratio of Tier 1 capital to total assets of at least four percent.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
Minor Work**

Proposed Amendment: N.J.A.C. 5:23-2.17A

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 1993-540.

Submit comments by November 3, 1993 to:

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

The agency proposal follows:

Summary

N.J.A.C. 5:23-2.17A(c)1 currently allows reroofing in excess of 25 percent of the total roof area in one and two-family dwellings to be "minor work." That designation allows the contractor or homeowner to comply with the code simply by notifying the enforcing agency before work begins, and then mailing in the permit application and fee.

It has come to the attention of the Department that there have been several cases of such "minor work" where more than two roof coverings have been added, or the base or support structures are not sufficient for the weight of the material being applied. After issuing a minor work permit, the code official is required to perform an inspection within 30 days of notice. In the case of reroofing, code officials are finding non-complying or potentially unsafe conditions after all of the work is completed.

The proposed amendment would make it mandatory to obtain a construction permit before reroofing work begins, except for work classified as "ordinary repairs."

Social Impact

The proposed amendment will protect public safety by allowing the enforcing agency to be sure that reroofing is properly done so as to prevent sagging or structural failure of the roof.

Economic Impact

While there will be added costs involved in complying with permit requirements, the long-term economic impact of this amendment should be positive to the extent that roof failure is minimized and roofing work does not have to be removed and redone.

Regulatory Flexibility Analysis

Requiring permits for reroofing will have the same effect on buildings owned or leased by "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as it will on buildings owned by persons and business entities other than "small businesses." The safety considerations are the same for all and no differential treatment is warranted. While permitting costs will be incurred, the long-term economic effects should be positive.

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

5:23-2.17A Minor work

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

(c) Minor work:

1. Minor work shall mean and include the construction or total replacement of any porch or stoop which does not provide structural support for any roof or portion of a building; the construction or alteration of any rooms within an existing one or two family dwell-

ing, provided that no structural members are altered in any way; the removal and replacement of more than 25 percent of the exterior siding [and/or roofing] of a one or two-family dwelling;

2.-4. (No change.)

(d) (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
Utility Load Management Device Installation
Programs; Plan Review for Mausoleums;
Department Fees**

**Proposed Amendments: N.J.A.C. 5:23-2.18A, 3.11
and 4.20**

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 1993-563.

Submit comments by November 3, 1993 to:

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

The agency proposal follows:

Summary

In 1989, a new rule was adopted at N.J.A.C. 5:23-2.18A, that allowed for a special inspection ratio and fee schedule for the installation of load management devices (see 21 N.J.R. 233(a) and 3458(a)). These are devices owned by the electrical utility and installed by contractors employed by the utility. Since these devices were all similar, only 30 percent were inspected and a 30 percent fee schedule was established. Permit applications were required for each device installation.

Over the past four years, the Department has found that all aspects of the load management device rule, except paperwork, have worked very well. Recently, in one municipality, 7,000 load management devices were installed. This required 7,000 permit applications, entering the information into the municipal computer systems and filing. While the municipality had no trouble keeping up with the inspection process, they were unable to process the related paperwork.

The proposed amendments do not change the requirements for inspections. They do, however, dramatically reduce the amount of paperwork that must be processed by the utility, electrical contractor and municipality. Instead of one permit per installation, these amendments allow the contractor to put all of the installations completed the previous week on one permit. In addition to the permit application, the utility must provide a listing of all installations with detailed information to assist with inspections.

Due to the requirements of the Uniform Construction Code Activity Reporting System (UCCARS), special rule provisions are needed. The utility shall be the owner of the permit, since it owns the devices being installed and may remove them at any time. In addition, the system requires a block and lot number to be listed for the permit. For uniformity, the Department is requiring "UCC 2.18" as the block number and "A" as the lot. (This is because N.J.A.C. 5:23-2.18A is the rule governing load management devices.)

These devices have been considered to be electrical devices, and most municipal fee schedules allowed the installation of one to 50 devices for a flat fee. Since there was usually only one device per installation, a minimum fee was charged. With hundreds of these devices now proposed to be on a single permit, the method of determining the fee had to be revised, since the purpose of the proposed amendment is not to make a radical change in fee revenue. Load management devices will now be listed as a separate item, with a flat fee for each device inspected. This fee is similar to the minimum fee and shall keep the amount of fees paid approximately the same.

The proposed amendment also addresses the issue of certificates of approval. The amendment would require one certificate of approval to

be issued for each permit, which might include hundreds of devices. Currently, some municipalities are requiring, and charging for, certificates of approval for these devices, while others are not.

The proposed amendment at N.J.A.C. 5:23-3.11 includes an unrelated amendment designating the Department of Community Affairs as the sole plan review agency for public mausoleums, vaults, crypts or other structures intended to hold or contain human remains. N.J.S.A. 8A:3-14 already requires that full detailed plans and specifications of any such structure be presented to the Department for examination and approval before it can be constructed, so that the Department can determine whether the proposed structure can be operated and maintained without constituting a hazard to public health or safety. This proposal amends the rule on sole plan review authority of the Department to include this statutory delegation.

Social Impact

The proposed amendments to N.J.A.C. 5:23-2.18A and 4.20 are intended to promote uniformity in the processing of load management device permits, thereby eliminating the need for redundant paperwork by the utility, contractor and municipal code enforcement office.

Incorporating the provisions of N.J.S.A. 8A:3-14 in the Uniform Construction Code rules at N.J.A.C. 5:23-3.11 will eliminate a possible source of confusion as to whether local or State enforcing agencies have plan review authority over mausoleums and similar structures.

Economic Impact

While most municipalities have been able to cover the cost of inspections for load management devices with the fees collected, they have not been able to cover the cost of clerical overtime and/or temporary clerical help for processing the paperwork. Instead of raising fees, the proposed amendment will provide substantial savings due to the elimination of unnecessary paperwork, both for the utility and contractor who generate it and for the municipalities who must process it. In the municipality that brought this issue to the Department's attention, only 30 permit applications would be required for the same work now requiring 7,000. Neither the workloads nor the revenues of private and municipal enforcing agencies will be affected by these amendments, since no change is being made either to fees or to the percentage of inspections that is required. As N.J.A.C. 5:23-3.11 is amended to clarify Department review and approval authority already delegated by statute, no economic impact is anticipated, except as may result from the elimination of confusion as to plan review authority.

Regulatory Flexibility Analysis

The installation of these devices and the majority of the related paperwork was completed by the electrical contractors installing the devices. These contractors generally qualify as "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and they can expect to realize a substantial cost reduction in staff time in preparing permit applications.

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

5:23-2.18A Utility load management device installation programs

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

(f) On the Monday following installations, the utility shall submit to each municipality a completed permit application[s] for all installations completed in the municipality's jurisdiction during the preceding week.

1. A listing of all permits so delivered shall be filed by the utility with the Department.

2. **All devices installed during that week, by a single contractor, shall be included on that application. The application shall include the Construction Permit Application (F100B) and an Electrical Subcode Technical Section (F120B).**

3. **Since the permit is not, typically, for work at a single location, the block number shall be entered as "UCC 2.18" and the lot as "A." The work site location shall be the name of the municipality and the owner in fee shall be the utility.**

4. **In addition to the Construction Permit Application, the utility or contractor shall supply the municipality a complete listing of locations where the devices, listed on this permit, were installed. This list shall include owner's name, owner's address, block and lot, date of installation, type of device(s) installed, and the contractor's name.**

(g) [Applications shall bear the name of the installation contractor and the date of installation.] If, for any reason, a permit application, **or any part**, is found to have been submitted in error, the utility or its contractors shall notify the municipality [and the Department] as soon as possible.

(h) **When all required municipal and utility inspections have been approved, a single certificate of approval, for that permit, shall be issued to the utility.** [The municipality shall submit weekly reports to the Department which shall include a listing of permit applications received pursuant to (f) above together with the following information: "installations completed—permit applications received", "errata", if applicable, and, pursuant to (k) below, "installations inspected—date, contractor, pass or fail". If a municipality so chooses, it may review and certify data presented to it by the utility, if that data is complete and accurate. Data on pass/fail rates for inspections shall specify each contractor so that program-wide pass/fail rates may be tabulated.]

(i)-(j) (No change.)

(k) The municipality shall inspect 30 percent of the installations performed and shall record the results of those inspections [to be forwarded to the Department in its weekly report pursuant to (h) above]. The utility shall inspect at least 10 percent of the installations performed and shall record the results of those inspections and forward those results concurrently to the municipality and to the Department weekly. [Any data submitted in reports by the utility to the municipality and the Department may be omitted from the municipality's report, if, after reviewing the utility's data, the municipality finds it to be complete and accurate.]

(l)-(o) (No change.)

5:23-3.11 Enforcement activities reserved to the Department

(a) The Department of Community Affairs shall be the sole plan review agency for the following structures:

1.-5. (No change.)

6. Public mausoleums, vaults, crypts and other structures intended to hold or contain human remains; and

Recodify existing 6. as 7. (No change.)

(b)-(h) (No change.)

5:23-4.20 Departmental fees

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

(c) Departmental (enforcing agency) fees shall be as follows:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be \$46.00.

i.-ii. (No change.)

iii. Electrical fixtures and devices: The fees shall be as follows:
(1)-(2) (No change.)

(3) For each motor or electrical device greater than 10 horsepower and less than or equal to 50 horsepower; for each service panel, service entrance, or sub-panel less than or equal to 200 amperes; [and] for [all] **each** transformers and generators greater than 10 kilowatts and less than or equal to 45 kilowatts[.]; **and for each utility load management device, the fee shall be \$46.00.**

(4)-(6) (No change.)

iv. (No change.)

3.-9. (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
Municipal Fees; Annual Permits**

Proposed Amendment: N.J.A.C. 5:23-4.18

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 1993-564.

Submit comments by November 3, 1993 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

When N.J.A.C. 5:23-4.20(c)5ii(2) was amended in 1992 to change the training registration fee from \$100.00 to \$140.00, the same change was inadvertently not made to the other provision in which the same requirement appears—N.J.A.C. 5:23-4.18(a)5. This discrepancy has become a source of confusion, which the proposed amendment is intended to eliminate. The amendment also updates the name of the bureau responsible for receiving training registration fee payments. The former Bureau of Construction Code Enforcement is now the Construction Code Element, and the bureau within that element that includes the Training Section is, as indicated in N.J.A.C. 5:23-4.20(c)5ii(2), the Bureau of Technical Assistance.

Social Impact

The proposed amendment will correct a discrepancy between two rule provisions, thereby eliminating a source of confusion.

Economic Impact

Since the fee of \$140.00 is already being charged by authority of N.J.A.C. 5:23-4.20(c)5ii(2), the proposed amendment will have no economic impact.

Regulatory Flexibility Statement

Since there will be no economic impact as a result of the proposed amendment, there can be no differential economic impact or any compliance requirements for "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No new requirements are imposed.

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

5:23-4.18 Standards for municipal fees

(a) General:

1.-4. (No change.)

5. Prior to the issuance of the annual permit, a training registration fee of [\$100.00] **\$140.00** per subcode shall be submitted by the applicant to the municipal construction official, who shall forward the fee to the Department of Community Affairs, Bureau of [Construction Code Enforcement] **Technical Assistance**, Training Section along with [copies] **a copy** of the construction permit (Form F-170C). Checks shall be made payable to "Treasurer, State of New Jersey."

(b)-(k) (No change.)

EDUCATION

(b)

STATE BOARD OF EDUCATION

Appeals

Proposed Readoption with Amendments: N.J.A.C. 6:2

Authorized By: State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:4-1 through 18A:4-20, 18A:6-27 through 18A:6-29, 18A:6-39, 18A:7A-15 and 18A:12-29.

Proposal Number: PRN 1993-554.

Submit written comments by November 3, 1993 to:
Elease E. Greene-Smith, Administrative Practice Officer
N.J. Department of Education
225 East State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:2 expires on February 6, 1994 unless readopted. The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-1 through 18A:4-20, 18A:6-27 through 18A:6-29, 18A:6-39, 18A:7A-15 and 18A:12-29, proposes a re-adoption with amendments of the rules pertaining to appeals to the State Board from final decisions of the Commissioner of Education, N.J.A.C. 6:2.

This chapter provides the rules of procedure for processing appeals taken to the State Board of Education pursuant to N.J.S.A. 18A:6-27 from final decisions of the Commissioner of Education, State Board of Examiners and the School Ethics Commission. The Legal Committee of the State Board of Education has reviewed the rules codified at N.J.A.C. 6:2 and deems them essential to the fulfillment of the State Board's responsibilities to decide cases involving alleged violations of the school laws. The provisions of this chapter became effective prior to September 1, 1969. These rules were previously amended August 16, 1982 and March 21, 1984; they were repealed and a new chapter was readopted and became effective February 6, 1989.

The most significant proposed amendments to these rules are the repeal of the procedural rules for appeals to the State Board of Education from decisions of the Commissioner on school budget cap waiver applications pursuant to N.J.S.A. 18A:7A-25, which was repealed by the State legislature, and the inclusion of appeals from decisions of the School Ethics Commission made pursuant to N.J.S.A. 18A:12-29.

A review of the proposed re-adoption with amendments follows:

Subchapter 1. General Provisions

N.J.A.C. 6:2-1.1 and 1.2 specify which decisions are appealable to the State Board of Education. N.J.A.C. 6:2-1.1(a) has been amended to specify that decisions of the School Ethics Commission finding a violation of the School Ethics Act are appealable to the State Board of Education.

N.J.A.C. 6:2-1.3 prescribes the 30-day period for appealing to the State Board of Education from a decision of the Commissioner of Education, as required by N.J.S.A. 18A:6-28. N.J.A.C. 6:2-1.3(a) has been amended to include appeals from decisions of the School Ethics Commission.

N.J.A.C. 6:2-1.4 specifies how the State Board computes periods of time referred to in this subchapter. There are no amendments proposed for these rules.

N.J.A.C. 6:2-1.5 delineates the conditions under which extensions for filing papers may be obtained. The existing rule sets forth the procedures to be followed when extensions are opposed. N.J.A.C. 6:2-1.5(d) disallows extensions beyond 30 days in all instances, unless leave has been granted by the Legal Committee. These provisions are intended to eliminate potential abuses which prolong or delay the State Board appeals process. There are no amendments proposed for these rules.

N.J.A.C. 6:2-1.6 specifies the manner in which appeals and cross appeals are made to the State Board. This section has been amended to include appeals from decisions of the School Ethics Commission.

N.J.A.C. 6:2-1.7 specifies the contents of notices of appeal and cross appeal, and the filing and proof of mailing requirements for appeals to the State Board. N.J.A.C. 6:2-1.7 also specifies that the acceptable method of showing proof of service of appeals are a signed acknowl-

edgement of service by the party or the party's attorney, or affidavit, or a certificate of service. There are no amendments proposed for this rule.

N.J.A.C. 6:2-1.8 specifies what is included in the record on appeal. This section defines for parties what certification of the record by the Commissioner means and provides notice to the parties that the record which was before the Commissioner is certified to the State Board. The process established in N.J.A.C. 6:2-1.8 is intended to assure the parties that the entire record is before the State Board when it reviews an appeal. N.J.A.C. 6:2-1.8 has been amended to include School Ethics Commission decisions and to clarify that the record on appeal includes tape recordings, computer disks and exhibits, as well as the papers filed in a case.

N.J.A.C. 6:2-1.9 specifies the conditions under which the record before the State Board may be supplemented. There are no amendments proposed for this rule.

N.J.A.C. 6:2-1.10 specifies the requirements for filing and service of all briefs, motions, applications and exceptions to the State Board. There are no amendments proposed for this rule.

N.J.A.C. 6:2-1.11 specifies the timelines for filing and service of briefs, motions, applications and exceptions with the State Board. There are no proposed amendments for this rule.

N.J.A.C. 6:2-1.12 provides notice to appellants and cross appellants that failure to file an appeal brief or brief in support of a cross appeal could result in the State Board dismissing the appeal or cross appeal. Respondents are also provided notice that their failure to meet the filing deadline for an answer brief could result in the State Board considering the matter on the record before them. There are no amendments proposed for this rule.

N.J.A.C. 6:2-1.13 specifies what is to be included in appeal briefs, answer briefs and briefs in support of a cross appeal. N.J.A.C. 6:2-1.13 has been amended to require that all briefs be dated and signed by the attorney of record.

N.J.A.C. 6:2-1.14 provides for and establishes requirements applicable to appendices to briefs. N.J.A.C. 6:3-1.14 has been amended to clarify that the decision appealed from is to be included in the appendix to the appeal brief or brief filed in support of a cross appeal. The intent of this provision is to ensure that the documentation which is material to the resolution of a given case will be submitted with the briefs.

N.J.A.C. 6:2-1.15 specifies the length of formal briefs, which is not to exceed 40 pages exclusive of tables of contents and appendices. Letter briefs and reply briefs are not to exceed 15 pages. This rule provides that the page limit requirements may be relaxed only by leave of the Legal Committee. There are no amendments proposed for this rule.

N.J.A.C. 6:2-1.16 provides that the State Board may order briefs suppressed under certain circumstances and may direct the filing of a new brief within a fixed period of time. N.J.A.C. 6:2-1.16 has been amended to provide that all briefs and papers filed must protect the anonymity of minors who are witnesses or parties in cases appealed to the State Board.

N.J.A.C. 6:2-1.17 defines the manner in which parties may respond to reports of the State Board Legal Committee. There are no amendments proposed for this rule.

N.J.A.C. 6:2-1.18 defines the manner in which parties shall file motions and supporting briefs with the State Board. There are no amendments proposed for this rule.

N.J.A.C. 6:2-1.19 provides that the State Board may relax its procedural rules where adherence would result in injustice. There are no amendments proposed for this rule.

Subchapter 2. Miscellaneous Proceedings

N.J.A.C. 6:2-2.1 sets forth the manner in which motions to appear as amicus curiae are to be filed with the State Board and the conditions under which such motions will be granted. There are no amendments proposed for this rule.

N.J.A.C. 6:2-2.2 sets forth the manner in which motions for stay are to be filed with the State Board of Education. There are no amendments proposed for this rule.

N.J.A.C. 6:2-2.3 sets forth the manner in which motions for leave to appeal interlocutory orders, decisions or actions are to be made before the State Board. There are no amendments proposed for this rule.

N.J.A.C. 6:2-2.4 sets forth the manner in which a party may move for emergency relief before the State Board. N.J.A.C. 6:2-2.4 has been amended so as to cross-reference N.J.A.C. 6:2-3.3, which permits delegation of decision-making authority in certain circumstances.

N.J.A.C. 6:2-2.5 provided a process for the State Board to decide appeals from budget cap waiver applications under N.J.S.A. 18A:7A-25. N.J.A.C. 6:2-2.5 is being repealed because N.J.S.A. 18A:7A-25 was repealed by P.L. 1990, c.52 and no longer provides general authority for the Commissioner to grant cap waivers. N.J.A.C. 6:2-2.5 is being reserved pending the adoption of rules pertaining to budget reviews by the Commissioner in cases involving cap waivers under N.J.S.A. 18A:7D-28.

N.J.A.C. 6:2-2.6 sets forth the procedures under which recommendations by the Commissioner for the creation of a State-operated school district are to be considered by the State Board. There are no proposed amendments to this rule.

N.J.A.C. 6:2-2.7 sets forth the manner in which parties may request clarification of State Board of Education decisions. There are no proposed amendments to this rule.

Subchapter 3. Review and Decision

N.J.A.C. 6:2-3.1 defines the functions and authority of the State Board Legal Committee. N.J.A.C. 6:2-3.1(a) has been amended to include appeals from decisions of the School Ethics Commission.

N.J.A.C. 6:2-3.2 clarifies the procedures for requesting oral argument before the State Board or its Legal Committee. Also set forth in this section are the procedures for requesting oral argument and the conditions under which such requests will be granted. There are no proposed amendments to this rule.

N.J.A.C. 6:2-3.3 sets forth the State Board's authority to decide applications for emergency relief and conditions under which the authority may be delegated to the State Board president or chairperson of the Legal Committee. There are no proposed amendments to this rule.

N.J.A.C. 6:2-3.4 sets forth the manner in which the State Board will make final decisions. There are no proposed amendments to this rule.

Social Impact

The existing rules were designed for the processing of appeals to the State Board of Education from decisions of the Commissioner of Education and the State Board of Examiners and are intended to facilitate the administrative appeal process and advance justice. The readoption of these rules would include appeals from the School Ethics Commission and would continue to clearly delineate the appeals process, and to set realistic, clear, and fair timelines for litigants during the process. These rules are necessary to establish certain and clear procedures for litigants in pursuing their administrative appeals. Without them, litigants would be without guidance in the appeals process.

Economic Impact

The readoption with amendments of these rules impose no economic burden other than those which parties assume themselves by way of seeking representation of counsel. These rules require no filing fee nor are parties obliged to be represented by counsel.

Regulatory Flexibility Analysis

A small business, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which provides service or supplies/materials to a district board of education, may seek relief before the State Board concerning alleged violation of bidding laws or regulations. Under these circumstances, the small business would be required to comply with the reporting, recordkeeping and other compliance requirements of this chapter as described above in the same manner as any other individual, body or entity invoking the State Board's jurisdiction. However, the burden of compliance with these rules is minimal and is offset positively by the provision of such a mechanism for relief. No varying standards are therefore provided based on business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:2.

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

6:2-1.1 Appealable decisions

(a) Final decisions of the Commissioner of the Department of Education, [and] of the State Board of Examiners, and of the School Ethics Commission are appealable to the State Board of Education. Final decisions include the following:

1. Any determination of the Commissioner, including, as to those separable issues upon which the Commissioner has rendered a final decision, a decision remanding all or part of a controverted case; [and]

2. Any decision of the State Board of Examiners pertaining to the revocation or suspension of a certificate issued by the Board of Examiners[.]; and

3. Any decision of the School Ethics Commission finding a violation of the School Ethics Act, N.J.S.A. 18A:12-29d.

(b) The State Board, upon application made pursuant to N.J.A.C. 6:2-2.3, may grant leave to appeal from an interlocutory order, decision or action of the Commissioner, or his or her representative, or of the Board of Examiners, or of the School Ethics Commission.

6:2-1.2 Who may appeal

(a) Any party aggrieved by a decision of the Commissioner, or a decision by the Board of Examiners to revoke or suspend certification, or by the School Ethics Commission finding a violation of the School Ethics Act may appeal to the State Board of Education.

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

6:2-1.3 Time for appeal

(a) Appeals from final decisions of the Commissioner, or of the Board of Examiners, or of the School Ethics Commission shall be taken within 30 days of the filing date of the decision from which appeal is taken.

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

6:2-1.6 How to appeal

(a) An appeal or cross appeal shall be taken by serving a copy of the notice of appeal or cross appeal upon all other parties and by filing the original with the Legal Committee of the State Board of Education at 225 [West] East State Street, CN 500, Trenton, New Jersey 08625, and a copy with the Commissioner of the Department of Education, State Board of Examiners or School Ethics Commission.

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

6:2-1.8 Record on appeal

(a) The record on appeal shall [consist of] include all papers, tape recordings, computer disks and exhibits on file with the Commissioner [or], Board of Examiners or School Ethics Commission, with all entries as to matters made on the record, any stenographic transcript, and all papers filed with or entries made on the records of the State Board.

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

6:2-1.11 Time for serving and filing of briefs

(a) Except as otherwise provided by N.J.A.C. 6:2-2.3, [Motion] motion for leave to appeal, the appellant shall serve and file a brief in support of the appeal within 20 days after the appeal has been filed. The respondent shall serve and file an answer brief within 20 days after service of the appellant's brief. The appellant may serve and file a reply brief within 10 days after service of the respondent's brief. No other briefs shall be served or filed without leave of the Legal Committee.

(b) (No change.)

6:2-1.13 Contents of briefs

(a) The cover of each formal brief filed pursuant to this chapter shall contain the following matter:

1. The name of the State Board of Education and the State Board [of Education] docket number [of] for the action;

2.-5. (No change.)

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

(d) All briefs shall strictly preserve the anonymity of any minor who is a party to or witness in the matter by such means as using initials in place of the names of those minors.

[(d)](e) In lieu of filing a formal brief in accordance with (c) above, the appellant may file a letter brief. Letter briefs may be typed either single or double-spaced, but shall not exceed 15 pages. Letter briefs shall conform with the requirements of (c)2, 3, 4, and 5 above, and with the requirements of (d) above. Any point neither briefed nor argued in the proceedings prior to the appeal to the State Board shall include a statement to that effect in parentheses in the point heading. No cover need be annexed, provided that the information required is included in the heading of the letter.

[(e)](f) Respondent's answer brief shall conform to the requirements of (c) and (d) or [(d)] with those of (e) above, but shall include a counter-statement of facts only if respondent disagrees with such statement in appellant's brief.

[(f)](g) A brief in support of a cross appeal shall conform to the requirements of (c) and (d) or [(d)] with those of (e) above.

[(g)](h) [Appellant's] Appellant's reply brief shall conform to the requirements of (c) and (d) or [(d)] with those of (e) above.

6:2-1.14 Appendices

(a) An appeal brief or brief in support of a cross appeal shall have appended thereto an appendix containing the decision appealed from and such parts of the record, including evidentiary exhibits or portions thereof, upon which the appellant or cross-appellant relies, or upon which it should reasonably be assumed the respondent will rely in meeting the issues raised.

(b) (No change.)

6:2-1.15 Length of briefs

(a) Initial briefs of parties, if formal briefs, shall not exceed 40 pages exclusive of tables of contents and appendices.

(b) Letter briefs and reply briefs shall not exceed 15 pages.

[(b)](c) These page limits may be relaxed only by leave of the Legal Committee, which may be applied for ex parte.

6:2-1.16 Inadequacy or impropriety of briefs and papers

(a) (No change.)

(b) The [Legal Committee] State Board may, on its own or motion by a party, strike a brief of any part of a brief that is profane or abusive of the State Board or another person.

(c) If a brief or other paper filed fails to preserve the anonymity of any minor who is a party or was a witness in the case, the State Board may order the same suppressed.

6:2-1.18 Motions

(a) Every motion shall be accompanied by a brief, conforming to the requirements of either N.J.A.C. 6:2-1.13(c) or [(d)] (e). The brief shall explain clearly the nature of the action, the relief sought by the moving party and why the movant is entitled thereto.

(b)-(h) (No change.)

6:2-2.4 Emergency relief

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

(c) Applications for emergency relief shall be considered on an expedited basis and as provided by N.J.A.C. 6:2-3.3.

6:2-2.5 [Appeal from a decision of the Commissioner on school budget cap waiver applications] (Reserved)

[(a)] An appeal to the State Board of Education from a decision of the Commissioner made pursuant to N.J.S.A. 18A:7A-25 shall be taken within seven days of the filing of the Commissioner's decision. The appeal shall be taken by filing with the Commissioner and the Legal Committee of the State Board a notice identifying the decision and stating that an appeal is being taken to the State Board from it or such part of it as may be specified.

(b) The Commissioner shall certify the record of the cap waiver determination to the State Board within three days after the filing of the notice of appeal, and shall remit the record, so certified, together with the notice of appeal and two copies of the Commissioner's decision, to the Legal Committee of the State Board.

(c) Within three days of the filing of the notice of appeal, the appellant may submit to the Legal Committee of the State Board an original and 17 copies of the arguments upon which the appellant will rely. The arguments may be presented in letter form and shall state the reasons that a thorough and efficient system of education cannot be provided without each of the line items from which the appeal is taken. If no arguments are submitted within the three day period, the State Board will determine the appeal solely on the basis of the record certified to it by the Commissioner.]

6:2-3.1 Functions of the Legal Committee

(a) The Legal Committee shall supervise the preparation of and make available to the State Board the entire record, and shall transmit to each member of the Board the basic documents in the case file, which shall include, but not be limited to:

- 1. The decision [of the Commissioner or Board of Examiners] appealed from;
- 2.-3. (No change.)
- (b)-(d) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Notice of Extension of Public Comment Period Control and Prohibition of Air Pollution by Volatile Organic Compounds

Proposed New Rules: N.J.A.C. 7:27-16.8 through 16.11, 16.13, 16.17 and 16.21

Proposed Amendments: N.J.A.C. 7:27-1.4, 2.1, 8.1, 8.2, 16.1 through 16.3, 17.1, 17.3, 17.4, 23.1 through 23.7, 25.1 and 25.7; 7:27A-3.2 and 3.10; 7:27B-3.1 and 3.10

Proposed Recodifications with Amendments: N.J.A.C. 7:27-16.1A, 16.4, 16.5, 16.6, 16.16, 16.18, 16.19, 16.20, 16.22, 16.26 and 16.27

Take notice that the Department of Environmental Protection and Energy is extending the public comment period for the above referenced proposed new rules and amendments, notice of which was published in the August 2, 1993 New Jersey Register at 25 N.J.R. 3339(a). The extended deadline for the receipt of comments is October 18, 1993.

Submit written comments by October 18, 1993 to:

Janis E. Hoagland, Esq.
 Department of Environmental Protection and Energy
 Office of Legal Affairs
 CN 402
 Trenton, New Jersey 08625-0402
 ATTN: DEPE Docket No. 41-93-07

(b)

SITE REMEDIATION PROGRAM

Notice of Extension of Opportunity for Comment Period

Analysis of Strict, Joint and Several Liability Under the New Jersey Spill Compensation and Control Act

Take notice that the September 15, 1993 deadline for the submission of comments concerning the effectiveness and fairness of the strict, joint and several liability standard of the New Jersey Spill Compensation and Control Act contained in the Department of Environmental Protection and Energy's "Notice of Opportunity for Comment" published at 25 N.J.R. 3694(a) (August 16, 1993) has been extended by the Department to November 1, 1993. Comments may be directed until that date to:

John F. Dickinson, Jr.
 Deputy Attorney General
 Department of Law and Public Safety
 Division of Law
 Hazardous Site Litigation Section
 Hughes Justice Complex
 CN 093
 Trenton, New Jersey 08625

(c)

SITE REMEDIATION PROGRAM

Notice of Opportunity for Interested Party Review Remedial Priority System

Take notice that the Department of Environmental Protection and Energy is in the process of developing a system to score the relative risks of contaminated sites to human health and environment. See N.J.S.A. 58:10-23.16. The Department intends to use this system to pursue its worst first strategy in scheduling sites for publicly funded cleanups. See N.J.A.C. 7:26C.

The Department has developed a draft remedial scoring system which it intends to propose as a regulation in early 1994. Copies of the draft scoring system are available from:

Joanne Khammar
 Bureau of Field Operations—Site Assessment
 New Jersey Department of Environmental Protection and Energy
 CN 407
 Trenton, NJ 08625-0407
 (609) 584-4280

At this time the Department is seeking public input into the proposal development process. Interested parties may submit written comments on the draft scoring system until November 4, 1993 to Ms. Khammar at the above address. The Department will consider all comments received in response to this notice, but will not respond to the individual comments.

HUMAN SERVICES

(d)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Business Enterprise Program License

Proposed Amendments: N.J.A.C. 10:97-1.3 and 3.1

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12, 30:6-15.1 and 15.2, 20 U.S.C. 107 et seq., 34 CFR 395.

Proposal Number: PRN 1993-543.

Submit comments by November 3, 1993 to:

Jamie C. Hilton
 Executive Director
 Commission for the Blind and Visually Impaired
 153 Halsey Street, P.O. Box 47017
 Newark, New Jersey 07101

The agency proposal follows:

Summary

The New Jersey Administrative Code at N.J.A.C. 10:97 sets forth the rules governing the Business Enterprise Program of New Jersey Commission for the Blind and Visually Impaired, designated as the State licensing agency by the United States Department of Education, Rehabilitation Services Administration. The Commission was so designated by the Federal government, as provided at 34 CFR 395, and is required to promulgate rules for the operation of the Business Enterprise Program under 34 CFR 395.4.

The Commission's rules governing the Business Enterprise Program were reviewed by the United States Department of Education, Rehabilitation Services Administration. They were found to be consistent with Federal law and regulations except for N.J.A.C. 10:97-1.3, definition of "license," and 10:97-3.1(e), Completion of probation period and license. The Rehabilitation Services Administration requested that the Commission amend the rules to make them in full accord with the Federal code on the cited issues.

At N.J.A.C. 10:97-1.3, the current definition of "license" appears to be applied to a specific business enterprise, rather than a general qualification to operate a facility in the program. The proposed amend-

ment is a reflection of the Federal definition and states that the licensee is authorized to operate a facility in the program, as distinguished from the operation of a specific business enterprise.

N.J.A.C. 10:97-3.1(e) is proposed to be amended to state that, if a permit authorizing a specific business enterprise is terminated, through no fault of the operator, the operating agreement is terminated, but not necessarily the operator's license. The termination of a permit between the Commission and property management has no bearing on an operator's continuing ability to be licensed by the State.

Social Impact

The proposed amendments will define, for the 71 operators in the Business Enterprise Program, a clarified description of the parameters of the licensing procedure. Also, they will more accurately describe what action will occur in the event a permit to an existing business enterprise is terminated. The Committee of Business Enterprise Operators, elected representatives of all licensed operators in the program, has unanimously endorsed these amendments.

Economic Impact

During the past Federal fiscal year, there were sales of \$6.8 million by operators in the program. The average income of operators in the program was over \$26,000 per year. The 71 operators in the program would be affected economically in the program only in case an individual permit to a facility were terminated, through no fault of the operator. The Business Enterprise Program staff provides continuing management services to operators, thus making it possible for New Jersey to receive Federal funding.

Regulatory Flexibility Statement

All businesses licensed under the program are small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. Currently the program consists of 71 businesses, including cafeterias, snack bars, newsstands and vending machines on Federal, State, county and municipal property, throughout all areas of the State. Operators are responsible for submitting weekly sales reports (see N.J.A.C. 10:97-5.1) to the Commission on at least a monthly basis, due on or before the 15th day of the following month, as well as keeping payments current on any stock loan, see N.J.A.C. 10:97-3.4(b). The amendments will not change these requirements. A regulatory flexibility analysis is therefore not required because these amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, in accordance with N.J.S.A. 52:14B-16 et seq.

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

10:97-1.3 Definitions

The following words and terms shall have the indicated meanings, unless the context clearly indicates otherwise:

...
 "License" means a written [certificate] **instrument** issued by the [Commission] **State licensing agency** to a [qualified] blind person [permitting the operation of a business enterprise] **authorizing such person to operate a vending facility on Federal or other property.**
 ...

10:97-3.1 Completion of probation period and license

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

(e) If a permit authorizing a business to be established in a specific location is terminated, the [operator's license] **operating agreement** is terminated. However, if termination is through no fault of the operator, he or she will be eligible to apply for subsequent promotion and transfer opportunities, under conditions set forth in N.J.A.C. 10:97-7.3.

CORRECTIONS

(a)

THE COMMISSIONER

**Public Information Requests
 Reimbursement for Cost of Copying**

Proposed Amendments: N.J.A.C. 10A:1-1.3 and 10A:31-6.13

Proposed New Rule: N.J.A.C. 10A:1-1.4

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

Authority: N.J.S.A. 30:1B-6; 30:1B-10; and 47:1A-2.

Proposal Number: PRN 1993-550.

Submit comments by November 3, 1993 to:

William A. Fauver, Commissioner
 Department of Correction
 CN 863
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The present rules regarding the fees for copying records found at N.J.A.C. 10A:1-1.3 and 10A:31-6.13 were originally based on N.J.S.A. 47:1A-2 and are being amended to comply with the revised law at N.J.S.A. 47:1A-2 (P.L.1991, c.177) which took effect July 1, 1991. The increased fees which are established by law are based upon the total number of pages to be copied and will be changed as follows:

- First through 10th page from \$.50 to \$.75 per page;
- Eleventh through 20th page from \$.25 to \$.50 per page;
- Over 20 pages from \$.10 to \$.25 per page.

The proposed amendments will increase fees for the copying of the following information and documents which are deemed public records:

- 1. Name;
- 2. Number;
- 3. Sentence;
- 4. Place of incarceration;
- 5. Order of Commitment; and
- 6. Any documents filed in a court of competent jurisdiction.

When the Department of Corrections is required to supply documents or records other than public, the copying fees will also be based on this amended fee schedule.

Pursuant to N.J.S.A. 47:1A-2, when and if the fees for copying public records change, these changes will be published as a Public Notice in the New Jersey Register.

The subsection at N.J.A.C. 10A:1-1.3(c) and (d) are being recodified as a separate section at N.J.A.C. 10A:1-1.4 Reimbursement for costs of copying. This recodification is necessary since N.J.A.C. 10A:1-1.3(c) and (d) do not fit in logically with N.J.A.C. 10A:1-1.3 Public information requests. The recodification should enable interested individuals to easily locate cost of copying information. Additionally, this recodification should make N.J.A.C. 10A:1-1.4 consistent with N.J.A.C. 10A:22-2.11 and N.J.A.C. 10A:31-6.13.

Social Impact

The proposed fee increases for the copying of public records are determined and mandated by the New Jersey Legislature. The proposed fees represent increases in the costs of providing these services. As with any increase in cost of service, this may have a negative impact on those who request documents.

Economic Impact

Pursuant to N.J.S.A. 47:1A-1, the increase in public record copying fees shall reimburse the State for the expenses incurred from providing the service of copying public records. Although the increase in these fees may impose an economic burden on individuals who request documents, the intent of the Department of Corrections is to comply with the law and to provide a uniform fee schedule. Additional State financial resources will not be necessary to implement or maintain this amendment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other com-

pliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impact the New Jersey Department of Corrections, inmates and members of the public; however, the amendments have no measurable effect on small businesses.

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

10A:1-1.3 Public information requests

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

(c) The cost for copies of documents to a member(s) of the public is:

- 1. First page to 10th page: \$0.50 per page;
- 2. Eleventh page to 20th page: \$0.25 per page; and
- 3. All pages over 20: \$0.10 per page.

(d) Government agencies are exempt from cost for copies of documents.]

10A:1-1.4 Reimbursement for costs of copying

(a) Pursuant to N.J.S.A. 47:1A-2, correctional facilities and other administrative units within the Department of Corrections may charge the following fees for copying records deemed to be public:

- 1. First through 10th page: \$0.75 per page
- 2. Eleventh through 20th page: \$0.50 per page; and
- 3. All pages over 20: \$0.25 per page.

(b) Government agencies are exempt from cost for copies of documents.

(c) The copying fees for documents or records other than records deemed to be public shall also be based on the fee schedule in (a) above.

(d) When or if fees for the copying of public records change in accordance with the N.J.S.A. 47:1A-2, these changes shall be published as a public notice in the New Jersey Register.

10A:31-6.13 Reimbursement for costs of copying

(a) [Except] Pursuant to N.J.S.A. 47:1A-2, except as otherwise provided in this subchapter [or by law], adult county correctional facilities may charge the following fees for copying records deemed to be public:

- 1. First through 10th page \$[.50]0.75 per page
- 2. Eleventh through 20th page \$[.25]0.50 per page
- 3. Over 20 pages \$[.10]0.25 per page

(b) (No change.)

(c) The copying fees for documents or records other than records deemed to be public shall also be based on the fee schedule in (a) above.

(d) When or if fees for the copying of public records change in accordance with the N.J.S.A. 47:1A-2, these changes shall be published as a public notice in the New Jersey Register.

(a)

THE COMMISSIONER

Classification Process

Restoration of Forfeited Commutation Credits

Proposed Amendment: N.J.A.C. 10A:9-5.5

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

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

Proposal Number: PRN 1993-551.

Submit comments by November 3, 1993 to:

William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Presently, procedures at N.J.A.C. 10A:9-5.5 establish guidelines for restoring forfeited commutation credits to all inmates who received guilty

findings from charges for prohibited acts which occurred on or after May 24, 1979. Prior to May 24, 1979, each correctional facility had differing policies on restoration of forfeited commutation credit. The restoration of forfeited commutation credits for inmates who lost credits prior to May 24, 1979, was handled in accordance with the correctional facility's policy in effect at the time the inmate committed the prohibited act. Proposed new subsection (d) will establish how an inmate who forfeited commutation credits prior to May 24, 1979, may request the restoration of these credits and how these requests are to be handled by the correctional facility.

Social Impact

The proposed amendment at N.J.A.C. 10A:9-5.5(d) will provide the inmate who forfeited commutation time prior to May 24, 1979, an opportunity to apply to have commutation credits restored in an equitable manner. The restoration of forfeited commutation time will result in an earlier release of these inmates and the creation of some additional bed space for the admission of offenders who have State sentences and are housed in county correctional facilities. The proposed amendment, however, will result in an earlier release of only a small number of inmates because there are few inmates incarcerated who forfeited commutation time prior to May 24, 1979. The adoption of this amendment may also result in an easing of tensions for these inmates who are approaching the expiration of their sentences, and thereby serve as an incentive for good behavior.

Economic Impact

Counties receive from the Department of Corrections a per diem rate for housing State sentenced inmates in their correctional facilities. Upon adoption of the proposed amendment at N.J.A.C. 10A:5-5(d), it is likely that a small number of inmates will be able to be released early and thereby create bed space which would be available for offenders housed in county correctional facilities awaiting transfer to Department of Corrections facilities. The transfer of State sentenced inmates from county correctional facilities will not result in a savings of per diem costs for the Department of Corrections since these inmates are immediately replaced due to the continuous flow of State sentenced inmates into the county correctional system. The costs of housing inmates in county correctional facilities provide a continuous source of income to the counties, but the economic impact of this proposed amendment on the income counties receive from the Department of Corrections will be insignificant. The per diem costs that are received by counties for housing State sentenced inmates are provided by the approval of appropriation requests by the Department of Corrections utilizing the established State budgetary process.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping 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 amendment impacts on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

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

10A:9-5.5 Restoration of forfeited commutation credits

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

(d) The following procedures for restoring forfeited commutation credits apply to all inmates who received guilty findings from charges for prohibited acts which occurred prior to May 24, 1979:

1. One hundred percent of the forfeited commutation credits may be restored to an inmate(s) during three consecutive years (one-third restoration per year) which the inmate(s) completes without a charge which results in a finding of guilt.

2. Any inmate who feels that he or she meets the qualifications for restoration of commutation credits lost prior to May 24, 1979, must submit an application for restoration of commutation credits to the Institutional Classification Committee (I.C.C.) of the correctional facility in which the inmate is currently housed. The I.C.C. will not consider any restoration of forfeited commutation credits lost prior to May 24, 1979, unless an inmate submits an application. A recommendation on restoration of credits by the I.C.C. shall be made in accordance with this subchapter and forwarded to the Superintendent, who shall order the restoration of credits.

3. Any inmate under the jurisdiction of the Office of Interstate Services or Bureau of Community and Professional Services must submit an application for restoration of commutation credits lost prior to May 24, 1979, to the Superintendent of the correctional facility at which the inmate was housed prior to transfer. The Institutional Classification Committee (I.C.C.) of that correctional facility shall review the application. A recommendation on restoration of credits by the I.C.C. shall be made in accordance with this subchapter and forwarded to the Superintendent, who shall order the restoration of credits.

4. Any inmate housed at a contract facility under the jurisdiction of the Bureau of Contract Administration must submit an application for restoration of commutation credits lost prior to May 24, 1979, to the Superintendent of the regional correctional facility with responsibility for the inmate. The I.C.C. of that correctional facility shall review the application. A recommendation on restoration of credits by the I.C.C. shall be made in accordance with this subchapter and forwarded to the Superintendent, who shall order the restoration of credits.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

**Medical Fee Schedules: Automobile Insurance
Personal Injury Protection and Motor Bus Medical
Expense Insurance Coverage**

Proposed Amendment: N.J.A.C. 11:3-29.6

Authorized By: Samuel F. Fortunato, Commissioner,
Department of Insurance.
Authority: N.J.S.A. 39:6A-4.6
Proposal Number: PRN 1993-538.

Submit comments by November 3, 1993 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The Department proposes to amend the Medical Fee Schedule for physicians' services at N.J.A.C. 11:3-29.6(a) by deleting CPT-4 code 93762 relating to peripheral thermograms.

The Department proposes this amendment in light of the ongoing controversy surrounding thermograms, recognizing that a number of cases relating to this matter are now in litigation. In particular, the New Jersey Supreme Court case of *Thermographic Diagnostics, Inc. v. Allstate Insurance Company*, 125 N.J. 491, 518 (1991), has been remanded to a lower court for the purpose of determining proper charges for thermograms. As of this writing, that phase of the case has not been scheduled.

Social Impact

The deletion of CPT-4 code 93762 from the physicians' fee schedule will affect automobile insurers, automobile insurance purchasers, and providers of thermography services to insureds injured in automobile accidents.

Upon deletion of code 93762, reimbursement for thermographic services will be governed by N.J.A.C. 11:3-29.4(e). Pursuant to this provision, thermographers will charge for their services what they consider to be a usual, customary and reasonable fee. That same standard will be applied by insurers to review claims submitted for reimbursement.

The Department has already received indications that insurers and thermographers alike will favor the proposed deletion.

Economic Impact

As indicated above, the "usual, customary and reasonable" standard applies in determining appropriate charges and levels of reimbursement

whether or not the medical service appears on the fee schedule. Consequently, the impact resulting from deletion of CPT-4 code 93762 from the physicians' fee schedule is not expected to be significant.

Regulatory Flexibility Statement

The proposed amendment to the physicians' medical fee schedule will apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" include insurers authorized to write private passenger automobile insurance. Less than 10 of the more than 200 automobile insurers in New Jersey qualify as "small businesses."

A regulatory flexibility analysis is not required because these rules do not impose reporting, recordkeeping or other compliance requirements on small businesses beyond the statutory requirements.

Full text of the proposal follows (deletion indicated in brackets [thus]):

11:3-29.6 Medical Fee Schedules

(a) The following is the Medical Fee Schedule for physicians' services:

STATE OF NEW JERSEY					
PERSONAL AUTO INJURY FEE SCHEDULE—PHYSICIANS' SERVICES					
CPT-4 Code	Description Services	Region 1	Region 2	Region 3	
...	
[93762	PERIPHERAL THERMOGRAM, INCLUDING ANY SERIES	432	432	432]	
...	

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

(b)

DIVISION OF LIFE/HEALTH ACTUARIAL

Selective Contracting Arrangements of Insurers

Proposed New Rules: N.J.A.C. 11:4-37

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

Authority: P.L. 1993, c.162, section 22 (amending P.L. 1992, c.162 (N.J.S.A. 17B:27A-17 et seq.)), N.J.S.A. 17:1C-6 and 17B:21-1 et seq.

Proposal Number: PRN 1993-561.

Submit comments by November 3, 1993 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 Department of Insurance ("Department") is proposing these new rules setting forth standards for Department approval of selective contracting arrangements. P.L. 1993, c. 162, section 22 (amending P.L. 1992, c.162 (N.J.S.A. 17B:27A-17 et seq.)) grants the Commissioner of Insurance ("Commissioner") the authority to approve arrangements established on or after June 1, 1993, by New Jersey health insurers authorized under Title 17B of the New Jersey statutes to issue health benefits plans which provide selective contracting with health care providers and reasonable benefit differentials applicable to participating and non-participating providers (that is, selective contracting arrangements). According to P.L. 1993, c.162, section 22, the Commissioner shall approve a selective contracting arrangement if he determines, in consultation with the Commissioner of Health, that the arrangement promotes health care cost containment while adequately preserving quality of care.

Under these new rules, carriers authorized under Title 17B to issue health benefits plans in this State are required to first obtain the Commissioner's approval for any selective contracting arrangement the carriers intend to enter into either directly with preferred providers or indirectly through a preferred provider organization ("PPO"). In order to obtain the Commissioner's approval, the selective contracting arrangement must meet certain approval criteria, and the carrier must follow the approval procedures set forth in these rules. A carrier intending to enter into a selective contracting arrangement through a PPO is required to utilize a PPO which has been registered with the Department. These PPO registration procedures are set forth in the rules.

Proposed N.J.A.C. 11:4-37.1 sets forth the purpose and scope of the proposed new rules. These rules will apply to selective contracting arrangements offered by life/health insurers authorized pursuant to Title 17B of the statutes. The Department intends to promulgate separate rules for selective contracting arrangements offered by health and other service corporations.

Proposed N.J.A.C. 11:4-37.2 contains the definitions of words and terms used throughout the subchapter.

Proposed N.J.A.C. 11:4-37.3 sets forth the registration procedures for all preferred provider organizations with which a carrier intends to enter into a selective contracting arrangement.

Proposed N.J.A.C. 11:4-37.4 establishes the standards that a selective contracting arrangement must meet in order to obtain the Commissioner's approval. Included among these criteria is that the selective contracting arrangement utilize no more than a maximum 30 percent coinsurance differential. The Department believes the maximum 30 percent differential is reasonable in light of differentials currently utilized by the industry and in order to promote health care cost containment while adequately preserving quality of care. A larger differential may begin to adversely affect quality of care, while a significantly smaller maximum differential may not be sufficient to encourage cost containment.

Proposed N.J.A.C. 11:4-37.5 sets forth the specific procedures that a carrier must follow in filing for the Commissioner's approval.

Proposed N.J.A.C. 11:4-37.6 establishes the confidentiality of certain data or information filed with the Commissioner by either a carrier or a preferred provider organization.

Proposed N.J.A.C. 11:4-37.7 sets forth the conditions under which a carrier's selective contracting arrangement approval obtained under this subchapter may be suspended or revoked.

Proposed N.J.A.C. 11:4-37.8 provides for periodic monitoring and auditing of a carrier's approved selective contracting arrangement in order to ensure that the arrangement continues to promote health cost containment and preserve quality of care.

Proposed N.J.A.C. 11:4-37.9 sets forth the various filing and review fees for carriers and preferred provider organizations required under this subchapter.

Social Impact

These proposed new rules establish standards to be met by all selective contracting arrangements prior to obtaining the Commissioner's approval. This approval process will aid in ensuring that these arrangements will promote health care cost containment while adequately preserving quality of care, thereby protecting covered persons under such selective contracting arrangements.

Economic Impact

These proposed new rules are not expected to result in a substantial, adverse economic impact on carriers entering into selective contracting arrangements. These rules may, however, impose certain administrative costs upon these carriers due to the approval process set forth in these

rules. To the extent that these rules impose fees regarding the filing, approval, and updating of selective contracting arrangements, the Department notes that these costs are limited to those reasonable and necessary for the Department, in consultation with the Commissioner of Health, to determine that a selective contracting arrangement is promoting health care cost containment while adequately preserving quality of care.

The Department of Insurance, as well as the Department of Health, may experience a slight increase in its administrative costs due to the selective contracting arrangement approval process set forth in these rules. However, these costs will be offset somewhat by the various filing fees required to be paid by carriers subject to these rules.

Regulatory Flexibility Analysis

These new rules will affect carriers entering into selective contracting arrangements. Any of these carriers may be a small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that these rules will apply to small businesses, those small business carriers will be required to bear any costs associated with complying with the requirements of these rules, and may also be required to devote proportionately more staff and financial resources in order to comply with these rules.

These rules will require all carriers as defined herein intending to enter into selective contracting arrangements on or after June 1, 1993 to first obtain Department approval for the arrangement. To obtain such approval, the carriers will be required to submit certain documentation to the Department. Under the rules, the carriers additionally will be responsible for submitting various filing fees to the Department.

The rules' requirements do not differentiate based on carrier size. The purpose of the rules is to set standards applicable to all selective contracting arrangements which can not be relaxed for small business carriers without threatening the public welfare. It is the Department's responsibility under these rules to reasonably assure that all potential covered persons under the selective contracting arrangements will obtain the benefits offered by the carriers under these arrangements. Moreover, the information required to be submitted to the Department under these rules should be readily available to all carriers intending to offer health benefits plans utilizing these arrangements. The various filing fees required under the rules are, likewise, identical for carriers of any size and are reasonably related to the anticipated administrative costs of both the Department and the Department of Health. Both the Department and the Department of Health will experience the same administrative costs in carrying out the approval process required for selective contracting arrangements offered by either large or small carriers.

Full text of the proposed new rules follows:

SUBCHAPTER 37. SELECTIVE CONTRACTING ARRANGEMENTS OF INSURERS

11:4-37.1 Purpose and scope

(a) The purpose of this subchapter is to set forth standards and procedures whereby a carrier shall obtain approval from the Commissioner of its offering of health benefits plans utilizing selective contracting arrangements that promote health care cost containment while adequately preserving quality of care. This subchapter further permits a preferred provider organization to register with the Department.

(b) This subchapter applies to all carriers authorized pursuant to Title 17B of the New Jersey statutes to issue health benefits plans in this State, and to all preferred provider organizations entering into selective contracting arrangements with such carriers. This subchapter shall not apply to the following: hospital service corpor-

ations operating pursuant to N.J.S.A. 17:48-1 et seq.; medical service corporations operating pursuant to N.J.S.A. 17:48A-1 et seq.; hospital and medical service corporations operating pursuant to N.J.S.A. 17:48B-1 et seq.; dental service corporations operating pursuant to N.J.S.A. 17:48C-1 et seq.; dental plan organizations operating pursuant to N.J.S.A. 17:48D-1 et seq.; or health service corporations operating pursuant to N.J.S.A. 17:48E-1 et seq.

11:4-37.2 Definitions

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

“Allowable expense” means the usual, customary and reasonable item of expense for a covered service when the item of expense is covered at least in part by the health benefits plan.

“Carrier” means any insurance company operating pursuant to Title 17B of the New Jersey statutes and authorized to issue health benefits plans in this State.

“Coinsurance” means the percentage of the allowable expenses payable by the covered person.

“Coinsurance differential” means the difference in the coinsurance percentage applicable to in-network and out-of-network benefits.

“Commissioner” means the Commissioner of the New Jersey Department of Insurance.

“Covered person” means a person on whose behalf the carrier is obligated to pay benefits pursuant to the health benefits plan.

“Covered service” means a service provided to a covered person under a health benefits plan for which a carrier is obligated to pay benefits.

“Department” means the New Jersey Department of Insurance.

“Emergency care” means covered services that are provided by any health care provider, which are needed immediately because of an injury or sudden illness and the time required to reach a preferred provider would have meant serious deterioration of or risk of permanent damage to the covered person’s health. These services are considered to be emergency care as long as transfer of the covered person to a preferred provider is precluded because of risk to the covered person’s health or because transfer would be unreasonable, given the distance involved in the transfer or the nature of the medical condition.

“Evidence of coverage” means any booklet, certificate, agreement or contract issued to covered persons setting out the services and other benefits to which they are entitled under a health benefits plan.

“Health benefits plan” means a policy or contract delivered or issued for delivery in this State by a carrier paying benefits for covered services.

“Health care provider” means an individual or entity which, acting within the scope of its licensure provides a covered service defined by the health benefits plan.

“Preferred provider” means a health care provider or group of health care providers who have entered into selective contracting arrangements with a carrier or a preferred provider organization.

“Preferred provider organization” or “PPO” means an entity other than a carrier that contracts with health care providers to establish selective contracting arrangements.

“Selective contracting arrangement” means an arrangement for the payment of benefits for covered services between health care providers and either carriers or preferred provider organizations which establishes predetermined fee or reimbursement levels.

11:4-37.3 Registration of preferred provider organizations

(a) No carrier shall issue health benefits plans utilizing selective contracting arrangements unless the carrier has entered into such arrangements directly with preferred providers or has contracted with preferred provider organizations which have registered with the Department. Carriers intending to offer health benefits plans utilizing selective contracting arrangements shall follow the approval procedures set forth at N.J.A.C. 11:4-37.5.

(b) All PPOs may register with the Department by submitting three copies of the information specified below, together with the

registration fee set forth at N.J.A.C. 11:4-37.9, at the following address:

ATTN: PPO Registration
New Jersey Department of Insurance
Managed Health Care Bureau
Division of Life/Health Actuarial Services
20 West State Street
CN 325
Trenton, NJ 08625-0325

1. The PPO shall include in the information submitted:

i. The official address and telephone number of the place of business of the PPO;

ii. A description of all of the activities in which the PPO engages;

iii. A copy of the PPO’s most recent audited financial statement;

iv. A list of the names and addresses of preferred providers identified by specialty and geographic areas, and a copy of the provider directory to be distributed to covered persons;

v. A description of the standard contract(s) or agreement(s) the PPO has entered into with health care providers or classes of health care providers; and

vi. A certification signed by a senior officer that the PPO does not engage in the business of insurance in this State, and in no way assumes risk in the provision of services for the treatment of injury or illness or preventative care for any person or on behalf of any person, other than its own employees.

2. If the information submitted is incomplete, the Department shall notify the PPO in writing of the deficiency, and shall provide the PPO with an opportunity to cure the deficiency within 90 days of the date of notice of the deficiency.

i. Any deficiency in the information required under this subsection shall prevent the PPO from being included among the Department’s list of registered PPOs.

ii. Failure to cure a deficiency within the 90 day period will result in the requirement that the PPO resubmit its registration information in full, together with resubmission of the registration fee set forth at N.J.A.C. 11:4-37.9.

iii. Failure to be included on the Department’s list of registered PPOs shall not entitle the PPO to the return of any portion of the registration fee.

(c) A PPO may apply for biennial renewal of its registration by updating the information previously submitted to the Department under this section. Renewal registration shall be subject to the filing fee set forth at N.J.A.C. 11:4-37.9(a).

11:4-37.4 Standards for selective contracting arrangements

(a) For purposes of paying for covered services under a health benefits plan, a selective contracting arrangement entered into by a carrier shall meet the following criteria:

1. The selective contracting arrangement shall include a mechanism for the review or control of utilization of covered services;

2. The selective contracting arrangement shall provide for an adequate number of preferred providers by specialty to render covered services in the geographic area(s) where it functions;

3. If a covered person is in need of emergency care as defined herein, the health benefits plan utilizing a selective contracting arrangement shall include a mechanism which reimburses emergency care as if the covered person had been treated by a preferred provider;

4. The selective contracting arrangement shall include a procedure for resolving complaints and grievances of covered persons;

5. The selective contracting arrangement shall provide that information pertaining to the diagnosis, treatment or health of any covered person receiving health care benefits shall be confidential and shall not be disclosed to any person except as follows:

i. To the extent that it may be necessary to carry out the purposes of this subchapter;

ii. Upon the express consent of the covered person;

iii. Pursuant to statute or regulation;

iv. Pursuant to court order for the production of evidence or the discovery thereof;

v. In the event of a claim or litigation between such covered person and the carrier wherein such data or information is pertinent; or

vi. As otherwise required by law;

6. The carrier shall, within 30 days of entering into the selective contracting arrangement, provide covered persons with evidence of coverage which shall contain provisions or statements which are not unjust, unfair, inequitable, misleading, deceptive, or which encourage misrepresentation. The evidence of coverage shall contain either a clear and complete statement or a reasonably complete summary of:

i. The insurance or other benefits, if any, to which covered persons are entitled;

ii. Any limitation on the benefits, or kind of benefits, to be provided, including the coinsurance differential for services rendered by a preferred provider as opposed to a non-preferred provider, as well as any copayment, deductible or coinsurance feature;

iii. Information as to where and in what manner services or benefits may be obtained; and

iv. A clear, accurate and understandable description of the method for resolving complaints from covered persons;

7. The carrier utilizing a selective contracting arrangement shall provide that subsequent changes in coverage shall be evidenced in a separate document issued to the covered person;

8. The carrier utilizing a selective contracting arrangement for a health benefits plan may provide for direct payment to the preferred provider for covered services rendered, and shall establish either the methodology to determine the amount or the actual amount of payment to the preferred provider whichever is applicable;

9. The carrier utilizing a selective contracting arrangement for a health benefits plan shall include a mechanism which provides that the coinsurance differential, if any, applicable to covered services rendered by a preferred provider, as opposed to covered services rendered by other health care providers, shall be no greater than 30 percent of the allowable expense, provided deductibles and copayments are equivalent for both in-network and out-of-network benefits. If deductibles and copayments for in-network and out-of-network benefits are not equivalent, the 30 percent maximum coinsurance differential shall be adjusted to reflect the differences. The mechanisms for the delivery of a health benefits plan utilizing a selective contracting arrangement established by either the Individual Health Coverage Program Board of Directors or the Small Employer Health Benefits Program Board of Directors on or before January 1, 1994, will be deemed to meet this requirement; and

10. The carrier may establish or enter into selective contracting arrangements which place reasonable limits on the number or classes of preferred providers.

(b) Nothing contained in this subchapter shall be deemed to impair or otherwise affect any selective contracting arrangements, collective bargaining agreements, or health benefits plans which have been filed and approved by the Commissioner and which were in effect before June 1, 1993, except as they may be renewed on or after June 1, 1993.

i. All selective contracting arrangements entered into or renewed on or after June 1, 1993, other than those which provide benefits under a collective bargaining agreement, shall be brought into full compliance with the requirements of this subchapter as they renew but no later than January 1, 1995.

ii. Any selective contracting arrangement entered into or renewed on or after June 1, 1993, which provides benefits under a collective bargaining agreement, shall be brought into full compliance with the requirements of this subchapter either on or before January 1, 1995 or within 90 days after the expiration of the term of the collective bargaining agreement, whichever is later.

iii. Every carrier with selective contracting arrangements subject to this subsection shall submit to the Department on or before January 1, 1994, a Plan of Compliance, setting forth the methods and timetable the carrier will follow in bringing its current selective contracting arrangements into full compliance with this subchapter.

iv. Carriers shall submit five copies of the Plan of Compliance described in (b)iii above, together with the filing fee set forth at

N.J.A.C. 11:4-37.9, to the Department as specified at N.J.A.C. 11:4-37.5(a).

11:4-37.5 Selective contracting arrangement approval procedures

(a) For purposes of obtaining the Commissioner's approval under this subchapter, a carrier issuing health benefits plans utilizing a selective contracting arrangement shall submit to the Department five copies of the selective contracting arrangement approval application. The items set forth at (b)13 and 14 below shall be set forth separately from the remainder of the items to be included in the approval application. The entire application, together with the filing fee set forth at N.J.A.C. 11:4-37.9, shall be submitted to the Department at the following address:

New Jersey Department of Insurance
Managed Health Care Bureau
Division of Life/Health Actuarial Services
20 West State Street
CN 325
Trenton, NJ 08625

(b) The selective contracting arrangement approval application shall include the following:

1. A narrative description of the health benefits plan to be offered;

2. A statement that the carrier is entering into a selective contracting arrangement directly with preferred providers, or where the carrier is contracting with a PPO, a description of the PPO that will operate and/or administer the selective contracting arrangement, and a description of the relationship between the carrier and the PPO;

3. A description of the geographical area in which the health benefits plan is to be offered;

4. A description of the manner in which covered services and other benefits may be obtained by covered persons using the selective contracting arrangement;

5. A narrative description of the financial arrangements between the carrier and the preferred providers if the carrier is contracting directly with the preferred providers;

6. A copy of every standard form contract establishing the selective contracting arrangements that will be part of the health benefits plan;

7. A description of the criteria and method used to select preferred providers, including any credentialing plan;

8. The names and addresses of preferred providers, by specialty and geographic areas, and a copy of the provider directory to be distributed to covered persons;

9. A description of any provisions which allow covered persons to obtain covered services from a health care provider that is not a preferred provider;

10. A description of the utilization review program;

11. A description of the quality assurance program;

12. A description of the complaint and grievance system available to covered persons, including procedures for the registration and resolution of grievances;

13. A copy of every standard form policy or contract to be issued by the carrier to the contractholders of health benefits plans, which shall include the requirements set forth at N.J.A.C. 11:4-37.4(a)6;

14. A copy of every standard form of evidence of coverage to be issued by the carrier to covered persons, setting forth the carrier's contractual obligations to pay for covered services provided to covered persons, which shall include the requirements set forth at N.J.A.C. 11:4-37.4(a)6;

15. A description of the incentives for covered persons to use the services of preferred providers;

16. A description of any provisions within the health benefits plan for holding covered persons financially harmless for payment denials by, or on behalf of, the carrier for improper utilization of covered services caused by preferred providers;

17. An organizational chart of the carrier's division responsible for managing selective contracting arrangements and of the PPO if appropriate;

18. A listing and biography of the officers and directors, if any, of the carrier's division responsible for managing selective contracting arrangements and of the PPO if appropriate;

19. The address of the place of business of the carrier's division responsible for managing selective contracting arrangements and of the PPO if appropriate; and

20. The business plan of the carrier's division responsible for managing selective contracting arrangements and of the PPO if appropriate.

(c) Any significant changes to the nature of the selective contracting arrangement as reflected in the materials in (a) above shall be reported to the Department within 30 days, together with the filing fee set forth at N.J.A.C. 11:4-37.9, at the following address:

New Jersey Department of Insurance
Managed Health Care Bureau
Division of Life/Health Actuarial Services
20 West State Street
CN 325
Trenton, NJ 08625

(d) The Commissioner, in consultation with the Commissioner of Health as necessary, shall review these documents and grant approval, within 30 days of the carrier's filing its application for approval, to those carriers whose selective contracting arrangements are determined to meet the criteria set forth in this subchapter and which promote health care cost containment while adequately preserving quality of care. The Commissioner may extend the 30-day time frame an additional 30 days for good cause shown and shall provide notice to the carrier of such extension. A decision to deny approval shall be accompanied by a written explanation by the Department of the reasons for denial.

(e) The approval of a selective contracting arrangement issued under this subchapter by the Commissioner, in consultation with the Commissioner of Health, shall remain in force for a period of two years excepting suspension or revocation pursuant to this subchapter.

(f) A carrier shall apply for biennial renewal of the Department's approval of its selective contracting arrangement. Applications for renewal of the Department's approval shall be subject to the filing fee set forth at N.J.A.C. 11:4-37.9.

11:4-37.6 Confidentiality

(a) The following data or information submitted to the Department under this subchapter shall not be confidential and may be released by the Department and the Department of Health, but only upon written, specified request and upon notice to the entity submitting such information:

1. The carrier's narrative description of the health benefits plan to be offered;

2. The carrier's description of the geographical area in which the carrier will offer the health benefits plan;

3. The carrier's description of the manner in which covered services and other benefits may be obtained by covered persons under the selective contracting arrangement;

4. The names and addresses of the selective contracting arrangement's preferred providers, by specialty and geographic areas, and the provider directory;

5. The carrier's description of any provisions included in the selective contracting arrangement which allow covered persons to obtain covered services from a health care provider that is not a preferred provider;

6. The carrier's description of the complaint and grievance system available to covered persons under the selective contracting arrangement;

7. Copies of the standard form policy or contract to be issued by the carrier to the contractholders of health benefits plans;

8. Copies of the standard evidence of coverage form to be issued by the carrier to covered persons;

9. The carrier's description of the incentives for covered persons to use the services of preferred providers;

10. The carrier's description of any provisions within the health benefits plan for holding covered persons financially harmless for payment denials by or on behalf of the insurer for improper utilization of covered services caused by preferred providers;

11. The PPO's description of all the activities in which it engages;

12. The PPO's most recent audited financial statement;

13. The names and addresses of the PPO's preferred providers by specialty and geographic areas, and the PPO's provider directory;

14. The PPO's description of the standard contracts or agreements it has entered into with health care providers or classes of health care providers;

15. The PPO's certification that it does not engage in the business of insurance in this State or assume risk in the provision of services for the treatment of injury or illness or preventative care for any person or on behalf of any person, other than its own employees;

16. The carrier's or PPO's organizational chart;

17. The carrier's or PPO's listing and biography of its officers and directors;

18. The address of the carrier's or PPO's place of business; and

19. The address of the carrier's division responsible for managing selective contracting arrangements.

(b) All data or information submitted to the Department under this subchapter, except for those items included in (a) above, is confidential and shall not be disclosed by the Department to any person other than employees and representatives of the Department and the Department of Health.

11:4-37.7 Approval suspension and revocation

(a) The approval of a selective contracting arrangement issued by the Department under this subchapter may be suspended or revoked if the Commissioner determines that:

1. The selective contracting arrangement criteria set forth in this subchapter are no longer being met;

2. Payment for covered services provided under the selective contracting arrangement is not in accordance with the terms of the approved arrangement;

3. The arrangement for the payment of covered services fails to meet the requirements of these rules;

4. Any false or misleading information is submitted by the carrier seeking approval; or

5. The arrangement for the payment of covered services is contrary to the interests of covered persons or the public.

(b) If the Commissioner believes that any of the conditions set forth in subsection (a) above exist, the Commissioner shall notify the carrier by directing a notice by certified mail or personal delivery to the last known business or mailing address of the carrier. The notice shall include:

1. A description of the condition(s) in (a) above alleged to exist;

2. A statement that the carrier may within 20 days correct the condition(s) alleged to exist; and

3. A statement advising the carrier of the procedure for requesting a hearing.

(c) A carrier requesting a hearing pursuant to (b)3 above shall submit the hearing request to the Department at the following address:

New Jersey Department of Insurance
Managed Health Care Bureau
Division of Life/Health Actuarial Services
20 West State Street
CN 325
Trenton, NJ 08625

The hearing request shall include:

1. The name, address and telephone number of a contact person familiar with the matter;

2. A copy of the Commissioner's written allegations;

3. A statement requesting a hearing; and

4. A concise statement describing the factual and legal bases for which the carrier believes that the Commissioner's allegations are erroneous; and

5. All relevant documents in support of the hearing request.

(d) The Commissioner may, after receipt of a properly completed request for a hearing, provide an informal conference between the carrier and such personnel of the Department or Department of Health as the Commissioner may direct, to determine whether there are material issues of fact in dispute.

(e) The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter con-

stitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

1. If the Commissioner concludes that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. In a matter which has been determined to be a contested case, if the Commissioner concludes that there are no good-faith disputed issues of material fact and the matter may be decided on the documents filed, the Commissioner may notify the carrier in writing of the final disposition of the matter.

(f) In addition, or as an alternative to suspension or revocation, the Commissioner may impose such other penalties as provided by law.

11:4-37.8 Monitoring; auditing

(a) The Commissioner, in consultation with the Commissioner of Health as necessary, shall monitor and conduct periodic audits or examinations of the carrier's selective contracting arrangements as necessary to ensure compliance with the approval criteria set forth in this subchapter.

(b) All records of the carrier relating to selective contracting arrangements shall be disclosed upon request of and in a format acceptable to the Commissioner. If such records are maintained in a coded or semi-coded manner, a legend for the codes shall be provided to the Commissioner.

11:4-37.9 Filing and review fees

(a) Every PPO registering with the Department pursuant to N.J.A.C. 11:4-37.3(b) shall pay a registration fee of \$150.00 payable to "Treasurer, State of New Jersey."

(b) Every carrier shall pay a \$3,000 filing fee for filing the following with the Department:

1. A selective contracting arrangement pursuant to N.J.A.C. 11:4-37.5;

2. A plan of Compliance pursuant to N.J.A.C. 11:4-37.4(b);

3. A biennial renewal application of a selective contracting arrangement pursuant to N.J.A.C. 11:4-37.5(e).

(c) The approval application fee of \$3,000 shall be payable as follows:

1. \$1,500 payable to the "Treasurer, State of New Jersey."

2. \$1,500 payable to the "New Jersey Department of Health."

(d) Every carrier filing with the Department any significant changes to its approved selective contracting arrangement pursuant to N.J.A.C. 11:4-37.5(c) shall pay a filing fee of \$100.00 payable to "Treasurer, State of New Jersey."

(e) Every carrier, in addition to complying with the filing and review fee requirements set forth in this section, shall be subject to any fees that may be applicable as set forth in N.J.A.C. 11:1-32.

(a)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM

Relief from Obligations Imposed by the Individual Health Insurance Reform Act

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

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

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1C-6(e), and 17B:27A-2 et seq.

Proposal Number: PRN 1993-558.

Submit comments by November 3, 1993 to:

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

The agency proposal follows:

Summary

These proposed new rules implement various provisions of the Individual Health Insurance Reform Act, N.J.S.A. 17B:27A-2 et seq. (the "Act"). The Act substantially revises the requirements governing the provision of individual health insurance benefits in this State. The Act requires that all insurers, health service corporations and health maintenance organizations (collectively, "carriers") issuing individual health benefits plans in this State issue such plans in accordance with the provisions of the Act. The law essentially requires that all carriers offer coverage and accept applications for individual health insurance from "eligible persons" as defined in the Act; issue individual health benefits plans that conform to the requirements as may be established by the Board of Directors of the New Jersey Individual Health Coverage Program ("IHC Program") established pursuant to the Act and as otherwise required pursuant to the Act; and to reimburse other carriers issuing individual health benefits plans in this State which sustain net paid losses, unless such obligation is exempted by the IHC Program Board of Directors ("Board") pursuant to the provisions in N.J.S.A. 17B:27A-12d.

The goal of the Act is to ensure that all eligible persons are afforded the ability to obtain individual health insurance while ensuring that the costs of providing such coverage are equitably distributed among all carriers providing such benefits in this State. The Act, however, permits a carrier to request a waiver from the requirement that it offer coverage and accept applications to provide individual health insurance benefits pursuant to the Act, and to request a deferral of its obligation to pay assessments. Specifically, N.J.S.A. 17B:27A-8b provides that a carrier shall not be required to offer coverage or accept applications under the Act if the Commissioner of Insurance ("Commissioner") finds that the acceptance of applications will place the carrier in a "financially impaired condition." Similarly, the Act provides that a carrier that is financially impaired may seek from the Commissioner a deferment in whole or in part from any assessment issued by the Board pursuant to N.J.S.A. 17B:27A-12a. This subsection further provides that the Commissioner may defer, in whole or in part, the assessment of the carrier if, in the Commissioner's opinion, payment of the assessment would endanger the ability of the carrier to fulfill its contractual obligations. Pursuant to N.J.S.A. 17B:27A-12a(3) the carrier receiving the deferment remains liable to the IHC Program for the amount deferred. The Act defines "financially impaired" to mean "a carrier, which, after the effective date of [the] Act, is not insolvent, but is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations, or a carrier which is placed under an order of rehabilitation or conservation by a court of competent jurisdiction." In addition, N.J.S.A. 17B:27A-13 provides for a separate assessment to be made to cover net losses of carriers issuing individual health benefits plans accruing in calendar year 1992. This assessment is to be made in the same manner.

In order to implement these statutory provisions, the Department proposes these new rules to set forth informational and procedural requirements for carriers who wish to request relief from these obligations imposed by the Act. The proposed new rules set forth the detailed information to be submitted by carriers requesting relief and the format for such requests, provide for a non-refundable filing fee of \$1,000 (except where the carrier is in rehabilitation or conservation on the date of the filing) to help defray costs to the Department in reviewing such requests, and provide the procedures and standards by which the Commissioner may determine whether relief may be granted pursuant to the Act. This in turn will ensure that all carriers are fully apprised of the procedures by which relief may be requested and may be granted by the Commissioner in accordance with the Act so as to ensure a thorough and expeditious review of such requests.

The rules provide that the Commissioner shall find that a carrier is "financially impaired" and that relief is warranted, if: (1) the carrier is in rehabilitation or conservation pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the carrier's state of domicile; (2) the Commissioner finds that the carrier is in a hazardous financial condition determined pursuant to N.J.A.C. 11:2-27; or (3) the Commissioner finds that fulfillment of the obligation(s) from which relief is sought would place the carrier in a hazardous financial condition pursuant to N.J.A.C. 11:2-27. The Department believes that it is reasonable and appropriate to consider the factors set forth in N.J.A.C. 11:2-27 in determining whether a carrier is or would be "financially impaired" since the definitions of "hazardous financial condition" set forth in N.J.A.C. 11:2-27 and "financially impaired" set forth in N.J.S.A. 17B:27A-2 are substan-

tially similar and have the same essential meaning. This will also provide objective standards by which disposition of requests for relief are made and thereby ensure consistency in the granting or denial of such requests.

The rules also provide that any waiver or deferral granted shall be effective for a specified period of time, not exceeding 12 months. A carrier may seek to continue the waiver or deferral without lapse by making a separate application for relief no later than 45 days prior to the expiration of the relief period. Failure to do so will result in the expiration of the relief at the end of the period. The Department believes that this process is reasonable, appropriate and implements the intent of the Legislature as set forth in N.J.S.A. 17B:27A-2 et seq. The Department interprets the "relief" provisions of the Act to grant temporary relief to carriers and to provide a period within which the carrier may take corrective action to cure any financial impairment, rather than to provide a permanent exemption from the requirements of the Act.

The rules additionally provide that if the Commissioner grants a deferral of payment of an assessment, the terms of the deferral shall include the requirement that the member pay to the Board an additional amount representing the loss to the Board of the time value of the assessment for the period of deferral, unless the reason for granting the deferral was that the member is in rehabilitation or conservation.

Finally, N.J.S.A. 17B:27A-8a provides that a carrier which is a health maintenance organization shall not be required to offer coverage to or accept an applicant pursuant to the Act if it does not have the capacity in its facilities to enroll additional members. That section further provides that if the carrier does not have capacity for additional individual enrollees, it may not offer coverage to or accept any new group enrollees. In order to give effect to and implement this statutory provision, the proposed new rules require that any health maintenance organization that maintains that it does not have capacity for additional enrollees shall so advise the Commissioner and the Program, and file specified information.

Proposed N.J.A.C. 11:20-11.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:20-11.2 provides the definitions of words and terms used throughout the subchapter.

Proposed N.J.A.C. 11:20-11.3 provides general application procedures and filing format for requests for relief from obligations under the Individual Health Insurance Reform Act.

Proposed N.J.A.C. 11:20-11.4 sets forth the information to be filed and the application procedures to be used by carriers when applying for relief from either or both obligations.

Proposed N.J.A.C. 11:20-11.5 provides that all information contained in the request for relief is confidential, except for specified information.

Proposed N.J.A.C. 11:20-11.6 provides the standards the Commissioner shall utilize when determining whether or not to grant relief in accordance with the Act.

Proposed N.J.A.C. 11:20-11.7 sets forth procedures by which carriers may request a hearing on the Commissioner's determination.

Proposed N.J.A.C. 11:20-11.8 requires carriers requesting relief to notify the Program of the relief request and of the disposition of such requests by the Commissioner.

Proposed N.J.A.C. 11:20-11.9 provides notice and filing requirements for a carrier which is a health maintenance organization asserting that it is not required to offer or accept applications pursuant to the Act pursuant to N.J.S.A. 17B:27A-8a because it lacks the capacity for additional enrollees.

Proposed N.J.A.C. 11:20-11.10 provides notice to carriers and clarifies and confirms that these rules do not limit or preclude the Commissioner from instituting any other actions regarding carrier's operations pursuant to law.

Proposed N.J.A.C. 11:20-11.11 sets forth penalties for violations of the subchapter.

Social Impact

The proposed new rules will establish procedures by which a carrier may apply for a deferral of its obligation to pay assessments or a waiver of its obligation to offer coverage and accept applications from eligible persons. These proposed new rules therefore implement the provisions of the Individual Health Insurance Reform Act by requiring that all carriers provide individual health benefits plans in accordance with the requirements set forth in the Act, while maintaining the financial stability of carriers and their ability to pay existing claims liabilities. This in turn will protect current policyholders and subscribers, and benefit the insurance buying public and carriers generally.

Economic Impact

The proposed new rules should not result in an adverse economic impact upon carriers. These proposed new rules implement various provisions of the act by providing adequate procedures and informational requirements by which carriers may request relief from certain statutory obligations under the Act, and by which the Commissioner may adequately evaluate such requests to determine whether relief is warranted in a particular case. This promulgation of Department policy will aid carriers' administrative, financial and legal staff in initiating and executing an application for relief as permitted under the Act, which should avoid any adverse economic impact. Carriers seeking relief will be required to bear costs of compiling and submitting the required information in the proper format, and pay a \$1,000 filing fee, except that no fee is required if the carrier is in rehabilitation or conservation. The Department does not believe that any additional adverse impact will be imposed on carriers in that the information requested should be readily available and because the filing fee is reasonable in consideration of costs to the Department to review such filings.

The Department will experience an economic impact in that it will be required to review and analyze requests for relief pursuant to these rules. The filing fee required to accompany requests for relief will help defray costs to the Department incurred in the review and analysis of such requests.

Regulatory Flexibility Analysis

The proposed new rules apply to all insurers, health service corporations and health maintenance organizations authorized to issue health benefits plans in this State. Some of these entities may be "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed rules impose specified reporting and compliance requirements only upon those carriers that choose to request relief from the Act. The Department, however, does not believe that these rules will impose any adverse impact on these entities. The proposed new rules merely set forth informational and procedural requirements by which these entities may request relief from obligations imposed pursuant to the Individual Health Insurance Reform Act. Carriers which are small businesses will be required to bear any costs associated with compiling and filing information as required by these proposed new rules, including the required filing fee. To the extent that the proposed new rules apply to small businesses, they may impose a greater impact on small businesses in that they may be required to devote proportionately more staff and financial resources to comply with these rules. The Department believes, however, that any additional costs will not pose an undue burden in that the information required should be readily available, and because the filing fee is reasonable in consideration of the costs to the Department to conduct the review of such filings.

The proposed new rules provide no different compliance requirements based on business size. As noted previously, these proposed rules set forth information and procedural requirements by which carriers may request relief from the obligation to pay assessments or to issue coverage to "eligible persons" pursuant to the Individual Health Insurance Reform Act. This Act provides no different compliance requirements based on business size. Accordingly, and to ensure consistency and uniformity in the review of requests for relief, the proposed new rules provide no differentiation in compliance requirements based on business size.

Full text of the proposed new rules follows:

SUBCHAPTER 11. RELIEF FROM OBLIGATIONS IMPOSED BY THE INDIVIDUAL HEALTH INSURANCE REFORM ACT

11:20-11.1 Purpose and scope

(a) This subchapter establishes the informational and procedural requirements for members requesting relief from obligations to pay assessments pursuant to N.J.S.A. 17B:27A-12 or 17B:27A-13 (including assessments for IHC Program losses and administrative expenses), or to offer coverage or accept applications to provide a standard health benefits plan to eligible persons, pursuant to N.J.S.A. 17B:27A-8.

(b) This subchapter applies to all members of the IHC Program.

11:20-11.2 Definitions

(a) Words and terms defined at N.J.S.A. 17B:27A-2 and N.J.A.C. 11:20-1, when used in this subchapter, shall have the meanings as

defined therein, unless more specifically defined in (b) below or unless the context clearly indicates otherwise.

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

"Applicant" means the member seeking a deferral of its obligation to pay assessments or a waiver of its obligation to offer coverage and accept applications pursuant to N.J.S.A. 17B:27A-2 et seq.

"Financially impaired" means a member which, after the effective date of this subchapter, is not insolvent, but is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations, or a member which is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

"Relief" means a deferral of obligations imposed pursuant to N.J.S.A. 17B:27A-12 and 17B:27A-13, or a waiver of obligations pursuant to N.J.S.A. 17B:27A-8, as applicable.

11:20-11.3 Application procedures and filing format

(a) Any member seeking relief may submit such request to the Department at any time, except that requests for relief from payment of assessments pursuant to N.J.S.A. 17B:27A-12a(3) or 17B:27A-13 shall be submitted to the Department no later than 15 days following the due date of payment of the assessment.

(b) All requests outlined in this subchapter shall be accompanied by a statement averring a need for relief from the obligation(s), as the case may be, including supporting documentation as set forth in N.J.A.C. 11:20-11.4, and shall specify the statutory and regulatory basis for such relief. A single filing may request relief from more than one obligation, but shall specify each obligation from which relief is sought.

(c) Each request shall be in loose leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the exhibits set forth in N.J.A.C. 11:20-11.4. The loose leaf sheets used in the request shall be eight and one-half inches wide and 11 inches long and punched for two-ring or three-ring binders, as appropriate.

(d) All members requesting relief pursuant to this subchapter shall submit five copies of each request in the format set forth in (c) above.

(e) If a request fails to materially comply with the filing format and information requirements set forth in N.J.A.C. 11:20-11.4 and this section, the Department shall notify the member that its request for relief is deficient and is denied on such grounds. The notice shall also set forth any information or other action required to cure the deficiency(s). If the member intends to pursue its request, the member shall submit the additional information specified or otherwise submit a filing in accordance with the format requirements specified in this section within 15 days of receipt of the Department's notice of deficiency. Failure to submit within 15 days the information necessary in the proper format to cure the deficiency shall result in the member's request being denied.

(f) All requests for relief or other information required pursuant to this subchapter shall be filed with the Department at the following address:

IHC Program
Request for Relief
New Jersey Department of Insurance
Division of Financial Solvency
20 West State Street
CN-325
Trenton, NJ 08625

11:20-11.4 Informational filing requirements

(a) When requesting relief from obligations imposed pursuant to N.J.S.A. 17B:27A-4, 17B:27A-12 or 17B:27A-13, the applicant shall provide with its request the following information in a clear, concise and complete manner:

1. A cover letter stating:
 - i. The name of the applicant;
 - ii. The form of relief and, if a deferral of less than the full amount, specific amount/percentage of relief which the applicant is requesting;

- iii. A statement of facts relied upon as the basis under which relief is sought, including the specific factor(s) upon which the Commissioner may find that the member is or would be placed in a financially impaired position as set forth in N.J.A.C. 11:2-27.4(a)1 to 28; and

- iv. The name, title, telephone number and telefax number of a contact person familiar with the filing to whom the Department may direct any additional questions;

2. A detailed explanation, with supporting documentation, of the projected effect that fulfillment of the obligation would have on the immediate and long term financial condition of the applicant unless relief is granted as requested;

3. The most recent financial examination report, whether conducted by the applicant's state of domicile or other state;

4. A statement addressing whether the applicant is planning to modify its method of doing business in any way including, but not limited to, new acquisitions or new restructuring;

5. If the applicant is a member of a holding company system, the following shall be provided:

- i. A list of all members of the holding company system;

- ii. A list of all intercompany transactions for the period beginning January 1 in the year of the filing to the date of the quarterly statement immediately preceding the date of the filing, in the format set forth in the statutory annual statement filed by the applicant; and

- iii. A copy of the registration statement filed pursuant to N.J.S.A. 17:27A-3 and the applicant's organizational chart;

6. An actuarial opinion attesting to the adequacy of reserves specifically for all accident and health lines of business, and for all lines of business which the applicant transacts, in the format of and satisfying all requirements for the actuarial opinion and memorandum required to be submitted as a part of the annual statement filed by the applicant;

- i. If the applicant is a health maintenance organization, the applicant shall obtain and file an actuarial opinion which complies with the requirements set forth in (a)6 above;

7. A report signed by the attesting actuary referred in (a)6 above, which includes, in summary form if necessary, all data utilized, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

8. A copy of the annual statement of the applicant, including all accompanying exhibits, filed with this State immediately preceding the date of the relief filing;

9. Copies of all quarterly statements for the period beginning January 1 in the year of the filing to the quarterly statement immediately preceding the date of the filing;

10. Except for requests for relief from the obligation to pay assessments pursuant to N.J.S.A. 17B:27A-13, three year financial projections beginning with the calendar year of the date of the filing assuming relief is granted and assuming relief is denied. The projections shall include, in summary form if necessary, all data utilized, and a complete explanation of methods and assumptions utilized and relief upon by the applicant in making the projections. The projections shall include results for the applicant's operations worldwide by line of business and for the applicant's operations in New Jersey only for individual health benefits plans issued pursuant to N.J.S.A. 17B:27A-2 et seq. The projections shall assume the same rate of assessment as in the first year for the subsequent years, and shall include projections of the applicant's operating results containing the information and in the format set forth in the following:

- i. For life and health insurers, the balance sheet and summary of operations exhibits of the statutory annual statement filed by the insurer;

- ii. For property and casualty insurers, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the insurer;

- iii. For health service corporations, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the health service corporation; and

iv. For health maintenance organizations, the balance sheet and statement of revenue, expenses and net worth of the annual statement filed by the health maintenance organization;

11. A description of any relief from obligations imposed by this State or any other state granted or in effect within the preceding 12 months, and the basis upon which such relief was granted;

12. A non-refundable filing fee of \$1,000, unless the applicant is in rehabilitation or conservation at the time of filing pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the applicant's state of domicile; and

13. Any other information the Commissioner may deem relevant to the consideration of the request.

(b) An applicant asserting that the Department's review of its request be evaluated on a particular basis (that is, pre-pooled, post-pooled, consolidated or unconsolidated), shall submit a written statement which sets forth the specific reasons, with supporting documentation, if any, for which it believes evaluation on a particular basis is appropriate to that applicant, and the specific reasons, with supporting documentation, if any, for which evaluation on other bases would be inappropriate.

(c) All filings shall be accompanied by the following certification signed by the chief financial officer of the applicant: "I _____ certify that the attached filing complies with all requirements set forth in N.J.A.C. 11:20-11 and that all of the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of the applicant."

11:20-11.5 Confidentiality of request for relief

(a) All data or information contained in the request for relief filed pursuant to this subchapter shall be confidential and shall not be subject to public disclosure or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., except for the following items, but only upon written, specified request and following 10 days written notice by the Department to the member/applicant:

1. N.J.A.C. 11:20-11.4(a)1i and ii—cover letter with name of applicant and describing relief sought;

2. N.J.A.C. 11:20-11.4(a)1iv—name, title, telephone number and telefax number of person familiar with the filing;

3. N.J.A.C. 11:20-11.4(a)3—most recent financial examination report;

4. N.J.A.C. 11:20-11.4(a)5i and ii—list of members of holding company system and intercompany transactions for period preceding date of filing;

5. N.J.A.C. 11:20-11.4(a)8—annual statement filed immediately preceding date of filing;

6. N.J.A.C. 11:20-11.4(a)12—non-refundable filing fee; and

7. N.J.A.C. 11:20-11.4(a)13—additional information required by the Commissioner to evaluate a particular filing.

11:20-11.6 Disposition of request for relief

(a) When the Commissioner determines pursuant to N.J.S.A. 17B:27A-8 or 17B:27A-12a(3), as applicable, that the member is or would be placed in a financially impaired condition through fulfillment of a coverage or assessment obligation or obligations, the Commissioner shall notify the member that its duty to fulfill the applicable obligation shall be waived, or deferred in whole or in part, as appropriate. If the Commissioner defers in whole or in part a member's obligation to pay assessments pursuant to N.J.S.A. 17B:27A-12a(3) or 17B:27A-13, the member shall remain liable to the IHC Program for the amount deferred.

(b) The Commissioner shall find that a member is or would be financially impaired if:

1. The member has been placed in rehabilitation or conservation pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the member's state of domicile;

2. The Commissioner finds that the member is in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27; or

3. The Commissioner finds that fulfillment of the obligation(s) from which relief is sought would place the member in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27.

(c) Any waiver or deferral from a particular obligation granted by the Commissioner pursuant to this subchapter shall be for a

specified period as set forth in the notice granting the request, but shall not exceed 12 months from the date of the notice. Any member seeking to continue a waiver or deferral shall file a separate request for relief in accordance with this subchapter no later than 45 days prior to the expiration of the waiver or deferral period set forth in the original notification granting the request. Such a request shall also include a detailed explanation of all actions the applicant has taken and intends to take to cure the financial impairment. Failure to file a properly completed request for relief within the time prescribed shall result in the expiration of the waiver or deferral at the expiration of the period set forth in the original notification granting the request. Nothing herein shall be construed as limiting or prohibiting any member from applying for relief at any time in accordance with this subchapter.

(d) If the Commissioner grants a request for a deferral of payment of an assessment, the terms of the deferral shall include the requirement that the member shall pay to the Board an additional amount representing the loss to the Board of the time value of the assessment for the period of the deferral.

1. In calculating the additional amount to be paid, the member shall use the annual interest rate on one-year U.S. Treasury bills as of the date the assessment was due and payable.

2. In calculating the additional amount to be paid, the period of deferral shall begin on the date that payment of the assessment was due and payable and end on the date the amount deferred is paid to the Board.

3. The payment of the additional amount set forth in (d) above shall be in lieu of payment by the member of any interest or penalty on the amount deferred, which otherwise may be required under any other rule.

4. The requirement to pay an additional amount as provided in (d) above shall not apply when the reason for granting the deferral is that the member is in rehabilitation or conservation.

11:20-11.7 Hearings

(a) If the Commissioner denies a member's request for relief made pursuant to this subchapter, or if the member objects to the terms of the relief granted, the member may request a hearing on the Commissioner's determination within seven days from the date of receipt of such determination as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, and daytime telephone number of a contact person familiar with the matter;

ii. A copy of the Commissioner's determination;

iii. A statement requesting a hearing; and

iv. A concise statement describing the basis for which the member believes that the Commissioner's findings of fact are erroneous.

2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between the member and such personnel of the Department as the Commissioner may direct, to determine whether there are material issues of fact in dispute.

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

i. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

ii. In a matter which has been determined to be a contested case, if the Commissioner finds that there are no good-faith disputed issues of material facts and the matter may be decided on the documents filed, the Commissioner may notify the applicant in writing as to the final disposition of the matter.

11:20-11.8 Notice to the IHC Program

Members requesting relief pursuant to this subchapter shall concurrently provide notice of all such requests to the IHC Program through the Interim Administrator or Administrator, as appropriate.

Members shall also provide notice to the IHC Program of all dispositions of such requests by the Commissioner, within 15 days of such disposition.

11:20-11.9 Exceptions for health maintenance organizations due to lack of capacity

(a) Any member health maintenance organization (HMO) asserting that it is not required to offer coverage or accept applications pursuant to the requirements of the Act because it does not have the capacity to enroll additional members, pursuant to N.J.S.A. 17B:27A-8a, shall file the following information with the Commissioner:

- I. A cover letter stating:
 - i. The name of the member HMO;
 - ii. A statement that the member is not required to offer coverage or accept applications pursuant to the Act because it does not have the capacity in its facilities to enroll additional members, and the basis for that assertion, with supporting documentation, certified by the president or duly authorized officer of the member;
 - iii. The number of the member's current individual and group members, listed by provider and classified by the provider's specialty, which shall be updated annually each year the member asserts a waiver pursuant to N.J.S.A. 17B:27A-8a; and
 - iv. A certification signed by the president or duly authorized officer that the member shall not offer coverage to or accept any new group members, pursuant to N.J.S.A. 17B:27A-8a. Individual additions to existing groups shall not be considered new group members.

(b) The member shall concurrently file the information required pursuant to (a) above with the IHC Program.

11:20-11.10 Other actions by the Commissioner

Nothing in this subchapter shall be construed as limiting the Commissioner's authority to take such action with respect to insurers, health service corporations or health maintenance organizations as may be authorized by law, including, but not limited to, placing an insurer, health service corporation or health maintenance organization in rehabilitation, liquidation or conservation pursuant to N.J.S.A. 17B:32-31 et seq.

11:20-11.11 Penalties

Failure to comply with this subchapter, including all notice requirements set forth herein, may result in the denial of relief requested and imposition of penalties as authorized by law, including any actions that may be taken by the Board pursuant to N.J.S.A. 17B:27A-2 et seq. and the IHC Program Plan of Operation, including, but not limited to, imposition of an interest penalty for assessments due from the member and a recommendation by the Board to remove the member's authority to issue any health benefits plans in this State.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Small Employer Health Benefits Program Board Plan of Operation

Proposed New Rules: N.J.A.C. 11:21-2

Authorized By: Small Employer Health Benefits Program Board of Directors, Maureen Lopes, Chair.

Authority: N.J.S.A. 17B:27A-30, as amended by P.L. 1993, c.162, section 16.

Proposal Number: PRN 1993-562.

Submit written comments by October 19, 1993 to:

Interim Administrator
New Jersey Small Employer
Health Benefits Program
SEH Box 1
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, NJ 08830

The agency proposal follows:

Summary

These rules are being proposed pursuant to the Small Employer Health Insurance Reform Act, N.J.S.A. 17B:27A-17 et seq., enacted November 30, 1992 and amended June 30, 1993, P.L. 1993, c.162 ("The Act").

The Small Employer Health Benefits ("SEH") Program Board of Directors ("Board") is promulgating regulations in accordance with N.J.S.A. 17B:27-30 and 31 as amended, and P.L. 1993, c.162, section 16. N.J.S.A. 17B:27A-31 sets forth what must be written in the Plan of Operation ("Plan"). P.L. 1993, c.162, section 16 provides a special procedure by which the Board may take actions, such as promulgation of a Plan of Operation. Prior to the adoption of an action, the Board shall provide notice and a detailed description of its intended action to three newspapers of general circulation. The Board is further required to forward the notice of intended action and detailed description to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board is also required to provide all interested persons an opportunity to comment in writing on the intended action of at least 15 days. The Board may adopt an action immediately following the close of the public comment period, and the action shall be effective on the date the regulations are submitted to the OAL for publication in the New Jersey Register, or such later date as the Board may establish. Within a reasonable time after submission of the comments, the Board is also required to prepare a report for public distribution listing all parties who provided comments, summarizing the content of the comments, and providing the Board's response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register.

With respect to the SEH Program Board's Plan of Operation, it should be noted that the Commissioner of Insurance ("Commissioner") must, in accordance with N.J.S.A. 17B:27A-30, hold a hearing prior to approving the Plan of Operation. The Commissioner's hearing will be held on or about the same date as the close of the comment period established herein. Following approval of the Plan of Operation by the Commissioner, the Board will adopt the Plan of Operation in accordance with P.L. 1993, c.162, section 16.

These proposed new rules implement various provisions of the Act. Through the SEH Program, the Act substantially revises the requirements governing the provisions of health insurance offered to small employer groups in the State. In accordance with the Act, insurers, medical service corporations, hospital service corporations, and health maintenance corporations (collectively "carriers") may offer only the health benefits plans promulgated by the SEH Program Board to New Jersey small employers and their eligible employees; the health benefits plans must be offered on a guaranteed issue basis. Further, the SEH Program established a reinsurance mechanism to cover a portion of the losses incurred, if any, under such health benefits plans by certain carriers issuing such health benefits plans. Carriers which elect to be "reinsuring" carriers may receive reimbursements for some of their losses, and likewise are subject to assessments to cover the losses of other reinsuring carriers. "Risk-assuming" carriers may not be reimbursed for any of their losses, and are subject to assessments only if reinsuring carrier assessments are insufficient. (Carriers must submit their election to be a risk-assuming or reinsuring carrier in accordance with the rules promulgated by the Commissioner. The election to be a risk-assuming carrier must be approved by the Commissioner.)

Pursuant to the Act, the Board is given broad authority to oversee the SEH Program, in accordance with a Plan of Operation, which is the subject of these regulations. The Plan of Operation must address: (1) the handling and accounting of assets and monies of the SEH Program, and annual fiscal reporting to the Commissioner; (2) a means of providing for the filling of vacancies on the Board, subject to the approval of the Commissioner; (3) the method to be used to determine the extent to which a carrier's payment per insured for each small employer health benefit plan exceeds the Statewide average payment per insured for each small employer health benefits plan; (4) the method for determining the extent to which a carrier, whose average cost of insuring individuals covered by small employer health benefits plans exceeds the threshold described at N.J.S.A. 17B-27A-29, may receive reimbursement from the SEH Program; (5) the efficiency and risk management standards a carrier must meet in order to receive reimbursement from the SEH Program; and (6) any additional matters which are appropriate to effectuate the provisions of the Act.

A summary of the provisions of the Plan of Operations as set forth in the proposed new rules follows:

Proposed N.J.A.C. 11:21-2.1 sets forth the purpose and structure of the SEH Program.

Proposed N.J.A.C. 11:21-2.2 sets forth definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:21-2.3 sets forth the general powers of the SEH program and the Board.

Proposed N.J.A.C. 11:21-2.4 provides that the Plan of Operation creates no contractual rights or obligations between the SEH Program and any other person or entity.

Proposed N.J.A.C. 11:21-2.5 sets forth requirements with respect to the Board of Directors of the SEH Program including, but not limited to, the appointment of members of the Board, procedures for meetings to be held by the Board, and procedures by which actions may be taken by the Board.

Proposed N.J.A.C. 11:21-2.6 provides specific requirements regarding the establishment of various committees, appointment to such committees, and functions of those committees.

Proposed N.J.A.C. 11:21-2.7 establishes that the Board shall select an administrator for the SEH Program via a bidding process, and sets forth the administrative functions the administrator is expected to perform.

Proposed N.J.A.C. 11:21-2.8 sets forth the procedures by which the Board will collect assessments from program members to cover the administrative costs of the SEH Program.

Proposed N.J.A.C. 11:21-2.9 sets forth the procedures by which the Board will collect assessments to cover net losses of the Program. This proposed provision also establishes the methodology by which net losses are to be determined, and minimum efficiency and risk management standards which reinsuring carriers must meet before receiving reimbursements for any of their losses.

Proposed N.J.A.C. 11:21-2.10 sets forth reporting requirements which carriers must meet with respect to the SEH Program.

Proposed N.J.A.C. 11:21-2.11 provides procedures by which the financial activities and the funds of the SEH Program shall be administered.

Proposed N.J.A.C. 11:21-2.12 provides the procedures for the maintenance and retention of the SEH Program's official records.

Proposed N.J.A.C. 11:21-2.13 provides that the Board shall have an annual audit of its operations conducted by a qualified independent certified public accountant, and sets forth other requirements regarding such audits.

Proposed N.J.A.C. 11:21-2.14 provides procedures for the imposition of penalties and for the resolution of disputes and for addressing certain complaints.

Proposed N.J.A.C. 11:21-2.15 generally provides that the Board shall not be liable for any obligation of the SEH Program, and that the Directors and employees of the Board shall not be liable for any action taken or omission made by them in the performance of their powers and duties under the Act, except where the action or omission constitutes willful misconduct or gross negligence.

Proposed N.J.A.C. 11:21-2.16 sets forth procedures for amending the Plan of Operations by the Board, subject to the approval of the Commissioner, and the method for distributing funds of the SEH Program, if any exist, upon the termination of the Program.

Social Impact

The Plan of Operation established by these rules will implement the requirements of the Act as amended, and is intended to assure the fair, reasonable and equitable administration of the SEH Program. The rules are intended to ensure that organizational and operational structure and procedures for the SEH Program will be in place to provide for the provision of small employer health benefits plans by January 1, 1994. This, in turn, will implement the intent of the Legislature as set forth in the Act as amended, benefiting all members of the SEH Program and the public generally.

Economic Impact

The Board does not believe that any adverse economic impact is directly imposed by this Plan of Operation established by these proposed new rules. These proposed new rules merely establish operating procedures for the administration of the SEH Program to provide for the issuance of new small employer health benefits plans with effective dates on or after January 1, 1994, in accordance with the requirements set forth in the Act as amended.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed new rules do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules establish a Plan of Operation for the fair, reasonable and equitable administration of the SEH Program. The rules generally impose compliance requirements upon the SEH Program Board, which is created by the Act as amended, and which is not a "small business" as defined in the Regulatory Flexibility Act. To the extent that small businesses may be impacted through the promulgation of this Plan of Operation, any impact would be that directly imposed by the Act and implementing rules.

Full text of the proposed new rules follows:

SUBCHAPTER 2. NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM PLAN OF OPERATION

11:21-2.1 Purpose and structure

(a) The Program has been created pursuant to section 12 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-28) as amended by P.L. 1993, c.162, section 6, to provide a mechanism:

1. To assure the availability of five standardized health benefits plans to New Jersey small employers, their eligible employees and the dependents of those eligible employees, on a guaranteed issue basis; and

2. Through which certain losses of specified member companies accruing under the five small employer health benefits plans will be reimbursed by other member companies that are subject to assessments.

(b) The Board has been created pursuant to Section 13 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-29) to administer the Program reasonably and equitably under law.

(c) The Program Plan of Operation ("Plan") has been created in accordance with Section 14 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-30) to set forth as completely as possible the reasonable and equitable manner by which the Board will administer the Program under applicable law.

(d) The Program shall be administered by the Board. The Board shall administer the Program in accordance with the Plan developed and adopted by the Board pursuant to law, subject to the review and approval of the Commissioner of Insurance.

(e) The Board shall consist of 11 persons, including the Commissioners of Health and Insurance or their designees, both of whom shall serve as ex officio, and nine persons who shall be elected by the members of the Program. Initially, three of the public members of the Board shall be elected for a three-year term, three shall be elected for a two-year term, and three shall be elected for a one-year term. Thereafter, all public members of the Board shall be elected for a term of three years. Filling of vacancies on the Board shall be subject to the approval of the Commissioner of Insurance. No carrier shall have more than one representative on the Board. The following categories shall be represented among the public members:

1. Two carriers whose principal health insurance business is in the small employer market;
2. One carrier whose principal health insurance business is in the larger employer market;
3. A health, hospital or medical service corporation;
4. A health maintenance organization;
5. A risk-assuming carrier;
6. A reinsuring carrier; and
7. Two persons representing small employers.

11:21-2.2 Definitions

The words and terms used in this Plan shall have the meanings set forth at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21-1.3, or as further defined below:

"Administrator" means any person who meets the qualifications specified in the request for proposal for administering the Program.

"Board" means the Board of Directors of the Program. As used in this Plan, "Director" shall refer to members of the Board.

"Carrier" means any insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization ("HMO") authorized to issue health benefits plans in this State. For purposes of the Act, carriers that are affiliated companies shall be treated as one carrier, except that any insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in the State or any health maintenance organization located in the State that is affiliated with an insurance company, health service corporation, hospital service corporation, or medical service corporation shall treat the health maintenance organization as a separate carrier.

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

"Department" means the New Jersey Department of Insurance.

"Dependent" means the spouse or child of an eligible employee subject to applicable terms of the health benefits plan covering the employee.

"Earned premium" means the premium earned in New Jersey on health benefits plans less return premiums thereon.

"Eligible employee" means a full-time employee who works a normal work week of 25 or more hours. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefits plan of a small employer, but does not include employees who work less than 25 hours a week or work on a temporary or substitute basis.

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of the Act (N.J.S.A. 17B:27A-19). "Health benefits plan" excludes the following plans, policies, or contracts: accident only, credit, disability, long-term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70.

"Member" means all carriers issuing health benefits plans in this State on or after the effective date of the Act.

"Plan of Operation" means the plan of operation of the Program, including articles, by-laws and operating rules approved by the Board pursuant to the Act.

"Program" means the New Jersey Small Employer Health Benefits Program established pursuant to the Act.

"Reinsuring carrier" means a small employer carrier electing to receive reimbursement from the program in accordance with Section 19 of the Act (N.J.S.A. 17B:27A-35).

"Risk-assuming carrier" means a small employer carrier electing to assume risks pursuant to section 18 of the Act (N.J.S.A. 17B:27A-34).

"Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed at least two but no more than 49 eligible employees, the majority of whom are employed within the State. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer. Subsequent to the issuance of a health benefits plan to a small employer pursuant to the provisions of the Act, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of the Act which apply to a small employer shall continue to apply until the anniversary date of the health benefits plan next following the date the employer no longer meets the definition of a small employer.

"Small employer carrier" means any carrier that offers health benefits plans covering eligible employees of one or more small employers.

"Small employer health benefits plan" means a health benefits plan for small employers approved by the commissioner pursuant to Section 17 of the Act (N.J.S.A. 17B:27A-33).

"State" means the State of New Jersey.

11:21-2.3 Powers of the Board

(a) The Board has the specific authority pursuant to the Act to:

1. Develop the method to be used to determine the extent to which a reinsuring carrier's payment per insured for each health benefit plan provided for under the Act exceeds the Statewide average payment per insured for each health benefits plan provided for under the Act;

2. Develop the method for determining the extent to which a reinsuring carrier whose average cost of insuring individuals covered by small employer health benefits plans exceeds the threshold described in Section 13(c) of the Act (N.J.S.A. 17B:27A-29(c)) may receive reimbursement from the Program;

3. Develop a statement of the efficiency and risk management standards a reinsuring carrier must meet before a reinsuring carrier may receive reimbursement from the Program;

4. Enter into contracts as are necessary or proper to carry out the provisions and purposes of the Act;

5. Sue or be sued, including taking any legal actions as may be necessary for recovery of any assessments due to the Program or to avoid paying any improper claims;

6. Establish benefit levels, deductibles and copayments, exclusions, and limitations for the health benefits plans in accordance with applicable law;

7. Establish guidelines to ensure that small employer carriers are assuming their share of high risk small employer groups in proportion to their market share of small employer health benefits plan business. In the event that any carrier does not assume its reasonable share of the high risk market, the Board may adjust the assessment formula, with the approval of the Commissioner, to require a proportionally higher assessment from the carrier;

8. Promulgate one standard claim form. In order to provide a standard system of payment for medical services, all claim forms for any claimant's use under a group health insurance policy delivered or issued for delivery in this State shall conform to the form adopted by the Board and promulgated in conjunction with the Individual Health Coverage Program pursuant to P.L. 1993, c.162, Section 20;

9. Assess members in accordance with the provisions of the Act, including such interim assessments as may be reasonable and necessary for organization and reasonable operating expenses. Such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year;

10. Establish rules, conditions, and procedures pertaining to the reimbursement and assessment of the members of the Program;

11. Establish a standard policy form for five standard health benefits plans and five rider packages, as provided in the Act;

12. Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical and other assistance in the operation of the Program, policy and other contract design, and any other functions within the authority of the Program;

13. Employ or retain such persons, firms or corporations to perform such functions as are necessary for the Board's performance of its duties. The Board may use the mailing address of such person, firm or corporation as the official address of the Program. Such persons may include an Administrator or executive director with such authority as may be delegated by the Board to implement and carry out broad directives of the Board made pursuant to statutory powers. Such persons may include actuaries, accountants, auditors, insurance producers and such other specialists or persons whose advice or assistance is deemed by the Board to be necessary to the discharge of its duties under the Act. The Board may agree to compensate such persons so as best to serve the interests of the Program and the public. Such persons, firms or corporations shall keep and maintain such records of their activities as may be required by the Board;

14. Develop a method of handling and accounting for assets and moneys of the Program and an annual fiscal reporting to the Commissioner;

INSURANCE

15. Develop a means of providing for the filling of vacancies on the Board, subject to the approval of the Commissioner;

16. Address any additional matters which are appropriate to effectuate the provisions of this Act; and

17. Develop a buyers' guide for the Program, and provide for a reasonable charge for its use and distribution.

11:21-2.4 Plan of Operation

(a) The Board shall perform its function under this Plan, and in accordance with the Act. The Plan is intended to assure the fair, reasonable and equitable administration of the Program and shall constitute a public record and accordance with the Act.

(b) The Plan does not, nor is it intended to, create any contractual or other rights or obligations between the Program and any entity or any person insured by any carrier. It does not provide any benefits or create any obligation, contractual or otherwise, to any person or entity.

11:21-2.5 Board structure and meetings

(a) The Program shall exercise its powers through a Board.

1. The Board shall be made up of the Commissioner, the Commissioner of Health, or their designees (who shall serve ex officio) and nine additional persons. The composition of the Board shall be as described in Section 13(a) of the Act. No person representing one of the public members shall serve, or continue to serve, on the Board unless such person represents one of the categories specified in Section 13(a) of the Act (N.J.S.A. 17B:27A-29).

2. Initially, three of the public members shall serve for a term of three years; three shall serve for a term of two years; and three shall serve for a term of one year. Thereafter, all public members shall serve for a term of three years. Vacancies shall be filled in the same manner as the original appointments.

i. On or about 60 days prior to the date of the election meeting, the Board shall send written notice to the Program members setting forth the time, date and place of the election meeting, stating the positions for which a vote is to be taken, soliciting written nominations of candidates for those positions, and stating the last date that written nominations shall be accepted, which shall be no less than 10 business days following the date of the written notice.

ii. Following the close of the nomination period, the Board shall determine from among the carriers and/or small employer representatives nominated those persons that are eligible and willing to serve in the position for which nominated.

iii. At least 30 calendar days prior to the date of the election meeting, the Board shall send a written notice to members setting forth the candidates to be considered for purposes of voting at the election meeting, along with a ballot by which the member carrier may vote absentee on or before a date specified by the Board, which shall be no earlier than three business days prior to the date of the election meeting.

iv. Affiliated carriers shall have no more than one vote for each position subject to vote.

v. Elections shall be by a simple majority of those ballots properly cast in person and absentee.

vi. The Board shall maintain a written record of each election, including copies of all notices sent, ballots received and the tally sheets in accordance with its record retention procedures set forth at N.J.A.C. 11:21-2.12.

3. The Board may elect a Chair, Vice Chair and Secretary from among its Directors, as well as other officers, as it deems appropriate. The election of officers shall be held annually or more frequently if needed to fill vacancies. Subject to the provisions of the Act and as authorized by the Board, such officers are authorized to serve as signatories on behalf of the Board and perform other ministerial functions necessary and proper to effectuate the actions of the Board.

(b) The votes of the Board shall be on a one person, one vote basis. A Director, other than the two small employer representatives provided for in Section 13 of the Act (N.J.S.A. 17B:27A-29), may designate a voting alternate employed by the same carrier or same State agency, as appropriate.

PROPOSALS

(c) A majority of the Directors shall constitute a quorum for the transaction of business. The acts of the majority of the Directors at a meeting at which a quorum is present shall be the acts of the Board, except as otherwise provided herein.

(d) A meeting of the Board shall be held no later than the first Tuesday in April each year in accordance with the State's Open Public Meetings Act. At that meeting and/or subsequent meetings, the Board shall:

1. Review the financial results for the prior year, including expenses of Program administration and incurred losses, taking into account all other appropriate items; and

2. Determine if an assessment is necessary for the proper administration of the Program.

(e) At least once each year, the Board shall meet to:

1. Review the Plan and submit proposed amendments, if any, to the Commissioner for review;

2. Review reports of the committees established by the Board;

3. Review and approve the rate of interest to be charged for late payments;

4. Review and approve changes in the communications program, as recommended by the Marketing and Communications Committee;

5. Determine whether any technical corrections or amendments to the Act should be recommended to the Legislature;

6. Fill any vacancies among the Directors who represent carriers which exist or which will exist within 10 business days following the date of the election meeting pursuant to a resolution of the Board or the expiration of a Director's normal term of office; and

7. Review, consider, and act on any matters deemed by the Board to be necessary and proper for the administration of the program.

(f) The Board shall hold other meetings upon the request of the Chair or three or more Directors, as deemed appropriate. A meeting may be held in person or by telephone. Notice of such a meeting and its purpose shall be provided to the general public and to the Directors in accordance with the State's Open Public Meetings Act.

(g) The Board shall keep reasonably comprehensive minutes of all its meetings showing the time and place, the Directors present, the subjects considered, the actions taken, the vote of each Director, and any other information required to be shown in the minutes by law. The original of the public record shall be retained by the Board or its agent and shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with Section 7 of the Open Public Meetings Act (N.J.S.A. 10:4-12). At least two copies of the minutes of every meeting of the Board shall be delivered forthwith to the Commissioner.

(h) The Board may establish rules of the Program consistent with the Act and this Plan.

(i) Amendments to the Plan or suggestions for technical corrections to the Act shall require the concurrence of a majority of the entire Board.

(j) Directors shall not be compensated by the Program for their services or related personal expenses.

(k) The Board may adopt rules for the taking of testimony from the public, which may include rules relating to the time and place of any such public hearing, and reasonable rules for the length and format of testimony from individuals, groups and organizations.

(l) The Board may take up any additional matters which are appropriate to effectuate the provisions of this Act.

11:21-2.6 Committees

(a) Appointments to Standing and other committees shall be approved by a majority of the Board present. Each of the Standing Committees shall include no more than five directors, but the Chair may appoint additional persons as needed, with the approval of a majority of the Board. A written record of the proceedings of each committee shall be maintained by a Secretary appointed from the membership of the committee. Committee members are responsible for providing staff support, but may recommend that the Board provide funding for outside contractors. Committees may not take final action; however, within the scope of their mission and duties, Committees may make recommendations and reports to the Board for its decision and action.

- (b) Standing Committees shall include the following:
1. A Finance Committee which shall make recommendations to the Board with respect to:
 - i. The methods and rules for calculating assessments and other risk sharing charges;
 - ii. Assessment of members in accordance with the provisions of the Act, including such interim assessments as may be reasonable and necessary for organizational and reasonable interim operating expenses;
 - iii. Establishment of rules, conditions, and procedures pertaining to the reimbursement of the members of the Program;
 - iv. Independent consulting actuaries who may be approved by the Board;
 - v. Establishment of rules, conditions, and procedures pertaining to the registry of multiple employer arrangements in accordance with the provisions of the Act; and
 - vi. Oversight of studies necessary for development of reinsurance mechanisms;
 2. An Operations Committee which shall make recommendations to the Board with respect to:
 - i. The Plan and amendments thereto;
 - ii. A uniform reinsurance compliance audit program to be utilized by independent auditors retained by carriers in their review of items related to assessments for each affected carrier;
 - iii. The selection of an independent auditor for the annual audit of the Program operations;
 - iv. The review of reports prepared by independent auditors and other audit-related matters the Board deems necessary;
 - v. Contracts which are necessary or proper to carry out the provisions and purposes of the Act;
 - vi. Developing the means to select a plan administrator, a statement of the powers and duties of the Administrator, the compensation of the Administrator, and a statement of the efficiency standards an Administrator must meet; and
 - vii. Recommendations for employing or retaining persons, firms or corporations to perform the functions necessary for the Board's performance of its duties, including retention of an Administrator for the Program;
 3. A Legal Committee which shall make recommendations to the Board with respect to:
 - i. Appropriate interpretations of the Act, and such other matters as the Board may desire, including rules and regulations promulgated by the Board pursuant to the Act;
 - ii. Amendments to the Plan, and the various health benefits plans proposed by the Board for compliance with the Act, and by implication under Federal or other State legislation;
 - iii. Proposed amendments to the Act for Board approval;
 - iv. Contracts and legal documents for the Program;
 - v. All litigation and other disputes involving the Program and its operations;
 - vi. Maintenance of a written record of all questions received and responses provided by the Board;
 - vii. Coordination with legal counsel for the Board, as needed, on matters relating to the Program operations, including proposed contracts, operational practices, and statutory construction;
 - viii. Any legal actions necessary or proper for recovery of an assessment for, on behalf of, or against the Program or a member;
 - ix. The Board's entering into contracts necessary or proper to carry out the provisions and purposes of the Act; and
 - x. Legal actions as may be necessary for recovery of any assessments due to the Program or to avoid paying any improper claims and other matters related to lawsuits by or against the Board;
 4. A Marketing and Communications Committee which shall make recommendations to the Board with respect to:
 - i. Rules for implementation and administration of the Act and standards to provide for the fair marketing and broad availability of health benefits plans to eligible employees;
 - ii. Marketing and communication plans for the Program, as needed;
 - iii. Issues or concerns arising out of the marketing of Program coverage;

- iv. The development of information concerning the Program to be released to the general public; and
 - v. Reviewing marketing material submitted by carriers in accordance with the Act; and
5. A Dispute Resolution Committee which shall make recommendations to the Board with respect to:
 - i. Consumer, policyholder and member carrier inquiries, complaints and disputes arising in connection with the Program;
 - ii. The manner by which the Board may address inquiries, complaints and disputes brought to its attention;
 - iii. Procedures for receiving, logging and handling inquiries, complaints and disputes;
 - iv. The design of inquiry, complaint and dispute forms;
 - v. Procedures for carriers to use in notifying the Board of complaints and disputes;
 - vi. Whether and how to respond to interpretations of the Board's rules made by carriers and inquiries and complaints received from consumers, policyholders, carriers or others.
- (1) Recommendations by the Dispute Resolution Committee may include a recommendation that the Board issue a statement interpreting its regulations, seek declaratory or injunctive relief as may be appropriate, or other administrative or legal remedies as may be available.
- (2) In an effort to answer any inquiry or resolve any dispute or complaint, the Dispute Resolution Committee or Administrator may seek the input of other appropriate Committees in order to assist the Dispute Resolution Committee in reaching a recommendation.
- (3) The Dispute Resolution Committee may refer matters as necessary to any other Committee which may also make recommendations to the Board.
- (4) The Dispute Resolution Committee or Administrator shall compile statistics on complaints, disputes and appeals received and submit an annual report to the Board and the Commissioner detailing the volume of complaints, disputes and appeals categorized by type, carrier and disposition.
- (5) Nothing in this paragraph shall be deemed to impair or otherwise affect the authority of the Commissioner to investigate and resolve any complaint or dispute or to take any regulatory or enforcement action with respect to any violations of any State insurance statutes or rules which come to the Commissioner's attention.
- (c) The Board may appoint other committees. The Board may by resolution adopted by a majority of the entire Board:
1. Determine the size of and appoint members to and/or fill any vacancy in any committee;
 2. Appoint one or more persons to serve as alternate members of any committee, to act in the absence or disability of members of any committee with all the powers of such absent or disabled members;
 3. Abolish any committees, in its discretion;
 4. Remove any person from membership on any committee at any time, with or without cause; and
 5. Authorize or appoint the use of consultants or other advisors to work with any committee.
- 11:21-2.7 Administrator selection and duties
- (a) The Administrator shall be selected by the Board.
- (b) The Administrator shall be selected by a bidding process. The Board shall issue a Request for Proposal with written criteria for selection of a qualified person and shall solicit responses from carriers participating in the small group market and other qualified persons.
- (c) The Administrator shall perform the administrative functions required under the Act and the Plan. The Administrator is responsible, along with the Board, for the fair, equitable and reasonable administration of the Program.
- (d) The Administrator shall perform all administrative functions developed by the Board including the following:
1. Preparing and submitting an annual report to the Board and the Commissioner no later than the third week of March; preparing and submitting monthly reports to the Board;

2. Establishing the procedures and installing the systems needed to properly administer the operations of the Program;
3. Establishing with Board approval, one or more depository accounts for the transaction of Program business;
4. Collecting assessments due to the Program on a timely basis;
5. Depositing all moneys collected on behalf of the Program in the established depository account(s) on a timely basis;
6. Reimbursing reinsuring carriers following their submission of acceptable documentation;
7. Issuing checks or drafts, on and/or approving charges against, bank accounts of the Program;
8. Keeping all accounting, administrative and financial records of the Program;
9. Acting as a resource for reinsuring carriers in complying with the Program;
10. Calculating all assessments in accordance with the methodology approved by the Board; notifying members of amounts due; tracking the amount of assessments in dispute or subject to deferral request; coordinating with the Department and other appropriate parties, including State agencies, regarding fiscal administrative matters;
11. Preparing an annual estimate of the operating and administrative expenses of the Program;
12. Preparing a detailed Operations and Procedures Manual which must include forms and procedures for processing business as required by the Plan;
13. Based on minimum standards for participation in the Program as a reinsuring carrier developed by the Board, reviewing compliance with such standards; and
14. Performing other functions as agreed between the Board and the Administrator.

(e) The Administrator shall maintain calendar year records of premiums, reimbursements, and operating and administrative expenses and shall retain these records for a period of seven years following the end of such calendar year.

(f) The Administrator shall serve for a period of three years, or until it is otherwise removed by the Board. The Administrator may request to terminate its contract and must give the Board 180 days notice. The Board must act upon the Administrator's request within 90 days of its receipt or the request is considered approved.

(d) The Administrator shall be reimbursed as set forth in the request for proposal.

11:21-2.8 Assessments for administrative and operating expenses

(a) Annually on or about April 15, the Board shall determine the final administrative expense total for the preceding calendar year, if any.

1. Each member's final assessment shall be reduced by any interim assessment paid by the member or credited to the member by the Board.

2. Each member's final assessment shall be reduced by any deferred assessments paid by assessed carriers in proportion to the original additional assessment made to cover the deferred amount.

3. Members shall be assessed for a proportionate share of the final administrative expenses on the basis of health benefits plan earned premiums for that year. The administrative expense assessment for each member shall be equal to the total of all administrative expenses for the calendar year multiplied by the ratio of that member's earned premium for health benefits plans to the earned premium for health benefits plans of all members for the calendar year.

(b) The Board may make an interim assessment of members for reasonable and necessary organizational expenses and to cover anticipated interim operating expenses. At the discretion of the Board, interim assessments may be made on a monthly basis or such other periodic basis as necessary to ensure the availability of funds to meet operating expenses.

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

1. Members shall be subject to payment of an interest penalty on any assessment, or portion of an assessment, not paid within 45 days of the date of the invoice for the assessment, unless the member has been granted a deferral by the Commissioner of the amount not timely paid.

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

ii. Payment of an assessment, or portion of an assessment, for which an interest penalty amount has accrued, shall include the interest penalty amount accrued as of the invoice date; otherwise, payment shall not be considered to be in full.

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

3. A member may request that the Commissioner grant a deferral of its obligation to pay an assessment in accordance with procedures established by the Commissioner.

i. If a member files a proper request for deferral within 15 days of the date of the invoice, that member may make payment of the amount of the assessment invoice to be held in an interest bearing escrow account in accordance with the procedures set forth herein, pending final disposition by the Commissioner of the deferral request.

ii. If the member withholds payment, as permitted herein and the Commissioner denies the request for deferral, the member shall be subject to payment of the interest penalty set forth herein, accruing from the date of the invoice for the assessment.

4. Amounts deferred by the Commissioner or subject to dispute, which dispute is resolved in favor of the carrier, shall be redistributed among all other members proportionately.

(d) The Administrator shall coordinate with the Department and other appropriate parties, including State agencies, regarding fiscal administrative matters, and develop appropriate procedures for such matters, and disburse funds for administrative expenses upon the directive of the Board.

1. Amounts of assessment in dispute or subject to deferral request, including any interest penalty paid by a carrier pursuant thereto, shall not be disbursed by the Administrator until such time as the dispute has been settled against the disputing carrier, or the deferral denied, except that any portion of an assessment not in dispute or subject to the deferral request, or portions no longer disputed or subject to a deferral request, may be disbursed immediately according to Board directive.

2. Amounts of assessment disputed or subject to deferral wherein the dispute is settled in favor of the disputing carrier, or a deferral is granted, shall be returned to the appropriate carrier within 15 days of the date that the Administrator receives notice of the determination by the Board or the Commissioner, as applicable, along with the proportionate amount of interest penalty, if any, paid by the carrier for late payment of the amount.

(e) A member requesting a deferral from the Commissioner of an assessment amount shall concurrently provide notice of such request in duplicate to the Administrator in order to preserve its right to the moneys owed and paid pursuant to the invoice for assessment.

(f) If a member determined liable for an assessment fails to pay the full amount of the assessment and applicable interest, if any, within 60 days of the date of the invoice, and has neither submitted notice that it is seeking a deferral from the Commissioner, nor requested a hearing, the Board may provide to the Commissioner a notice of the member's failure to make payment along with a recommendation to revoke the member's authority to write any health benefits plans or other health coverage in this State or to take such other action against the carrier as may be authorized by

law. A copy of this notice shall be sent to the member by registered mail at the same time that the notice is sent to the Commissioner. In accordance with the Act, failure to pay assessments shall be grounds for removal of a member's authority to write health coverage of any kind in this State.

11:21-2.11 Assessment for reimbursable losses

(a) The Board shall determine the total reimbursable losses, which shall be the net loss of the Program, if any, for the calendar year based upon the information submitted by reinsuring carriers annually on or before August 15 to the Board beginning in 1995. Such a determination shall be made by the Board on or about October 1 annually.

(b) The total reimbursable losses for the year shall be the aggregate of the reimbursable losses for all reinsuring carriers reporting reimbursable losses.

(c) Reinsuring carriers shall be liable for a portion of the reimbursable losses. A reinsuring carrier's assessment amount shall equal reimbursable losses but shall not exceed four percent of the earned premiums for small employer health benefits plans for any reinsuring carrier.

1. Each reinsuring carrier's assessment amount shall be determined by multiplying the total assessment amount by the ratio of the reinsuring carrier's earned premiums for that calendar year for small employer health benefits plans to the total earned premiums for that calendar year for all reinsuring carriers for small employer health benefits plans.

2. The Board shall provide notice to reinsuring carriers in writing on or about October 1 of the total reimbursable losses for the year and whether the reinsuring carrier may be liable for a portion of the total reimbursable losses.

3. The Board shall notify each reinsuring carrier of the assessment and reimbursement for reimbursable losses by invoice stating the dollar amount then due by November 1. As a result of the assessment, any monies determined to be owed to or by the Board shall be calculated without provision for interest.

4. Assessment amounts for reinsuring carriers granted a deferral by the Commissioner, or subject to dispute by a carrier wherein the dispute is settled in favor of the disputing carrier, shall be apportioned to other reinsuring carriers based on their respective share of earned premiums for small employer health benefits plans.

5. A reinsuring carrier's assessments in amounts exceeding four percent of earned premiums shall be apportioned to all small employer carriers based upon their respective share of small employer health benefits plan earned premiums until such other members reach one percent of small employer health benefits plan earned premiums or the total reimbursable losses are fully assessed, whichever occurs first.

6. If a member that is not a reinsuring carrier demonstrates that it would have qualified for reimbursable losses if it had elected to be a reinsuring carrier, such carrier shall be eligible for a reduction in its assessment. Said reduction shall be equal to 1.00 minus the carrier's ratio of its earned premium for small employer health plans to the total earned premium for small employer health plans divided by the ratio of the carrier's reimbursable loss calculated above to the total of all calculated reimbursable losses. In no event shall this calculation cause the assessment to be increased.

7. Reductions in assessments made according to (c)5 above shall be apportioned to other members until such other members are assessed one percent of small employer health benefits plan earned premiums.

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

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

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

ii. Payment of an assessment, or portion of an assessment for which an interest penalty has accrued, shall include the interest penalty amount accrued as of the date of payment; otherwise, payment shall not be considered to be in full.

iii. If a member makes an error relating to or involving an assessment or any other error resulting in non-payment or underpayment of funds, the member shall make immediate payment of additional amounts due. Errors that are reported and paid in full to the Board by a member within 60 days of their occurrence shall not be subject to the interest penalty set forth above.

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

(e) A member may request that the Commissioner grant a deferral of its obligation to pay an assessment in accordance with procedures established by the Commissioner.

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

2. If the member withholds payment, as permitted herein, and the Commissioner denies the request for deferral, the member shall be subject to payment of the interest penalty set forth herein, accruing from the date of the invoice for the assessment.

(f) The Board shall approve the disbursement of any payments to those members determined by the Board as having reimbursable losses. Disbursement shall be in proportion to the member's share of the total reimbursable losses, until all such available funds have been paid out, or a member's reimbursable losses have been reimbursed, whichever comes first.

1. Amounts of assessment in dispute or subject to a deferral request shall not be disbursed to members having reimbursable losses until such time as the dispute has been settled or concluded with the disputing carrier, or the deferral denied, except that any portion of an assessment not in dispute or subject to the deferral request, or portions no longer disputed or subject to a deferral request, may be disbursed to members having reimbursable losses along with any applicable interest penalty amounts paid or interest earned while held in escrow by the Board.

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

(g) Assessment amounts shall be redistributed to the appropriate reinsuring carriers for their losses on or about December 1 of each calendar year.

(h) A member requesting a deferral from the Commissioner of an assessment amount shall concurrently provide notice of such request in duplicate to the Administrator in order to preserve its right to the moneys owed and paid pursuant to the invoice for assessment.

(i) If a member determined liable for an assessment fails to pay the full amount of the assessment and applicable interest, if any, within 60 days of the date of the invoice, and has neither submitted notice that it is seeking a deferral from the Commissioner, nor

requested a hearing, the Board may provide to the Commissioner a notice of the member's failure to make payment along with a recommendation to revoke the member's authority to write any health benefits plans or other health coverage in this State or to take such other action against the carrier as may be authorized by law. A copy of this notice shall be sent to the member by registered mail at the same time that the notice is sent to the Commissioner. In accordance with the Act, failure to pay assessments shall be grounds for removal of a member's authority to write health coverage of any kind in this State.

(j) A reinsuring carrier may apply to the Board for reimbursement from the program if such reinsuring carrier demonstrates to the Board that it has satisfied the efficiency and risk management standards promulgated by the Board, as set forth herein, and demonstrates it has incurred an average cost of insuring individuals covered by small employer health benefits plans that exceeds the Statewide average payment per insured by 20 percent. A reinsuring carrier satisfactorily demonstrating it has met these threshold standards may seek reimbursement from the Program for the lesser of its actual losses or 80 percent of the excess of its incurred claims over 120 percent of the Statewide average payment per insured, as defined herein, multiplied by the number of insured months for the reinsuring carrier.

(k) Before a member may receive reimbursement from the Program, the member must demonstrate to the Board's satisfaction, subject to its review and audit by the Board, that it has conducted its business operations with respect to administering its small employer health benefits plans in accordance with generally accepted industry practice and has made good faith efforts to apply sound risk management principles in an efficient manner.

1. Such risk management and efficiency standards shall include, but are not limited to, claim processing and payment practices showing the member has:

- i. Paid or declined for payment 85 percent of all claims within 10 working days from the date the completed submission was received;
- ii. Reviewed a statistically valid sample of claims on a regular basis for accuracy and proper use of the reimbursement methodology, with dollar accuracy, without allowance for offsets of over/under payments, being at least 99.0 percent; and
- iii. Responded to all inquiries from insureds or covered individuals within 30 business days.

2. A member shall apply its case management and claims handling techniques and other methods of operation in the same manner with respect to all its business.

(l) Statewide average payment per insured means the ratio of the claims incurred in the calendar year for all members to the total number of insured months for that calendar year for all members calculated separately for each small employer health benefits plan.

1. A carrier's average payment per insured means the ratio of the claims incurred in the calendar year to the total number of insured months for that calendar year calculated separately for each small employer health benefits plan.

2. The extent to which that carrier's average payment per insured for the small employer health benefits plan exceeds the Statewide average payment per insured for the small employer health benefits plan shall equal the difference between the carrier's average payment per insured and the Statewide average payment per insured for a given small employer health benefits plan.

3. The calculations shall be performed after the close of the calendar year at a time which the Board establishes that most claims incurred will have emerged.

(m) In order to ensure small employer carriers are assuming their share of high risk employer groups in proportion to their share of the small employer health benefits plan business, the Board shall charge the appropriate Committee(s) with conducting a survey of the market beginning sometime after the first full calendar year of operation under the Program to measure and define the proportion of high risk small employer groups within the small employer group health market and to determine the distribution of such groups among the members in the market. Based on this survey, the Board

shall request that the appropriate Committee(s) assess the reasons for any member's disproportionately low share of such high risk groups.

1. Based on the findings, the Board shall consider appropriate steps to ensure each member's share of the high risk market is proportionate to its total small employer health benefits plan business and shall, based upon the survey data, direct the Finance Committee to develop suitable mechanisms for adjusting the assessment formula to require a proportionately higher assessment for members not assuming their reasonable share of the high risk market. The Board shall further determine the best means of regularly ensuring the proportionate distribution of high risk groups among members for subsequent years of the Program's operation.

11:21-2.10 Reporting requirements

Carriers shall submit statements, assessments and other reports as may be required by the Board pursuant to the Act.

11:21-2.10 Financial administration

(a) The Board shall maintain the books and records of the Program so that financial statements can be prepared to satisfy the Act. Further, these books shall satisfy any additional requirements of the Board and outside auditors.

1. The receipt and disbursement of cash by the Program shall be recorded as it occurs.

2. Non-cash transactions shall be recorded when assets or liabilities should be realized by the Program in accordance with generally accepted accounting principles.

3. Assets and liabilities of the Program, other than cash, shall be accounted for and described in itemized records.

4. The net balance due to or from the Program shall be calculated for each carrier and confirmed as deemed appropriate by the Board or when requested by the respective carrier. These balances should be supported by a record of each individual carrier's financial transactions with the Program. These records include:

- i. Net losses of the Program calculated in accordance with this Plan;
- ii. Any adjustments to assessments as explained in this Plan;
- iii. Adjustments to the amount due to/from the Program based upon corrections to carrier submissions;
- iv. Interest charges due from a carrier for late payment of amounts due to the Program; and
- v. Other records required by the Board.

5. The Board shall maintain a general ledger which balances are used to produce the Program's financial statements in accordance with generally accepted accounting principles. The balances in the general ledger shall agree with the corresponding balances in subsidiary ledgers or journals.

6. Assessments shall be paid when billed. If the assessment is not received by the Board within 45 days of the invoice date, the carrier shall pay interest on the assessment from the invoice date at the rate of 1.5 percent per month except if the carrier is granted a deferral.

(b) All funds of the Program shall be deposited in, and all disbursements made from, the General Treasury in accordance with procedures established and approved by the Department of Treasury, Office of Management and Budget, and all financial records shall be kept in a form acceptable to the Office of Management and Budget.

1. Funds of the Program shall be deposited into a dedicated account within the General Fund.

2. Moneys shall be credited from the General Fund, with the approval of the Director of the Division of Budget and Accounting, to the Program's bank accounts upon request by the Board through the Department, which request shall include a justification for the request, with supporting documentation.

3. The Administrator shall make such requests for funds as directed by the Board and shall deposit all moneys received from the Treasury in a Board bank account.

(c) Bank checking accounts shall be established separately in the name of the Program and shall be approved by the Board.

1. The Board shall authorize individuals to sign checks on behalf of the Board.

2. All cash and other assets shall be invested in accordance with the investment policy developed and approved by the Board as permitted by applicable law. All investment income earned shall be credited to the Program and shall be applied to reduce future assessments of members for the Program losses and administrative expenses.

11:21-2.11 Records

(a) The Board shall provide for the maintenance and retention of its official records in accordance with the Destruction of Public Records law (N.J.S.A. 47:3-15-32) and all other applicable laws.

(b) The Board's records shall include the following:

1. Minutes of all Board meetings;
2. Written reports and recommendations of committees to the Board;
3. Informational and other filings made by carriers with the Board pursuant to the Act or the Board's rules;
4. Riders proposed or adopted by the Board, including all comments received;
5. The Plan of Operation and any amendments thereto;
6. Records concerning the election of Directors and appointment of committees and committee members; and
7. Regulations or actions proposed or adopted by the Board, including all comments received.

(c) The records set forth in (b) above shall be subject to public inspection and copying pursuant to the "Right-To-Know" Act (N.J.S.A. 47:1A-1 et seq.) except that information in filings determined by the Board by regulation to be confidential and proprietary shall not be subject to public inspection and copying.

(d) For the purpose of disseminating information about the Program, the Board shall maintain a mailing list of carriers and other interested parties.

1. The mailing list of member carriers initially shall be based upon the member carriers' addresses filed with the Department pursuant to N.J.A.C. 11:1-25. The Board may proceed to develop its own list of member carriers.

i. Upon any change in name or mailing address, a member carrier shall notify the Board in writing no later than 10 days from the date the new name or address becomes effective.

ii. Unless the Board is notified otherwise as provided above, the name and address of a member carrier shall be deemed correct and communications mailed to the name and address on file shall be deemed received by the member carrier.

2. Persons other than member carriers who wish to receive communications from the Board, including proposed rules, actions and public notices, may request to be placed on the Board's mailing list as an interested party. Until the Board receives written notice of a change in name or address from an interested party, communications mailed to the name and address on file shall be deemed to be properly received. The Board shall not charge any fee for placement upon the mailing list, but the Board may charge a fee for copies of communications from the Board, which fee shall not be in excess of the actual cost of reproducing and mailing the copies.

11:21-2.13 Audit functions

(a) The necessity for and the frequency of audits of carriers shall be determined by the Board. The reasonable cost of the audit of a carrier shall be borne by that carrier. The Board shall have the right to conduct appropriate additional audits of carriers.

1. All information disclosed in the course of the audit of a carrier shall be kept privileged and protected by the carrier, the auditing firm, and the Program, to the extent permitted by law.

2. Any information disclosed in the course of the audit may be used by the Board or Department to effectuate the provisions of this Act.

(b) The Program shall have an annual audit of its operations conducted by an independent certified public accountant approved by the Board. This audit shall encompass at least the following items:

1. The handling and accounting of assets and money for the Program;

2. The annual fiscal report of the Program; and
3. The calculation and collection by the Program of any assessments of carriers for net losses.

11:21-2.14 Penalties/adjustments and dispute resolution

(a) Numerous factual determinations and tasks shall be performed by carriers relative to their participation in the Program. It is expected that all carriers will exercise good faith and due diligence in all aspects of their relationship with the Program. Errors may occur, however, and it is appropriate that the sanctions applicable to such errors be detailed.

1. Carrier errors related to assessments shall require the immediate payment of additional amounts due plus interest, calculated from the date such sum should have been paid, except as provided herein.

2. All other additional sums due to the Program as a result of errors made by carriers shall be paid immediately, with interest.

3. If the Board determines that the nature or extent of errors made by a particular carrier evidences gross negligence or intentional misconduct, the Board may, after notice, recommend to the Commissioner, Attorney General, and other appropriate officials, penalties and sanctions as may be appropriate in accordance with the Act.

4. All interest payments required under this Plan shall be calculated at 1.5 percent per month, from the date the incorrect payment occurred or a payment should have been made, through the date the correct payment is made. Errors reported by carriers within 60 days of their occurrence shall not be subject to interest.

(b) A carrier seeking to challenge the amount of an assessment shall do so within 20 days of receiving the notice of assessment following the procedures in (d) below.

(c) A carrier which disputes being subject to an assessment and wishes to contest that issue shall file its appeal with the Board no later than 20 days after receiving the notice of assessment following the procedures in (d) below.

(d) Concurrent with its challenge to the assessment, a carrier shall advise the Board in detail of the reasons why the assessment is inaccurate or not appropriate and shall submit all documentation that supports or tends to support the carrier's position. The carrier shall also advise at this time whether a hearing is requested.

(e) If a hearing is requested, within 30 days of its receipt thereof, the Board shall determine whether the matter constitutes a contested case. If the matter is determined to be a contested case, the Board shall determine whether to hear the matter or refer it to the Office of Administrative Law for a hearing 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. If the matter does not constitute a contested case, the Board shall review the challenge itself or delegate this review to an appropriate Committee to make a recommendation to the Board.

11:21-2.15 Indemnification

(a) The Board shall not be liable for any obligation of the Program. No Director, officer, or employee of the Board or the Department or Department of Health shall be individually liable and no cause of action of any nature may arise against them, for any action taken or omission made by them unless their conduct was outside the scope of their employment or constituted a crime, actual fraud, actual malice or willful misconduct.

(b) The Program shall adopt additional procedures for indemnifying the Directors and any officers or employees, as the Board deems appropriate.

11:21-2.16 Amendment and termination

(a) This Plan may be amended by a majority vote of the entire Board, subject to approval of the Commissioner as provided hereinafter. A vote on an amendment may be taken at any meeting called, in whole or in part, for the purpose of considering a proposed amendment. Written notice of any meeting at which an amendment to the Plan is to be considered shall be sent to each Director by mail or facsimile transmission at least 10 days (exclusive of the meeting day) prior to the date of the meeting. Such notice shall

state that an amendment to the Plan is to be considered at the meeting and shall set forth the substance of any amendments which have been proposed or a description of the section or sections which are proposed to be amended. Notice to a Director shall be deemed sufficient if mailed, postage prepaid, to the most recent address provided by the Director to the Board or sent by facsimile transmission to the most recent facsimile reception number provided by the Director. At any meeting for the consideration of an amendment to the Plan, for which proper notice has been given pursuant to this Article, the Board may vote on any amendment proposed by a Director prior to, or during the meeting. Any amendment adopted by the Board shall be submitted to the Commissioner for approval. Any such amendment submitted to the Commissioner shall be deemed approved no later than 90 days after receipt by the Commissioner unless expressly disapproved in writing by the Commissioner before expiration of the approval period. Amendments to the Plan must be adopted pursuant to P.L. 1993, c.162.

(b) The program shall continue in existence subject to termination in accordance with the laws of this State or the United States of America. In case of enactment of a law or laws which, in the determination of the Board and the Commissioner, shall result in the termination of the program, the program shall terminate and conclude its affairs. Any funds or assets held by the program following the payment of all claims and expenses of the program shall be distributed to the carriers at that time in accordance with the then-existing assessment formula.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Declaration and Approval of Reinsuring or Risk-Assuming Carrier Status

Proposed New Rules: N.J.A.C. 11:21-14

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:27A-34 and
17B:27A-46.

Proposal Number: PRN 1993-560.

Submit comments by September 20, 1993 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

These proposed new rules implement the provisions of N.J.S.A. 17B:27A-34 and 35, by which carriers issuing health benefits plans to small employers participate in the New Jersey Small Employer Health Benefits Program (SEH Program) established by P.L. 1992, c.162 (enacted November 30, 1992) (N.J.S.A. 17B:27A-17 et seq.) (hereinafter, "the Act").

The Department of Insurance ("Department") is promulgating regulations in accordance with N.J.S.A. 17B:27-17 et seq., as amended, and P.L. 1993, c.162, section 16, which provides that the Commissioner of Insurance ("Commissioner") may adopt an action pursuant to the procedure set forth in P.L. 1993, c.162, section 16a through f. Prior to the adoption of an action, the Department shall provide notice and a detailed description of its intended action to three newspapers of general circulation. The Department is further required to forward the notice of intended action and detailed description to the Office of Administrative Law (OAL) for publication in the New Jersey Register. The Department is also required to provide all interested persons an opportunity to comment in writing on the intended action of at least 15 days. The Department may adopt an action immediately following the close of the public comment period, and the action shall be effective on the date the regulations are submitted to the OAL for publication

in the New Jersey Register, or such later date as the Department may establish. Within a reasonable time after submission of the comments, the Department is also required to prepare a report for public distribution listing all parties who provided comments, summarizing the content of the comments, and providing the Department's response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register.

N.J.S.A. 17B:27A-34 requires carriers to make and file their election to participate in the SEH Program as either a "reinsuring" or "risk assuming" carrier. This election is important to the carrier and the SEH Program, since reinsuring carriers may receive reimbursement for losses pursuant to N.J.S.A. 17B:27A-35, but are subject to an assessment totalling four percent of the carrier's aggregate premiums from policies or contracts covering small employers ("first tier" assessments) to cover any net loss of the SEH Program. Risk-assuming carriers are not eligible for reimbursement for losses through the SEH Program but also are not subject to first tier assessments. Both reinsuring and risk-assuming carriers are subject to a second tier assessment of an additional one percent of all health benefits premiums if necessary to recoup the net losses of the SEH Program, pursuant to N.J.S.A. 17B:27A-37c.

N.J.S.A. 17B:27A-34 provides that a carrier's election to be a risk-assuming carrier is subject to the approval of the Commissioner of Insurance ("Commissioner"). Because risk-assuming carriers are not eligible for reimbursement, it is important that they demonstrate their own independent financial ability to write small employer health benefits plans on a guaranteed issue basis. These rules, therefore, not only specify the form and manner in which the carrier's election to be reinsuring or risk-assuming is made, but also establish procedures and standards for the Commissioner's approval of those carriers that elect to be risk-assuming.

Member carriers of the SEH Program should note that these rules address both the filing of the election with the SEH Board and the approval of risk-assuming carriers by the Commissioner. As provided in N.J.S.A. 17B:27A-35b, a carrier's initial election must be filed with the Board within 30 days of the Board's submission to the Commissioner of its Plan of Operation.

Proposed N.J.A.C. 11:21-14.1 sets forth the purpose and scope of these proposed new rules.

Proposed N.J.A.C. 11:21-14.2 provides definitions of terms used in the subchapter, either as set forth in the Act or N.J.A.C. 11:21-1, or more specifically in this rule. The definition of "statutory election period" provides that a carrier shall make its initial election before October 5, 1994, or within 30 days following the submission of the plan of operation, whichever date is later, and that the election shall be binding for two years. In proposing this definition, the Department recognizes that N.J.S.A. 17B:27A-35 provides that the initial election shall be made "within 30 days of the submission to the commissioner [by the SEH Board] of the plan of operation. . . ." The SEH Program Board of Directors has indicated an intent to submit its Plan of Operation on or about September 3, 1993. However, whatever the date of submission, the SEH Board will provide notice to carriers of the date of submission, and the 30 day initial election period will commence upon that date. It is important that carriers be aware of the 30-day initial election period, because there is a significant difference between the commitment a carrier makes to the SEH Program when the election is expressly made before the end of the 30-day period (that is, a reinsuring election is binding for two years), and expressly or impliedly made after the 30-day (a reinsuring election is binding for five years).

Proposed N.J.A.C. 11:21-14.3 sets forth general requirements concerning a member small employer carrier's filing of its declaration to be reinsuring or risk-assuming with the Board and the Commissioner.

Proposed N.J.A.C. 11:21-14.4 addresses the filing of declarations by small employer carriers as well as carriers that become small employer carriers in the future, and the filing of declarations to change a small employer carrier's status. Since a member small employer carrier of the SEH Program must be either a reinsuring or risk-assuming carrier, in the absence of a declaration filed by the member small employer carrier, or upon disapproval by the Commissioner for a carrier to be risk-assuming, a member small employer carrier will be deemed to be a "reinsuring" carrier. A declaration that a carrier is risk-assuming will not be effective until approved by the Commissioner.

Proposed N.J.A.C. 11:21-14.5 sets forth the filing requirements for approval of risk-assuming status with the Commissioner, and references forms set forth in the appendix to be submitted with the application for approval.

Proposed N.J.A.C. 11:21-14.6 sets forth the Department's procedures for review of applications for risk-assuming carrier status.

Proposed N.J.A.C. 11:21-14.7 sets forth the standards for approval of risk-assuming status, which vary by the type of carrier, that is, insurer; health service, hospital service and medical service corporations; and health maintenance organizations. In order to provide the greatest measure of freedom to carriers to elect their status in the SEH Program, the standards for approval of risk-assuming carrier status set forth in these rules essentially provide that in the absence of clear evidence that a carrier is not capable of being risk-assuming, the Commissioner may approve the carrier's election. The minimum standards set forth in proposed N.J.A.C. 11:21-14.7 require only that a carrier electing to be risk-assuming is authorized to issue health benefits plans in New Jersey, is not in a hazardous financial condition, and has capital and/or surplus, or statutory net worth, in excess of the minimum required to be admitted or to maintain a certificate of authority, depending upon the type of carrier involved.

Proposed N.J.A.C. 11:21-14.8 provides the right to a hearing in certain circumstances when the Commissioner disapproves risk-assuming carrier status.

Proposed Appendix Exhibit U contains the declaration forms that carriers electing risk-assuming or reinsuring carrier status, and the application form that carriers electing risk-assuming status must submit to the Board and/or the Department as appropriate.

Social Impact

These proposed new rules, together with others, implement the provisions of N.J.S.A. 17B:27A-17 et seq., which establishes the New Jersey Small Employer Health Benefits Program. The SEH Program is intended to broaden availability and enhance competition in the small employer group health benefits market. The SEH Program undertakes to accomplish this goal by, among other things, providing a mechanism by which carriers providing small employer health benefits plans may be entitled to limited reimbursement for losses incurred under small employer health benefits plans through assessments upon other carriers experiencing fewer or no such losses. These proposed new rules provide specifically for the election by carriers to participate in the SEH Program either as a "reinsuring" or "risk-assuming" carrier. Election of "reinsuring" carrier status entitles the insurer to reimbursement for a portion of its net losses under the Program, but subjects the carrier to certain assessments. Risk-assuming carriers cannot be reimbursed for any of their losses under the program. Election of "risk-assuming" status requires approval by the Commissioner. These rules set forth procedures and standards by which the Commissioner reviews applications for risk-assuming carrier status in order to ensure that a carrier electing risk-assuming status has the financial capability to participate in the SEH Program in that manner. These rules also provide certain procedural safeguards to ensure that the approval of risk-assuming carrier status is accomplished in a fair and equitable manner.

Economic Impact

These rules will impact the Department and carriers issuing health benefits plans in the small employer market. The Department will be required to bear the costs associated with the review and approval of carriers that elect to be "risk-assuming."

As distinguished from the impact of the Act itself, which includes a reimbursement/assessment mechanism for participating carriers, these proposed rules have a negligible economic impact on carriers. These rules simply provide the form and manner in which a declaration is made to be a risk-assuming or reinsuring carrier and establish procedures and standards for approval by the Commissioner of carriers electing risk-assuming status pursuant to the Act. All small employer carriers will be required in accordance with these rules to file their election in the form and manner provided, and carriers electing to be risk-assuming will be required to complete the forms, and meet the standards, set forth in these proposed rules.

The cost of doing so, however, is minimal. The standards for approval of risk-assuming status as set forth in these rules are intended to provide carriers with the greatest freedom of election, subject to the Commissioner's determination that the carrier is able to meet minimum standards of financial capability to participate in the SEH Program as a risk-assuming carrier.

Regulatory Flexibility Analysis

These rules may apply to "small businesses" as that term is defined in the New Jersey Regulatory Flexibility Act at N.J.S.A. 52:14B-17. These

"small businesses" are carriers issuing health benefits plans in the small employer market. These rules, which impose requirements as to the form and manner in which a declaration is made to be a risk-assuming or reinsuring carrier, apply uniformly to all carriers regardless of size and there are no exemptions or different compliance requirements based on the carrier's size.

For those electing "reinsuring" carrier status, these rules will not require any professional or other services to be obtained by the carrier. For those electing to be a "risk-assuming" carrier, compliance with these rules may require obtaining the services of outside actuarial consultants if such services are not available to the carrier in-house. The Department notes, however, that the information required to be submitted for approval as a risk-assuming carrier is minimal and readily available to all carriers. Moreover, prudent carriers would in any event need such services in connection with their determination to elect to be a risk-assuming carrier.

Because all small employer carriers are required to elect to be either reinsuring or risk-assuming in accordance with the Act, and because the compliance requirements in these proposed rules have been minimized for all carriers, and because these proposed rules promote uniformity and consistency in the Commissioner's review and approval of a carrier's election for risk-assuming status, no differentiation based on business size is appropriate, or has been provided.

Full text of the proposed new rules follows:

SUBCHAPTER 14. DECLARATION AND APPROVAL OF REINSURING OR RISK-ASSUMING CARRIER STATUS

11:21-14.1 Purpose and scope

This subchapter establishes the rules applicable to all carriers requesting to operate as a risk-assuming and reinsuring carrier under the Program, and sets forth the standards for approval of risk-assuming applications by the Commissioner.

11:21-14.2 Definitions

(a) Words and terms defined at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21-1.2, when used in this subchapter, shall have the meanings as defined by the Act or for the chapter, unless more specifically defined in (b) below or unless the context clearly indicates otherwise.

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

"Health maintenance organization" or "HMO" means a company operating in accordance with N.J.S.A. 26:2J-1 et seq.

"Health service corporation" is a company operating in accordance with N.J.S.A. 17:48E-1 et seq.

"Hospital service corporation" is a company operating in accordance with N.J.S.A. 17:48E-1 et seq.

"Insurer" means a company transacting the business of health insurance as defined at N.J.S.A. 17B:17-4.

"Medical service corporation" is a company operating in accordance with N.J.S.A. 17:48A-1 et seq.

"Reinsuring carrier" means a small employer carrier issuing small employer health benefits plans on a guaranteed issue basis that has elected pursuant to N.J.S.A. 17B:27A-34 and this subchapter to be eligible for reimbursement of losses it may incur under those small employer health benefits plans as well as to be responsible for payment of assessments for reimbursable losses incurred by other reinsuring carriers.

"Relief" means a deferral of obligation granted pursuant to N.J.S.A. 17B:27A-38 or a waiver of obligations granted in accordance with N.J.S.A. 17B:27A-26.

"Risk-assuming carrier" means a small employer carrier issuing small employer health benefits plans that has elected and been approved by the Commissioner pursuant to N.J.S.A. 17B:27A-34 and this subchapter to cover risks on a guaranteed issue basis without being subject to assessments for net reimbursable losses of the SEH Program incurred by reinsuring carriers which total the first four percent or less of the aggregate premiums from small employer health benefits plans issued by reinsuring carriers, and is not eligible for reimbursement of any losses it may incur under its small employer health benefits plans.

“Statutory election period” means the period of time specified at N.J.S.A. 17B:27A-35b for which an election to be a reinsuring carrier is binding. The initial “statutory election period” is that period in which carriers make their election on or before October 4, 1993, or within 30 days following the date that the Board submits its Plan of Operation to the Commissioner, whichever date is later, which election shall be effective for two years. The “statutory election period” which shall be binding for five years shall be applicable to any reinsuring carrier election made on or after October 5, 1993, or subsequent to the 30th day following the date that the Board submits its Plan of Operation to the Commissioner, whichever date is later.

11:21-14.3 General requirement

Each carrier, including each carrier among affiliated carriers, which is or becomes a small employer carrier, shall submit the information required by this subchapter independently from any other carrier. To the extent that any carrier's information is insufficient to meet the requirements of this subchapter, the carrier may submit the required information incorporating appropriate data from all of its affiliated carriers, if any, and so indicated on the form(s) submitted.

11:21-14.4 Declaration to be a reinsuring or risk-assuming carrier

(a) Every small employer carrier shall file a declaration with the Board and Commissioner on or before October 4, 1993 or within 30 days of the date that the Board files its Plan of Operation with the Commissioner for review, whichever date is later, stating whether the small employer carrier elects to operate as a risk-assuming carrier or a reinsuring carrier for purposes of compliance with the Program.

1. For purposes of compliance with this declaration deadline, the 30 day period shall begin to run from the date set forth on the notice sent to carriers by the Board of the submission of the Plan of Operation to the Commissioner, rather than the actual date of the Plan of Operation's submission, if the two dates are different.

2. The notice shall be considered properly sent if the Board sends it to the mailing address of the carrier which the carrier has on file with the Board.

3. Any small employer carrier that fails to file a timely declaration, or that is disapproved as a risk-assuming carrier, shall be deemed to have elected to operate as a reinsuring carrier.

(b) Every carrier that is not currently a small employer carrier but determines to become one, shall file, at least 90 days prior to issuing any small employer health benefits plans, a declaration with the Board and the Commissioner stating whether the carrier elects to operate as a risk-assuming carrier or as a reinsuring carrier for purposes of compliance with the Program. Any such carrier that fails to file a timely declaration, or that is disapproved as a risk-assuming carrier, shall be deemed to have elected to operate as a reinsuring carrier.

(c) A carrier operating as a reinsuring carrier which elects to operate as a risk-assuming carrier effective upon the expiration of the statutory election period applicable to the reinsuring carrier shall file a declaration with the Board and the Commissioner 90 days prior to the end of the applicable statutory election period stating that the reinsuring carrier elects to operate as a risk-assuming carrier for purposes of compliance with the Program.

1. The election shall not be effective until the end of the statutory election period.

2. The election shall not be effective until approved by the Commissioner as provided in this subchapter.

3. A reinsuring carrier that does not file such an election in a timely manner, or that is disapproved as a risk-assuming carrier, shall remain a reinsuring carrier through the end of the succeeding statutory election period, commencing upon the expiration date of the then-current statutory election period.

(d) Carriers electing to be reinsuring carriers shall complete the “Reinsuring Carrier Declaration” form set forth in Exhibit U, Part 1 of the Appendix to this chapter, incorporated herein by reference. Carriers electing to be Risk-assuming carriers shall complete the “Risk-Assuming Carrier Declaration” form set forth in Exhibit U, Part 2 of the Appendix to this chapter, incorporated herein by

reference. Completed declaration forms shall be certified by the chief financial officer or other duly authorized officer of the carrier.

11:21-14.5 Application to be a risk-assuming carrier

(a) Every carrier filing a declaration electing to operate as a risk-assuming carrier additionally shall submit to the Commissioner an application to be a risk-assuming carrier as set forth below in (b), (c), (d) and (e).

(b) Carriers shall file five copies of the declaration and application with the Commissioner at the following address:

Attention: SEH Declaration/Approval
New Jersey Department of Insurance
Division of Life/Health Actuarial Services
20 West State Street
CN-325

Trenton, New Jersey 08625-0325

(c) Every carrier filing for risk-assuming carrier status shall complete in full the Risk-Assuming Application Form set forth in Exhibit U, Part 3 of the Appendix to this chapter, incorporated herein by reference.

1. Carriers shall complete section D, E, or F of the Risk-Assuming Application Form, as is appropriate for the type of carrier.

2. The completed Risk-Assuming Application Form shall be certified by the chief financial officer, or other duly authorized officer, of the carrier.

3. The Risk-Assuming Application Form shall be supported by an actuarial opinion setting forth the assumptions and methodologies used to determine and certify that the carrier is not in a hazardous financial condition as set forth in N.J.A.C. 11:2-27.

4. The Risk-Assuming Application Form shall be accompanied by a statement setting forth the carrier's group experience in New Jersey for the past 10 years, if any. If a carrier or its affiliated carriers have no New Jersey group experience, then the statement shall set forth the national experience of the carrier and its affiliate(s). The experience information shall include:

- i. The number of group contracts in force annually;
- ii. The number of small employer group contracts in force annually;
- iii. The lapse rate of all group contracts and small employer group contracts annually;
- iv. The net earned premium for group contracts and small employer group contracts annually;
- v. The incurred claims for group contracts and small employer group contracts annually;
- vi. Assumptions used in developing the calculations in (c)4i through v above, where estimations have been made; and
- vii. Assumptions regarding similarities and dissimilarities between the marketplace upon which the foregoing data is based and the current New Jersey small employer group market.

5. In completing and certifying the Risk-Assuming Declaration Form and the Risk Assuming Application Form, the carrier agrees that, upon approval by the Commissioner as a risk-assuming carrier:

- i. It will not seek any reimbursement for any losses that will be incurred with respect to small employer health benefits plans as long as it retains its status as a risk-assuming carrier;
- ii. It is financially competent to accept any obligation(s) required by the Act; and
- iii. It does not intend to file an application for relief of any kind from its obligations under the Act for a period of one calendar year from the date that its application is approved or deemed approved.

(d) Carriers that have previously sought and obtained relief from their obligation(s) under the Act as a small employer carrier shall demonstrate to the satisfaction of the Commissioner that the carrier no longer has any need for relief and has been operating in full compliance with the Act, including the payment of all assessment amounts owed and issuance of small employer health benefits plans on a guaranteed issue basis, for a period of no less than 12 consecutive calendar months preceding the date of application.

(e) A declaration filed with the SEH Board to be a risk-assuming carrier shall not be effective until an application for risk-assuming carrier status has been approved as provided in this subchapter.

11:21-14.6 Procedures for review of applications for risk-assuming carrier status

(a) The time period for the Commissioner's review of an application for risk-assuming carrier status shall commence upon the day a complete application is received by the Commissioner.

(b) If the application is incomplete, the Department shall so advise the carrier in writing not later than 30 days after receipt of the application.

1. The application shall be deemed to be complete if the carrier is not notified in writing that the application is incomplete.

2. Notice to the carrier that the application is incomplete shall specify the missing item(s) or information. The notice shall advise the carrier that the deficiency must be cured within 30 days of receipt of notice, and that failure to cure the deficiency within 30 days of receipt of notice shall result in disapproval of the application. A deficiency shall not be considered cured until all of the missing items or information is received by the Department from the carrier.

3. Receipt of the specified missing items or information by the Department subsequent to the 30 day period specified in (b)2 above shall be deemed to be a new application and shall begin a new time period for review. Whenever a carrier submits information or missing items not specified by the Department in accordance with (b)2 above, it shall be deemed to be an amendment of the submission to which the information or missing items are to be attached, and shall begin a new time period for review.

(c) The Commissioner may approve an application for risk-assuming carrier status if the carrier meets the standards set forth in N.J.A.C. 11:21-14.7.

1. The Commissioner shall notify the carrier of the approval or any disapproval of its application in writing, and shall contemporaneously send a copy of the notice to the SEH Board.

2. Except as set forth in (b) above, an application shall be deemed approved if not disapproved within 90 days of its receipt.

3. Notice to the carrier that the application is disapproved shall be in writing and specify the reasons for disapproval.

11:21-14.7 Standards for approval

(a) The Commissioner may approve an application for risk-assuming status for a carrier that is an insurer if the carrier meets the following standards:

1. The carrier is authorized or admitted to transact the business of health insurance in this State;

2. The carrier is not in a hazardous financial condition as set forth in N.J.A.C. 11:2-27 and as may be amended hereafter;

3. The carrier has at least the capital and surplus currently required to commence business in this State, unless a waiver of such requirements has been granted pursuant to P.L. 1993, c.235 and N.J.A.C. 11:2-39; and

4. The carrier is qualified based on its history of assuming and managing risk, and its experience in managing small employer group business.

(b) The Commissioner may approve an application for risk-assuming carrier status for health service corporations, hospital service corporations and medical service corporations if the carrier meets the following standards:

1. The carrier is authorized to transact business in this State;

2. The carrier is not in a hazardous financial condition as set forth in N.J.A.C. 11:2-27 and as may be amended hereafter;

3. The carrier has either:

i. The surplus amounts required to be maintained in accordance with N.J.S.A. 17:48-10 or N.J.S.A. 17:48A-14, if the carrier is a hospital service corporation or a medical service corporation, respectively; or

ii. The amount required to be maintained in its special contingent surplus account for its other activities in accordance with N.J.S.A. 17:48E-17.1a and b, if the carrier is a health service corporation; and

4. The carrier is qualified based on its history of assuming and managing risk, and its experience in managing small group business.

(c) The Commissioner may approve an application for risk-assuming carrier status for HMOs if the carrier meets the following standards:

1. The carrier is authorized to transact business as an HMO in this State;

2. The carrier is not in a hazardous financial condition as set forth in N.J.A.C. 11:2-27 and as may be amended hereafter;

3. The carrier has a statutory net worth as filed annually with the Department of at least \$1 million; and

4. The carrier is qualified based on its history of assuming and managing risk, and its experience in managing small group business.

(d) The Commissioner may solicit and consider comments from the Board in determining any carrier's application to operate as a risk-assuming carrier.

11:21-14.8 Hearings

(a) If the Commissioner disapproves an application for risk-assuming carrier status made pursuant to this subchapter, the carrier may request a hearing on the Commissioner's determination, but must do so within 20 days from the date of receipt of notice of such determination.

(b) A request for a hearing shall be in writing and shall include:

1. The name, address, and telephone number of a contact person representing the carrier who is familiar with the matter;

2. A copy of the notice of disapproval;

3. A statement requesting a hearing; and

4. A concise statement describing the basis for which the carrier believes that the Commissioner's findings of fact are erroneous.

(c) Upon receipt of a properly completed request for a hearing which sets forth good-faith, disputed issues of material fact, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

APPENDIX

...

EXHIBIT U

PART 1

REINSURING CARRIER DECLARATION

(To be submitted to the SEH Program Board and the New Jersey Department of Insurance.)

Information on Person Completing this Declaration

Name: _____

Title: _____

Address: _____

Phone: _____ FAX: _____

{Carrier Name} elects to operate as a reinsuring carrier for purposes of complying with the Small Employer Health Benefits Program established pursuant to N.J.S.A. 17B:27A-17 et seq. In accordance with N.J.S.A. 17B:27A-35, this election shall be binding:

a. for two years from the effective date of this election, set forth below, if this election is made prior to October 5, 1993, or within 30 days of the date the SEH Board submitted its Plan of Operation to the Commissioner, whichever date is later, or

b. for five years from the effective date of this election, set forth below, if this election is made on or after October 5, 1993 or after the 30th day following the submission of the Plan of Operation by the SEH Board to the Commissioner, whichever date is later.

INSURANCE

PROPOSALS

This election is to be effective on (Month/Day/Year) on behalf of the company(ies) named below only. (Attach additional pages as necessary, and included NAIC numbers, if any.)

- 1. _____
- 2. _____
- 3. _____

 Date Signature

EXHIBIT U

PART 2

RISK-ASSUMING CARRIER DECLARATION

(To be submitted to the SEH Program Board and the New Jersey Department of Insurance.)

Name: _____

Title: _____

Address: _____

Phone: _____ FAX: _____

(Carrier Name) _____ elects to operate as a risk-assuming carrier for purposes of complying with the Small Employer Health Benefits Program established pursuant to N.J.S.A. 17B:27A-17 et seq. Upon approval by the Commissioner of the application to be a risk-assuming carrier, or deemed approval, it is agreed that the following conditions shall be binding upon each company for which this election has been made:

- a. The company shall not seek any reimbursement for any losses it may incur with respect to small employer health benefits plans as long as the company retains its status as a risk-assuming carrier.
- b. The company is financially competent to accept any obligations required by N.J.S.A. 17B:27A-17 et seq. and the company shall not seek relief of any kind from its obligations pursuant to N.J.S.A. 17B:27A-17 et seq. for a period of no less than one calendar year from the date that its application is approved or deemed approved by the Commissioner.

This election is to be effective on (Month/Day/Year) on behalf of the company(ies) named below only. (Attach additional pages as necessary, and included NAIC numbers, if any.)

- 1. _____
- 2. _____
- 3. _____

 Date Signature

EXHIBIT U

PART 3

RISK-ASSUMING CARRIER APPLICATION

(Submit to: SEH Declaration/Approval, NJ Department of Insurance, Division of Life/Health Actuarial Services, 20 West State Street, CN 325, Trenton, NJ 08625-0325.)

SECTION A (To be completed by all applicants)

- 1. Name and Title of Person Completing this Application: _____
 Address: _____
 Phone: _____ Fax: _____

(CITE 25 N.J.R. 4576)

- 2. Name and NAIC numbers, if any, of carrier(s) for which this application is being completed (include Group number; attach additional pages as necessary and place a checkmark here ____):

- a. _____
- b. _____
- c. _____

SECTION B (to be completed by all applicants)

- 1. Is the carrier currently a reinsuring carrier? Yes____ No____
 If yes, what was the date the statutory election period began? _____
- 2. Has the carrier sought relief from any obligations pursuant to N.J.S.A. 17B:27A-26 (waiver) or N.J.S.A. 17B:27A-38 (deferral)?
 Yes____ No____
 If yes, what was the date the last relief was granted? _____
- 3. Is an actuarial certification attached? Yes____ No____
- 4. Is an experience report attached setting forth the information required by N.J.A.C. 11:21-14?
 Yes____ No____ Nonapplicable____
 If yes, is the experience report based on New Jersey data?
 Yes____ No____
 If no, please indicate by two-letter postal code the states upon which the data submitted is based.

SECTION C (To be completed by all applicants)

- Is any of the information contained in this application and/or attachments based upon data from one or more carriers other than the carrier(s) listed in Section A2 above?
 Yes____ No____
 If yes, please indicate the specific information based upon other carrier data.
 _____ a. Actuarial certification
 _____ b. Experience data
 _____ c. Other

If yes, please indicate the carrier(s) and their NAIC numbers, if applicable, whose data has been included in the information submitted. (Attach additional pages if necessary, and place a checkmark here ____.)

SECTION D (To be completed by insurers)

- 1. Is the carrier authorized or admitted to transact the business of health insurance in New Jersey?
 Yes____ No____
 If no, the date the carrier anticipates admittance or authorization: _____
- 2. Is the carrier in a hazardous financial condition as set forth in N.J.A.C. 11:2-27?
 Yes____ No____

3. Does the carrier have at least the capital and surplus currently required to commence business in New Jersey?

Yes___ No___

If no, has the carrier received a waiver from this requirement by the Commissioner pursuant to P.L. 1993, c. 235 and N.J.A.C. 11:2-39?

Yes___ No___

If yes, does the carrier have at least the capital and surplus required for the carrier to commence business in accordance with the waiver granted by the Commissioner?

Yes___ No___

SECTION E To be completed by health service, hospital service and medical service corporations)

1. Is the carrier authorized to transact business in New Jersey?

Yes___ No___

If no, the date the carrier anticipates authorization:

2. Is the carrier in a hazardous financial condition as set forth in N.J.A.C. 11:2-27?

Yes___ No___

3. Does the carrier have:

a. (Health service corporation) The amount required to be maintained in accordance with N.J.S.A. 17:48E-17.1a and b for its nongroup contracts?

Yes___ No___

b. (Hospital service corporation) The surplus amounts required to be maintained in accordance with N.J.S.A. 17:48-10?

Yes___ No___

c. (Medical service corporation) The surplus amounts required to be maintained in accordance with N.J.S.A. 17:48A-14?

Yes___ No___

SECTION F (To be completed by HMOs)

1. Is the carrier authorized to transact business as an HMO in New Jersey?

Yes___ No___

If no, date the carrier anticipates it will be authorized:

2. Is the carrier in a hazardous financial condition as set forth in N.J.A.C. 11:2-27?

Yes___ No___

3. Does the carrier have a statutory net worth as filed annually with the Department of at least \$1,000,000?

Yes___ No___

I certify that the information contained in this application and any and all attachments hereto are accurate and truthful to the best of my knowledge and ability.

Date

Signature

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Relief from Obligations Imposed Under the Small Employer Health Benefits Program

Proposed New Rules: N.J.A.C. 11:21-15

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

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1C-6(e), 17B:27A-17 et seq. and P.L. 1993, c.162.

Proposal Number: PRN 1993-559.

Submit comments by October 19, 1993 to:

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

The agency proposal follows:

Summary

These rules are being proposed pursuant to the act establishing the Small Employer Health Benefits Program, N.J.S.A. 17B:27A-17 et seq., enacted November 30, 1992 and amended June 30, 1993, P.L. 1993, c.162 ("The Act").

The Department of Insurance ("Department") is promulgating these rules in accordance with P.L. 1993, c.162, section 16, which provides a special procedure whereby the Commissioner of Insurance ("Commissioner") may adopt certain actions. Pursuant to that procedure, the Department is required to publish notice of its intended actions in three newspapers of general circulation, which shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views. Notice of the intended action is additionally required to be provided by mail or other means to affected trade and professional associations, carriers subject to the provisions of P.L. 1993, c.162 and such other interested persons or organizations which may request notification. Currently, the Department is further required to forward the notice of its intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. P.L. 1993, c.162, section 16 further provides a minimum 15-day comment period to all interested persons to comment in writing on the intended action. Following the expiration of the comment period, the Department may adopt the intended action, and the adopted action is submitted to OAL for publication in the New Jersey Register. The adopted action becomes effective on the date of the submission or on such later date as the Department may establish. The Department is modifying this adoption procedure for these rules. The Department is extending the 15-day comment period to beyond the date of publication of these rules in the New Jersey Register in order to provide all interested parties additional time to submit comments prior to adoption of the rules. Within a reasonable time after submission of the comments, the Department is also required to prepare a report for public distribution listing all parties who provided comments, summarizing the content of the comments, and providing the Department's response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register.

These proposed new rules implement various provisions of the Act establishing the Small Employer Health Benefits Program ("SEH Program"). All carriers issuing health benefits plans in this State are members of the SEH Program. The Act substantially revises the requirements governing the provision of health benefits plans to small employers ("small employer health benefits plan") in this State. The Act requires that all insurers, health service corporations, hospital service corporations, medical service corporations and health maintenance organizations authorized to transact business in this State and offering health benefits plans to "small employers" (an employer with at least two, but not more than 49 employees) (collectively, "small employer carriers") issue such plans in accordance with the provisions of the Act. The law essentially requires that all small employer carriers offer coverage to every small employer and that coverage shall be offered to all "eligible employees" and their "dependents" as defined in the Act; issue small

employer health benefits plans that conform to the requirements as may be established by the SEH Program Board of Directors ("Board") and as otherwise required pursuant to the Act; and require all members to pay assessments to reimburse "reinsuring" carriers (as defined in the Act) for net paid losses (see N.J.S.A. 17B:27A-28, 17B:27A-34, 17B:27A-35 and 17B:27A-37).

The goal of the Act is to ensure that all small employers, and their eligible employees and dependents, are afforded the ability to obtain health insurance coverage while ensuring that the costs of providing such coverage are equitably distributed among all carriers providing health benefits in this State. The Act, however, permits small employer carriers to request a waiver from the requirement that it offer coverage and accept applications pursuant to the Act, and permits all members of the SEH Program to request a deferral, in whole or in part, of the obligation to pay any assessment levied by the Board. Specifically, N.J.S.A. 17B:27A-26b provides that a small employer carrier shall not be required to offer coverage or accept applications under the Act for any period of time in which the Commissioner of Insurance ("Commissioner") determines that requiring the issuing of policies or contracts pursuant to the Act would place the carrier in a "financially impaired position." Similarly, the Act provides that a member of the SEH Program may seek from the Commissioner a deferment in whole or in part from any assessment issued by the Board pursuant to N.J.S.A. 17B:27A-38. This statute further provides that the Commissioner may grant the deferment, in whole or in part, if, in his opinion, payment of the assessment would endanger the ability of the carrier to fulfill its contractual obligations. Pursuant to N.J.S.A. 17B:27A-38 the member receiving the deferment remains liable to the SEH Program for the amount deferred, and shall be prohibited from reinsuring individuals or groups in the SEH Program. The Act defines "financially impaired" to mean "a carrier, which, after the effective date of [the] Act, is not insolvent, but is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations, or a carrier which is placed under an order of rehabilitation or conservation by a court of competent jurisdiction."

In order to implement these statutory provisions, the Department proposes these new rules to set forth informational and procedural requirements for small employer carriers or other members who wish to request relief from these obligations imposed by the Act. The proposed new rules set forth the detailed information to be submitted by entities requesting relief and the format for such requests, provide for a non-refundable filing fee of \$1,000 (except where the entity is in rehabilitation or conservation on the date of the filing) to help defray costs to the Department in reviewing such requests, and provide the procedures and standards by which the Commissioner may determine whether relief may be granted pursuant to the Act. This in turn will ensure that all entities seeking relief are fully apprised of the procedures by which relief may be requested and may be granted by the Commissioner in accordance with the Act so as to ensure a thorough and expeditious review of such requests.

The rules provide that the Commissioner shall find that a small employer carrier or member is "financially impaired" or that payment of an assessment "would endanger the ability of the member to fulfill its contractual obligations," and that relief is warranted, if: (1) the carrier or member is in rehabilitation or conservation pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the carrier's state of domicile; (2) the Commissioner finds that the carrier or member is in a hazardous financial condition determined pursuant to N.J.A.C. 11:2-27; or (3) the Commissioner finds that fulfillment of the obligation(s) from which relief is sought would place the carrier or member in a hazardous financial condition pursuant to N.J.A.C. 11:2-27. The Department believes that it is reasonable and appropriate to consider the factors set forth in N.J.A.C. 11:2-27 in determining whether a carrier or member is or would be "financially impaired" since the definitions of "hazardous financial condition" set forth in N.J.A.C. 11:2-27 and "financially impaired" set forth in N.J.S.A. 17B:27A-2 are substantially similar and have the same essential meaning. This will also provide objective standards by which disposition of requests for relief are made and thereby ensure consistency in the granting or denial of such requests.

The rules also provide that any waiver or deferral granted should be effective for a specified period of time, not exceeding 12 months. A carrier or member may seek to continue the waiver or deferral without lapse by making a separate application for relief no later than 45 days prior to the expiration of the relief period. Failure to do so will result in the expiration of the relief at the end of the period. The Department believes that this process is reasonable, appropriate and implements the

intent of the Legislature as set forth in N.J.S.A. 17B:27A-17 et seq. The Department interprets the "relief" provisions of the Act to grant temporary relief to carriers and members and to provide a period within which the carrier or member may take corrective action to cure any financial impairment, rather than to provide a permanent exemption from the requirements of the Act.

The rules additionally provide that if the Commissioner grants a deferral of payment of an assessment, the terms of the deferral shall include the requirement that the member pay to the Board an additional amount representing the loss to the Board of the time value of the assessment for the period of deferral, unless the reason for granting the deferral was that the member is in rehabilitation or conservation.

Finally, N.J.S.A. 17B:27A-26a provides that a carrier which is a health maintenance organization shall not be required to offer coverage or accept applications pursuant to the Act to a small employer if it "reasonably anticipates and demonstrates to the satisfaction of the Commissioner that it will not have the capacity in its network of providers within the service area to deliver service adequately to the members of such groups" because of its obligations to existing group enrollees. In order to give effect to and implement this statutory provision, the proposed new rules require that any health maintenance organization that maintains that it will not have capacity to service the members of such groups shall so advise the Commissioner and the Program, and file specified information.

Proposed N.J.A.C. 11:21-15.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:21-15.2 provides the definitions of words and terms used throughout the subchapter.

Proposed N.J.A.C. 11:21-15.3 provides general application procedures and filing format for requests for relief from obligations under the Act.

Proposed N.J.A.C. 11:21-15.4 sets forth the information to be filed and the application procedures to be used by carriers or members when applying for relief from either or both obligations.

Proposed N.J.A.C. 11:21-15.5 provides that all information contained in the request for relief is confidential, except for specified information.

Proposed N.J.A.C. 11:21-15.6 provides the standards the Commissioner shall utilize when determining whether or not to grant relief in accordance with the Act.

Proposed N.J.A.C. 11:21-15.7 sets forth procedures by which small employer carriers or members may request a hearing on the Commissioner's determination.

Proposed N.J.A.C. 11:21-15.8 requires small employer carriers or members requesting relief to notify the SEH Program of the relief request and of the disposition of such requests by the Commissioner.

Proposed N.J.A.C. 11:21-15.9 provides notice and filing requirements for a carrier which is a health maintenance organization asserting that it is not required to offer or accept applications pursuant to the Act pursuant to N.J.S.A. 17B:27A-26a because it lacks the capacity for additional enrollees.

Proposed N.J.A.C. 11:21-15.10 provides notice to carriers and clarifies and confirms that these rules do not limit or preclude the Commissioner from instituting any other actions regarding carriers' operations pursuant to law.

Proposed N.J.A.C. 11:21-15.11 sets forth penalties for violations of the subchapter.

Social Impact

The proposed new rules will establish procedures by which a carrier may apply for a deferral of its obligation to pay assessments or a waiver of its obligation to offer coverage and accept applications for coverage pursuant to the Act. These proposed new rules therefore implement the provisions of the Act by requiring that all small employer carriers provide health benefits plans to small employers in accordance with the requirements set forth in the Act, while maintaining the financial stability of carriers and their ability to pay existing claims liabilities. This in turn will protect current policyholders and subscribers, and benefit the insurance buying public and carriers generally.

Economic Impact

The proposed new rules should not result in an adverse economic impact upon carriers. These proposed new rules implement various provisions of the Act by providing adequate procedures and informational requirements by which carriers may request relief from certain statutory obligations under the Act, and by which the Commissioner may adequately evaluate such requests to determine whether relief is warranted in a particular case. This promulgation of Department policy will aid

carriers' administrative, financial and legal staff in initiating and executing an application for relief as permitted under the Act, which should avoid any adverse economic impact. Carriers seeking relief will be required to bear costs of compiling and submitting the required information in the proper format, and pay a \$1,000 filing fee, except that no fee is required if the carrier is in rehabilitation or conservation. The Department does not believe that any additional adverse impact will be imposed on carriers in that the information requested should be readily available and because the filing fee is reasonable in consideration of costs to the Department to review such filings.

The Department will experience an economic impact in that it will be required to review and analyze requests for relief pursuant to these rules. The filing fee required to accompany requests for relief will help defray costs to the Department incurred in the review and analysis of such requests.

Regulatory Flexibility Analysis

The proposed new rules apply to all insurers, health service corporations, hospital service corporations, medical service corporations and health maintenance organizations authorized to issue health benefits plans in this State and subject to the Act. Some of these entities may be "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed rules impose specified reporting and compliance requirements only upon those carriers that choose to request relief from the Act. The Department, however, does not believe that these rules will impose any adverse impact on these entities. The proposed new rules merely set forth informational and procedural requirements by which these entities may request relief from obligations imposed pursuant to the Act. Carriers which are small businesses will be required to bear any costs associated with compiling and filing information as required by these proposed new rules, including the required filing fee. To the extent that the proposed new rules apply to small businesses, they may impose a greater impact on small businesses in that they may be required to devote proportionately more staff and financial resources to comply with these rules. The Department believes, however, that any additional costs will not pose an undue burden in that the information required should be readily available, and because the filing fee is reasonable in consideration of the costs to the Department to conduct the review of such filings.

The proposed new rules provide no different compliance requirements based on business size. As noted previously, these proposed rules set forth information and procedural requirements by which carriers may request relief from the obligation to pay assessments or to issue coverage to "small employers" pursuant to the Act. This Act provides no different compliance requirements based on business size. Accordingly, and to ensure consistency and uniformity in the review of requests for relief, the proposed new rules provide no differentiation in compliance requirements based on business size.

Full text of the proposed new rules follows:

SUBCHAPTER 15. RELIEF FROM OBLIGATIONS IMPOSED UNDER THE SMALL EMPLOYER HEALTH BENEFITS PROGRAM

11:21-15.1 Purpose and scope

(a) This subchapter establishes the informational and procedural requirements for members requesting relief from obligations to pay assessments pursuant to N.J.S.A. 17B:27A-38 or to offer coverage or accept applications to a small employer, pursuant to N.J.S.A. 17B:27A-26.

(b) This subchapter applies to all members of the SEH Program.

11:21-15.2 Definitions

(a) Words and terms defined at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21-1, when used in this subchapter, shall have the meanings as defined therein, unless more specifically defined in (b) below or unless the context clearly indicates otherwise.

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

"Applicant" means the member seeking a deferral of its obligation to pay assessments or a waiver of its obligation to offer coverage and accept applications pursuant to N.J.S.A. 17B:27A-17 et seq.

"Financially impaired" means a member which, after the effective date of this subchapter, is not insolvent, but is deemed by the

Commissioner to be potentially unable to fulfill its contractual obligations, or a member which is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

"Relief" means a deferral of obligations pursuant to N.J.S.A. 17B:27A-38 or a waiver of obligations pursuant to N.J.S.A. 17B:27A-26, as applicable.

11:21-15.3 Application procedures and filing format

(a) Any member seeking relief may submit such request to the Department at any time, except that requests for relief from payment of assessments pursuant to N.J.S.A. 17B:27A-38 shall be submitted to the Department no later than 15 days following the due date of payment of the assessment.

(b) All requests outlined in this subchapter shall be accompanied by a statement averring a need for relief from the obligation(s), as the case may be, including supporting documentation as set forth in N.J.A.C. 11:21-15.4, and shall specify the statutory and regulatory basis for such relief. A single filing may request relief from more than one obligation, but shall specify each obligation from which relief is sought.

(c) Each request shall be in loose leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the exhibits set forth in N.J.A.C. 11:21-15.4. The loose leaf sheets used in the request shall be eight and one-half inches wide and 11 inches long and punched for two-ring or three-ring binders, as appropriate.

(d) All members requesting relief pursuant to this subchapter shall submit five copies of each request in the format set forth in (c) above.

(e) If a request fails to materially comply with the filing format and information requirements set forth in N.J.A.C. 11:21-15.4 and this section, the Department shall notify the member that its request for relief is deficient and is denied on such grounds. The notice shall also set forth any information or other action required to cure the deficiency(s). If the member intends to pursue its request, the member shall submit the additional information specified or otherwise submit a filing in accordance with the format requirements specified in this section within 15 days of receipt of the Department's notice of deficiency. Failure to submit within 15 days the information necessary in the proper format to cure the deficiency shall result in the member's request being denied.

(f) All requests for relief or other information required pursuant to this subchapter shall be filed with the Department at the following address:

SEH Program
Request for Relief
New Jersey Department of Insurance
Division of Financial Solvency
20 West State Street
CN-325
Trenton, NJ 08625

11:21-15.4 Informational filing requirements

(a) When requesting relief from obligations pursuant to N.J.S.A. 17B:27A-26b or 17B:27A-38, the applicant shall provide with its request the following information in a clear, concise and complete manner:

1. A cover letter stating:
 - i. The name of the applicant;
 - ii. The form of relief and, if a deferral of less than the full amount, specific amount/percentage of relief which the applicant is requesting;
 - iii. A statement of facts relief upon as the basis under which relief is sought, including the specific factor(s) upon which the Commissioner may find that the member is or would be placed in a financially impaired position as set forth in N.J.A.C. 11:2-27.4(a)1 to 28; and
 - iv. The name, title, telephone number and telefax number of a contact person familiar with the filing to whom the Department may direct any additional questions;
2. A detailed explanation, with supporting documentation, of the projected effect that fulfillment of the obligation would have on the

immediate and long term financial condition of the applicant unless relief is granted as requested;

3. The most recent financial examination report, whether conducted by the applicant's state of domicile or other state;

4. A statement addressing whether the applicant is planning to modify its method of doing business in any way including, but not limited to, new acquisitions or new restructuring;

5. If the applicant is a member of a holding company system, the following shall be provided:

i. A list of all members of the holding company system;

ii. A list of all intercompany transactions for the period beginning January 1 in the year of the filing to the date of the quarterly statement immediately preceding the date of the filing, in the format set forth in the statutory annual statement filed by the applicant; and

iii. A copy of the registration statement filed pursuant to N.J.S.A. 17:27A-3 and the applicant's organizational chart;

6. An actuarial opinion attesting to the adequacy of reserves specifically for all accident and health lines of business, and for all lines of business which the applicant transacts, in the format of and satisfying all requirements for the actuarial opinion and memorandum required to be submitted as a part of the annual statement filed by the applicant.

i. If the applicant is a health maintenance organization, the applicant shall obtain and file an actuarial opinion which complies with the requirements set forth in (a)6 above;

7. A report signed by the attesting actuary referred in (a)6 above, which includes, in summary form if necessary, all data utilized, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

8. A copy of the annual statement of the applicant, including all accompanying exhibits, filed with this State immediately preceding the date of the relief filing;

9. Copies of all quarterly statements for the period beginning January 1 in the year of the filing to the quarterly statement immediately preceding the date of the filing;

10. Three year financial projections beginning with the calendar year of the date of the filing assuming relief is granted and assuming relief is denied. The projections shall include, in summary form if necessary, all data utilized, and a complete explanation of methods and assumptions utilized and relied upon by the applicant in making the projections. The projections shall include results for the applicant's operations worldwide by line of business and for the applicant's operations in New Jersey only for health benefits plans issued pursuant to N.J.S.A. 17B:27A-17 et seq. The projections shall assume the same rate of assessment as in the first year for the subsequent years, and shall include projections of the applicant's operating results containing the information and in the format set forth in the following:

i. For life and health insurers, the balance sheet and summary of operations exhibits of the statutory annual statement filed by the insurer;

ii. For property and casualty insurers, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the insurer;

iii. For health service corporations, hospital service corporations and medical service corporations, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the service corporation; and

iv. For health maintenance organizations, the balance sheet and statement of revenue, expenses and net worth of the annual statement filed by the health maintenance organization;

11. A description of any relief from obligations imposed by this State or any other state granted or in effect within the preceding 12 months, and the basis upon which such relief was granted;

12. A non-refundable filing fee of \$1,000, unless the applicant is in rehabilitation or conservation at the time of filing pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the applicant's state of domicile; and

13. Any other information the Commissioner may deem relevant to the consideration of the request.

(b) An applicant asserting that the Department's review of its request be evaluated on a particular basis (that is, pre-pooled, post-pooled, consolidated or unconsolidated), shall submit a written statement which sets forth the specific reasons, with supporting documentation, if any, for which it believes evaluation on a particular basis is appropriate to that applicant, and the specific reasons, with supporting documentation, if any, for which evaluation on other bases would be inappropriate.

(c) All filings shall be accompanied by the following certification signed by the chief financial officer of the applicant: "I _____ certify that the attached filing complies with all requirements set forth in N.J.A.C. 11:21-15 and that all of the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of the applicant."

11:21-15.5 Confidentiality of request for relief

(a) All data or information contained in the request for relief filed pursuant to this subchapter shall be confidential and shall not be subject to public disclosure or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., except for the following items, but only upon written, specified request and following 10 days written notice by the Department to the member/applicant:

1. N.J.A.C. 11:21-15.4(a)1i and ii—cover letter with name of applicant and describing relief sought;

2. N.J.A.C. 11:21-15.4(a)1iv—name, title, telephone number and telefax number of person familiar with the filing;

3. N.J.A.C. 11:21-15.4(a)3—most recent financial examination report;

4. N.J.A.C. 11:21-15.4(a)5i and ii—list of members of holding company system and intercompany transactions for period preceding date of filing;

5. N.J.A.C. 11:21-15.4(a)8—annual statement filed immediately preceding date of filing;

6. N.J.A.C. 11:21-15.4(a)12—non-refundable filing fee; and

7. N.J.A.C. 11:21-15.4(a)13—additional information required by the Commissioner to evaluate a particular filing.

11:21-15.6 Disposition of request for relief

(a) When the Commissioner determines pursuant to N.J.S.A. 17B:27A-26b or 17B:27A-38 as applicable, that the member is or would be placed in a financially impaired condition through fulfillment of a coverage or assessment obligation or obligations, the Commissioner shall notify the member that its duty to fulfill the applicable obligation shall be waived, or deferred in whole or in part, as appropriate. If the Commissioner defers in whole or in part a member's obligation to pay assessments pursuant to N.J.S.A. 17B:27A-38, the member shall remain liable to the SEH Program for the amount deferred and shall be prohibited from reinsuring any individuals or groups in the SEH Program if it fails to pay assessments.

(b) The Commissioner shall find that a member is or would be financially impaired if:

1. The member has been placed in rehabilitation or conservation pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the member's state of domicile;

2. The Commissioner finds that the member is in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27; or

3. The Commissioner finds that fulfillment of the obligation(s) from which relief is sought would place the member in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27.

(c) Any waiver or deferral from a particular obligation granted by the Commissioner pursuant to this subchapter shall be for a specified period as set forth in the notice granting the request, but shall not exceed 12 months from the date of the notice. Any member seeking to continue a waiver or deferral shall file a separate request for relief in accordance with this subchapter no later than 45 days prior to the expiration of the waiver or deferral period set forth in the original notification granting the request. Such a request shall also include a detailed explanation of all actions the applicant has

taken and intends to take to cure the financial impairment. Failure to file a properly completed request for relief within the time prescribed shall result in the expiration of the waiver or deferral at the expiration of the period set forth in the original notification granting the request. Nothing herein shall be construed as limiting or prohibiting any member from applying for relief at any time in accordance with this subchapter.

(d) If the Commissioner grants a request for a deferral of payment of an assessment, the terms of the deferral shall include the requirement that the member shall pay to the Board an additional amount representing the loss to the Board of the time value of the assessment for the period of the deferral.

1. In calculating the additional amount to be paid, the member shall use the annual interest rate on one-year U.S. Treasury bills as of the date the assessment was due and payable.

2. In calculating the additional amount to be paid, the period of deferral shall begin on the date that payment of the assessment was due and payable and end on the date of the amount deferred is paid to the Board.

3. The payment of the additional amount set forth in (d) above shall be in lieu of payment by the member of any interest or penalty on the amount deferred, which otherwise may be required under any other rule.

4. The requirement to pay an additional amount as provided in (d) above shall not apply when the reason for granting the deferral is that the member is in rehabilitation or conservation.

11:21-15.7 Hearings

(a) If the Commissioner denies a member's request for relief made pursuant to this subchapter, or if the member objects to the terms of the relief granted, the member may request a hearing on the Commissioner's determination within seven days from the date of receipt of such determination as follows:

1. A request for a hearing shall be in writing and shall include:

- i. The name, address, and daytime telephone number of a contact person familiar with the matter;
- ii. A copy of the Commissioner's determination;
- iii. A statement requesting a hearing; and
- iv. A concise statement describing the basis for which the member believes that the Commissioner's findings of fact are erroneous.

2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between the member and such personnel of the Department as the Commissioner may direct, to determine whether there are material issues of fact in dispute.

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

i. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

ii. In a matter which has been determined to be a contested case, if the Commissioner finds that there are no good-faith disputed issues of material facts and the matter may be decided on the documents filed, the Commissioner may notify the applicant in writing as to the final disposition of the matter.

11:21-15.8 Notice of the SEH Program

Members requesting relief pursuant to this subchapter shall concurrently provide notice of all such requests to the SEH Program through the Interim Administrator or Administrator, as appropriate. Members shall also provide notice to the SEH Program of all dispositions of such requests by the Commissioner, within 15 days of such disposition.

11:21-15.9 Exceptions for health maintenance organizations due to lack of capacity

(a) Any member HMO asserting that it is not required to offer coverage or accept applications pursuant to the requirements of the Act because it reasonably anticipates that it will not have the capacity

in its network of providers within the service area to deliver service adequately to the members of the additional small employer groups, pursuant to N.J.S.A. 17B:27A-26a, shall file the following information with the Commissioner:

- 1. A cover letter stating:
 - i. The name of the member HMO;
 - ii. A statement that the member is not required to offer coverage or accept applications pursuant to the Act because it anticipates that it will not have the capacity in its network of providers within the service area to deliver service adequately to the members of the additional small employer groups, and the basis for that assertion, with supporting documentation, certified by the president or duly authorized officer of the member; and
 - iii. The number of the member's current individual and group members, listed by provider and classified by the provider's specialty, which shall be updated annually each year the member asserts a waiver pursuant to N.J.S.A. 17B:27A-26a.
- (b) The member shall concurrently file the information required pursuant to (a) above with the SEH Program.

11:21-15.10 Other actions by the Commissioner

Nothing in this subchapter shall be construed as limiting the Commissioner's authority to take such action with respect to insurers, health service corporations, medical service corporations, hospital service corporations or health maintenance organizations as may be authorized by law, including, but not limited to, placing an insurer, health service corporation, medical service corporation, hospital service corporation or health maintenance organization in rehabilitation, liquidation or conservation pursuant to N.J.S.A. 17B:32-31 et seq.

11:21-15.11 Penalties

Failure to comply with this subchapter, including all notice requirements set forth herein, may result in the denial of relief requested and imposition of penalties as authorized by law, including any actions that may be taken by the Board pursuant to N.J.S.A. 17B:27A-17 et seq. and the SEH Program Plan of Operation, including, but not limited to, imposition of an interest penalty for assessments due from the member and a recommendation by the Board to remove the member's authority to issue any health benefits plans in this State.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Ski Lifts

Proposed Readoption with Amendments: N.J.A.C. 12:175

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

Authority: N.J.S.A. 34:1-2a, 34:1A-3(e) and 34:4A-1 et seq., specifically 34:4A-4.

Proposal Number: PRN 1993-553.

Submit written comments by November 3, 1993 to:

Linda Flores
 Special Assistant for External and
 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. 12:175, Ski Lifts, is scheduled to expire on November 28, 1993. The chapter governing N.J.A.C. 12:175 was promulgated pursuant to the mandate of the Ski Lift Safety Act (Act), N.J.S.A. 34:4A-1 et seq., which requires the

Department of Labor to adopt rules for the safe installation, repair, maintenance, use, operation and inspection of all ski tows, lifts and tramways for the protection of the public. The rules became effective on December 17, 1975 and were subsequently readopted with amendments effective December 19, 1988; the amendments included updated references to consensus standards and provided for the Department's re-inspection of a passenger tramway which has been ordered removed from service and repaired prior to the resumption of operation.

The Department has reviewed the rules proposed for re-adoption and determined them to be necessary, adequate, reasonable and proper for the purposes for which they were intended, namely, to protect the public from unnecessary mechanical hazards in the operation of ski tows, lifts and tramways. The chapter codifies the purposes of the Act and enables the Department's Division of Workplace Standards to administer effective and proven regulatory procedures for the safety of the public. The Department proposes the re-adoption of the existing chapter with only minor amendment, that is, the updating of certain referenced consensus standard.

N.J.A.C. 12:175-1 sets forth the general provisions of the chapter and contains rules relating to the purpose, scope and validity of the contents of the chapter.

N.J.A.C. 12:175-2 provides the definition of terms used in the chapter.

N.J.A.C. 12:175-3 describes the requirements associated with compliance, registration, inspection fees, filing of notices of intent to operate, maintenance and inspection of records, reporting of accidents, and submittal of plans and specifications to the Commissioner of Labor for approval.

N.J.A.C. 12:175-4 sets forth the standards applicable to the design, construction, installation, operation and maintenance of ski lifts. The proposed amendment to N.J.A.C. 12:175-4.2(a) adopts the most recent ANSI Passenger Tramways standard as a safety standard.

N.J.A.C. 12:175-5 addresses the evacuation of passengers from passenger tramways.

The last subchapter, N.J.A.C. 12:175-6, lists the standards and publications which are referenced in the chapter.

Social Impact

The proposed re-adoption of the rules provides for the safety of the public by maintaining safe and prudent procedures in the routine and emergency operation of ski lifts and tows. These procedures benefit both the operators of the ski lifts and the general public who use the lifts by setting forth minimum safety requirements in the ski lift operation.

Failure to readopt the rules will result in the public being left unprotected against subsequent lapses in the safe operation of the ski lifts and tows.

Economic Impact

The proposed re-adoption does not impose any additional costs on ski lift owners and operators. The rules contained in the chapter impose necessary compliance costs which ensure the safe design and operation of ski lifts, tows and tramways, including design, maintenance and reporting expenses. In addition, the rules proposed for re-adoption impact economically on ski lift owners and operators by setting forth at N.J.A.C. 12:175-3 the requisite fee of \$50.00 per day per inspection for the inspection of each ski lift. This fee is not modified by the re-adoption.

The requirements imposed by the proposed re-adoption of these rules are expected to maintain public confidence in the operation of ski lifts, tows and tramways, thereby ensuring their patronage. This patronage will result in revenues to the industry as well as general revenues to the State. The compliance costs of the proposed re-adoption will continue to provide economic advantage to the industry by reducing the risk of personal injury accidents to patrons of ski lifts and the attendant liability which might otherwise ensue.

Regulatory Flexibility Analysis

The rules proposed for re-adoption, N.J.A.C. 12:175, establishes registration, maintenance and inspection recordkeeping, tramway change and injury/death reporting, plan and specification submittal and other compliance requirements applicable to ski lift operators and owners, which include some small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B et seq. In addition, professional services may be required for the preparation of technical plans and specifications which must be submitted to the Commissioner. The costs of these requirements is discussed in the Economic Impact above. Uniform application of the standards to all operators is necessary to maintain maximum safety standards and conditions for the public using the ski lifts and tows. To exempt small businesses from these minimum requirements would

compromise the public safety. Accordingly, no lesser recordkeeping, reporting and compliance requirements can be allowed for small businesses.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:175.

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

12:175-4.2 Standards adopted by reference

(a) The standards prescribed by Passenger Tramways, [ANSI B77.1-1982, ANSI B77.1a-1986, and B77.1b-1988] **ANSI B77.1-1990** are adopted as safety standards and shall apply according to their provisions, except that the following sections and subsections shall not apply:

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

12:175-6.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publication referred to in this chapter are as follows:

- 1. ANSI [B77.1-1982] **B77.1-1990**, Passenger Tramways—Aerial Tramways and Lifts, Surface Lifts, and Tows.
- 2.-4. (No change.)

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

**URBAN ENTERPRISE ZONE AUTHORITY
Urban Enterprise Zone Authority Policies**

Proposed Re-adoption with Amendments: N.J.A.C. 12A:121

Authorized By: Urban Enterprise Zone Authority,
James N. Albers, Chairman Designate.
Authority: N.J.S.A. 52:27H-60 et seq., specifically 52:27H-65.
Proposal Number: PRN 1993-546.

Submit comments by November 3, 1993 to:
James N. Albers, Chairman Designate
Urban Enterprise Zone Authority
20 West State Street/CN 821
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 12A:121, Urban Enterprise Zone Authority Policies, expires on December 5, 1993. The Department has reviewed these rules and, with the exception of the amendments discussed below, has found them to be reasonable, necessary and proper for the purposes for which they were originally promulgated.

These rules are promulgated by the New Jersey Urban Enterprise Zone Authority (UEZA), which is given responsibility for implementing the New Jersey Urban Enterprise Zones Act (P.L. 1983, c.303) and associated programs. The purposes of these rules is to encourage economic development in certain areas of specifically designated municipalities in the State.

Subchapter 1 outlines the applicability and scope of the Urban Enterprise Zone boundary amendments program; defines the terms used in the rules; describes standards of eligibility for zone boundary revisions; and the factors for evaluation of a zone boundary revision application.

Subchapter 2 outlines the applicability and scope for the discretionary extension of 50 percent sales tax exemption to urban enterprise zone municipalities and the factors for evaluation of a 50 percent sales tax exemption municipal application.

The proposed amendment to N.J.A.C. 12A:121-1.5, establishes a five year, instead of a one year, waiting period for municipalities to apply for zone boundary revisions following the original designation date or a prior zone boundary revision. This is being proposed as a more practical timeline for administering such changes while preserving the municipalities' ability to effect desired changes.

Social Impact

The social impact of this program has and will continue to be positive because it has created additional employment opportunities for residents of the municipalities in which a zone is located and for the residents of the zones.

Economic Impact

The economic impact of this program has, and will continue to be, positive by providing enhanced economic development opportunities for economically-distressed municipalities. These opportunities will continue to result in sounder economic development within these municipalities by broadening and strengthening the tax base of these municipalities. The State incurs, and will continue to incur, certain costs to administer the program. Certain amounts of State sales tax generated from sales within the zone are set aside to provide certain service improvements within the zones.

The proposed amendment will continue to allow municipalities to qualify for zone boundary revisions to meet local changes and needs.

Regulatory Flexibility Statement

There may be a positive economic impact on those small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., who reside within the Urban Enterprise Zones governed by these rules. However, the rules pertain to the municipalities seeking participation in the Urban Enterprise Zone program and as such do not impose any reporting, record keeping or compliance requirements directly on small businesses. Therefore a regulatory flexibility analysis is not required.

Full text of the proposed rules for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:121.

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

12A:121-1.5 Time for zone boundary revisions

(a) A municipality in which a zone is located may apply [at any time after the date the original zone was designated by the UEZA] **for a boundary revision five years or more after the original designation date.**

(b) [A municipality will not be eligible to apply] **No subsequent application for a zone boundary revision may be made for at least [one year] five years after the date the UEZA approves a prior zone boundary revision.**

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS

Certified Midwife Practice: Prescriptive Authority

Proposed Amendments: N.J.A.C. 13:35-2A.9 and 6.13

Proposed New Rule: N.J.A.C. 13:35-2A.11

Authorized By: Board of Medical Examiners,

Charles A. Janousek, Executive Director.

Authority: N.J.S.A. 45:9-2 and 45:10-22.

Proposal Number: PRN 1993-423.

Submit written comments by November 3, 1993 to:

Charles A. Janousek, Executive Director

Board of Medical Examiners

20 West State Street

Trenton, New Jersey 08608

The agency proposal follows:

Summary

Pursuant to P.L. 1991, c.97, the Board of Medical Examiners is proposing an amendment and new rules governing prescriptive authorization, which may now be granted to certified nurse midwives (CNMs) who meet certain qualifications. The Board also proposes to amend its CNM fee schedule in order to cover the costs of administering the prescriptive authorization program.

The first amendment adds to the functions of the Certified Nurse Midwife Liaison Committee the duty of evaluating applicants for prescriptive authorization, which will be valid for two years and renewable. The other amendment sets forth a biennial registration fee of

\$50.00 for CNMs who are authorized to write prescriptions. This amount will be in addition to the general CNM biennial registration fee of \$170.00.

The new rules set forth the application process, detailing criteria which must be met by CNMs who apply for authorization to prescribe drugs (the term includes devices as well as medicine). The drugs are to be specified within a formulary herein established by the Board of Medical Examiners, and a CNM may not go beyond that list. Only substances and devices from the formulary may be included in the written agreement the CNM maintains with a licensed physician pursuant to N.J.A.C. 13:35-2A.3.

The rules state the circumstances under which a CNM's prescriptive authority may be revoked or limited, such as failure to maintain licensure, prescription of substances not included in the formulary, or prescription of drugs for non-therapeutic purposes. Information required on a CNM's prescription blank is also set forth.

Social Impact

The grant of prescriptive authority to qualified CNMs recognizes that the ability to prescribe drugs is necessary in order for these practitioners to function fully and expeditiously as providers of skilled health services. The proposed amendments and new rule allow CNMs to supply comprehensive care to women in a timely and efficient manner, without delays that might occur in obtaining prescriptions from physicians with whom the CNM is affiliated. By establishing orderly procedures for applying for prescriptive authority, as well as a formulary listing permissible drugs, medicines, and devices, the rules not only safeguard the public health but also provide a framework for proper implementation of the statute.

To the extent that direct prescribing by CNMs is a more efficient system and allows CNMs to provide additional services, the rules, like the underlying statute, may also help in the long run to increase health care availability, as greater numbers of persons become equipped to provide comprehensive patient care.

Economic Impact

The Board does not anticipate any appreciable economic impact upon the public as a result of the new rules. Some time will be saved by physicians, since they will no longer be called upon to write routine individual prescriptions for patients of affiliated CNMs, but that factor, in terms of cost, is minimal. The financial impact of the fee upon CNMs may be mitigated by benefits accruing to them through enhancement of their professional status resulting from the increased services they can now provide. In any case, the \$50.00 biennial registration fee for prescriptive authorization does not exceed administrative costs of the program.

Regulatory Flexibility Analysis

If, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., certified nurse midwives are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed amendment and new rules will impact upon an unknown percentage of the 188 certified nurse midwives presently licensed by the Board of Medical Examiners, 125 of whom are active. The exact number of CNMs affected cannot be determined until prescriptive authorization is granted to successful applicants. The amendments and new rule do not entail any reporting or additional recordkeeping by CNMs, who can be expected in any case to maintain, in the regular course of practice, notation of prescriptions dispensed to specific patients. The services of other professionals are not required in order to comply with these rules, since the written agreement with a licensed physician that figures in the rules is already mandatory under N.J.A.C. 13:35-2A.3.

Applicants for prescriptive authorization are required to present appropriate credentials reflecting Board registration, professional certification and completion of specialized education in pharmacology and drug therapy.

The proposed \$50.00 biennial registration fee for prescriptive authorization is necessitated by administrative costs. Like all fees imposed by professional and occupational licensing boards, the amount is set at the lowest possible level for efficient administration. No exemption from either the compliance requirements or the fee is possible without destroying the viability, protective purpose, and administrative functioning of the program.

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

13:35-2A.9 Certified Nurse Midwife Liaison Committee

(a) (No change.)

(b) Functions of the Committee shall include, but are not limited to, the following:

1. Advising and assisting the Board in the evaluation of applicants for certified nurse-midwifery registration and applicants for prescriptive authorization, investigation of unlawful conduct and approval of professional training programs;
- 2.-4. (No change.)

13:35-2A.11 Prescriptive authorization

(a) A CNM who is currently registered with the Board of Medical Examiners may apply for authorization to prescribe drugs (as used within this section, the term "drugs" shall include drugs, medicine and devices). The CNM shall make application on forms prescribed by the Board and shall demonstrate:

1. Current registration with the Board;
2. A.C.N.M. or A.C.C. certification in good standing; and
3. Evidence of satisfactory completion of a minimum of 30 contact hours (as defined by the National Task Force on the Continuing Education Unit) in pharmacology or a pharmacology course in an accredited institution of higher education approved by the Department of Higher Education or acceptable to the Board (hereinafter, "qualifying education"). Qualifying education must have been obtained within the two years immediately preceding the date on which application is made, except that, for any application made within 90 days from the effective date of this section, qualifying education completed on or after April 1, 1989 shall be acceptable.

(b) Prescriptive authorization obtained pursuant to (a) above shall be valid for a period of two years. In order to renew prescriptive authorization, a CNM shall make application for renewal on forms prescribed by the Board and shall demonstrate:

1. Current registration with the Board;
2. A.C.N.M. or A.C.C. certification in good standing; and
3. Evidence of the satisfactory completion of seven contact hours (as defined by the National Task Force on the Continuing Education Unit) of continuing education, or equivalent education, in pharmacology and drug management (hereinafter "continuing education"). Continuing education must have been obtained within the two-year period immediately preceding the date of the renewal application.

(c) The Board has established a formulary of drugs which may be ordered, administered, prescribed or dispensed by CNMs who have prescriptive authorization. The formulary shall be reviewed, amended if deemed necessary, and published periodically. The formulary consists of:

- Analgesics (IV**, IM**, PO**)
- Narcotics**
- Non-narcotic
- Anesthetics
- Injectable (Local/Pudendal)
- Topical
- Antacids
- Anthelmintics (Topical)
- Antibacterials (IV**, IM, PO, Topical)
- Antiseptics (IV**, IM, PO, Topical)
- Antibiotics (IV**, IM, PO, Topical)
- Antihistamines
- Antivirals
- Anti-Emetics
- Barbituates (IV**, IM**, PO**)
- Contraceptives Oral
- Devices
- Topical
- Barriers
- Cough and Cold Preparations
- Non-narcotic
- Fungicides (Topical)
- Hematinics
- Hemorrhoidal Preparations
- Hormones
- Laxatives
- Mineral Supplements
- Oxytocics (IV**, IM, PO, Topical)

- Parenteral Fluids**
- Pre-Eclampic Drugs**
- Prostaglandin Gels**
- RH—Immune Globulin
- Stool Softeners
- Tocolytics-Parenteral** (PO)
- Topical
- Moisturizers
- Cleansers
- Therapeutic Shampoo/lotion/cream
- Steroids
- Vaccines
- Vaginal Preparations
- Vitamins

**Administered in Licensed Health Care Facilities only.

(d) A CNM who is authorized to prescribe drugs may prescribe only those drugs which are specified within the formulary of drugs established by the Board. In no case may the written agreement with a licensed physician that CNM is required to maintain pursuant to N.J.A.C. 13:35-2A.3 include any substance or device not specified within the formulary.

(e) A CNM's authorization to prescribe drugs, medicine, or devices may, upon notice and an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., be revoked or otherwise limited by the Board if the CNM:

1. Fails to maintain current licensure and registration with the Board;
2. Fails to maintain A.C.N.M. or A.C.C. certification in good standing;
3. Uses prescriptive authorization for other than therapeutic purposes;
4. Uses prescriptive authorization to prescribe substances or devices not included within the formulary of drugs established by the Board; or
5. Uses prescriptive authorization to prescribe substances or devices not specified within any written agreement maintained pursuant to N.J.A.C. 13:35-2A.3 or for purposes not intended within any written agreement.

(f) A CNM shall provide the following on all prescription blanks:

1. The CNM's full name, identification of professional practice, license number, prescriptive authorization number, address and telephone number. This information shall be printed or stamped on all prescription blanks;
2. The supervising physician's full name, printed or stamped;
3. The full name, age and address of the patient;
4. The date of the issuance of the prescription;
5. The name, strength and quantity of drug or drugs to be dispensed and route of administration;
6. Adequate instruction for the patient. A direction of "p.r.n." or "as directed" alone shall be deemed an insufficient direction;
7. The number of refills permitted or time limit for refills, or both;
8. The signature of the prescriber, hand-written; and
9. Every prescription blank shall be imprinted with the words "substitution permissible" and "do not substitute" and shall contain space for the CNM's initials next to the chosen option, in addition to the space required for the signature in (f)8 above.

13:35-6.13 Fee Schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

- 1.-5. (No change.)
6. Certified Nurse Midwifery (registration) i.-v. (No change.)
- vi. Biennial prescriptive authorization 50.00
- 7.-10. (No change.)

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
Notice of Public Hearing and Extension of Comment
Period
Board of Psychological Examiners Rules
Inclusion of Psychoanalysis within the Scope of
Practice of Psychology; Employment by a Non-
Profit Bona Fide Community Organization—
Exemption from Licensure**

Proposed New Rules: N.J.A.C. 13:42

Take notice that on July 19, 1993, the Board of Psychological Examiners proposed to repeal the current text of N.J.A.C. 13:42 and to replace it with new rules (see 25 N.J.R. 3062(a)).

Take further notice that at the public session of its August 30, 1993 meeting the Board discussed responses received during the 30 day comment period. At the outset of the meeting, the Board determined that additional time was needed to consider two areas of concern that had engendered a significant amount of comment. Accordingly, the Board voted to defer consideration of these issues and to hold a public hearing in order to solicit additional comments. Specifically, the public hearing will be limited to consideration of the following issues:

1. Inclusion of psychoanalysis within the scope of practice of psychology. N.J.A.C. 13:42-1.1(a)4 and 1.2(a)3.

2. Employment by a non-profit bona fide community organization; exemption from licensure. N.J.A.C. 13:42-1.3.

The public hearing will be held on Monday, October 18, 1993 at the Division of Consumer Affairs, 124 Halsey Street, 4th floor, Newark, New Jersey between the hours of 10 A.M. and 2:00 P.M.

So that the Board may be provided with relevant, non-cumulative comments and data, persons who are members of an organization are requested to select a representative of the organization to provide testimony at the public hearing.

Persons wishing to speak at the public hearing on the two issues outlined above should provide written notice to the Board no later than October 14, 1993. Notice should be sent to:

Leslie Aronson, Executive Director
State Board of Psychological Examiners
Post Office Box 45017
Newark, New Jersey 07101

In order to ensure maximum participation, comments will be limited to 10 minutes.

The hearing will be conducted in accordance with the provisions of N.J.S.A. 52:14B-4(g). A copy of this notice has been forwarded to all interested parties pursuant to N.J.A.C. 1:30-3.3A(b)2.

Take further notice that, in accordance with N.J.A.C. 1:30-3.3(c), the Board is extending the deadline for written comments **only on the two issues set forth above** to October 18, 1993. Written comments on those issues should be submitted by that date to:

Leslie Aronson, Executive Director
State Board of Psychological Examiners
Post Office Box 45017
Newark, New Jersey 07101

(b)

**NEW JERSEY RACING COMMISSION
Thoroughbred Rules
The Pick(N)**

Proposed New Rule: N.J.A.C. 13:70-29.52

Authorized By: New Jersey Racing Commission,

Frank Zanzuccki, Executive Director.

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

Proposal Number: PRN 1993-556.

Submit written comments by November 3, 1993 to:

Mike Vukceovich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On July 3, 1992, New Jersey racetracks began the simulcasting of full race cards from other states. These race cards included many exotic type wagers not permitted at New Jersey racetracks. These types of wagers proved to be very popular with New Jersey racing patrons. In response to this popularity, Assembly Bill 1940 was introduced in October of 1992, passed both houses of legislature and was signed into law on January 22, 1993 as P.L. 1993, c.24. Proposed new rule N.J.A.C. 13:70-29.52 will allow the implementation of these exotic wagers, with carry-over features, at New Jersey racetracks. These wagers, called Pick(N), require selection of the first place finishers in each of four or more consecutive races, with the letter (N) representing the number of such races.

Social Impact

The social impact of the proposed rule is positive. These types of pools have proven to be popular when included in common pools from out-of-State tracks. The carry-over feature, in particular, will make these pools more interesting and will encourage a broader scope of participation by New Jersey racing patrons.

Economic Impact

The economic impact of the proposed new rule is positive. The carry-over provision of these rules is expected to generate increased handles at the New Jersey tracks which, in turn, will increase State revenue, and provide additional purse monies to the horsemen, tracks and breeders programs without any increased cost.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Assuming a racetrack association secures Commission approval for a Pick(N) format, it will assume compliance and recordkeeping responsibilities inherent in this or any wagering format. Those track associations which would assume such responsibilities are not small businesses, as each employ more than 100 people. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows:

13:70-29.52 The Pick(N)

(a) The Pick(N) requires selection of the first place finishers in each of four or more consecutive races, with the letter (N) representing the number of such races. The association must obtain written approval from the Commission concerning the scheduling of Pick(N) events. Any changes to the approved Pick(N) format requires prior approval from the Commission.

(b) A carry-over, as is relevant to this section, is that percentage of the pool not paid out when no one successfully selects all winning horses in the Pick(N). The carry-over amount shall be added to the subsequent Pick(N) pool until distributed as a result of the successful selection of all winning horses.

(c) The Pick(N) pool shall be distributed under one of the following methods:

1. Method 1. Pick(N) with carry-over: The net Pick(N) pool and carry-over, if any, shall be distributed as a single price pool to those who selected the first place finisher in each of the Pick(N) contests, based on the official order of finish. If there are no such wagers, then 25 percent of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick(N) races; and the remaining 75 percent of the net pool shall be added to the carry-over.

2. Method 2. Pick(N) with minor pool and carry-over: The major share of the net Pick(N) pool (75 percent) and the carry-over, if any, shall be distributed to those who selected the first-place finisher in each of the Pick(N) contests, based on the official order of finish. The minor share of the net Pick(N) pool (25 percent) shall be distributed to those who selected the first-place finisher in the second greatest number of Pick(N) contests based on the official order of finish. If there are no such wagers selecting the first-place finisher of all Pick(N) contests, the minor share of the net Pick(N) pool (25 percent) shall be distributed as a single price pool to those who

selected the first-place finisher in the greatest number of Pick(N) contests based on the official order of finish and the major share (75 percent) shall be added to the carry-over.

(d) If there is a dead heat for first in any of the Pick(N) contests involving contestants representing the same betting interest, the Pick(N) pool shall be distributed as if no dead heat occurred. If there is a dead heat for first in any of the Pick(N) contests involving contestants representing two or more betting interests, the Pick(N) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the net Pick(N) pool.

(e) The Pick(N) pool shall be held entirely separate from all other pools and is not a parlay and is not part of a daily double, exacta, trifecta or other wagering pool.

(f) Pick(N) tickets shall be sold in not less than \$1.00 denominations and only from machines capable of issuing four or more numbers.

(g) Those horses constituting an entry or a field as defined within the rules and regulations of the Commission shall race in any Pick(N) race as a single wagering interest for the purpose of Pick(N) pari-mutuel pool calculations and payments to the public. A scratch after wagering has begun on any part of an entry or mutuel field in such a race shall be of no effect with respect to the status of such entry or field as a viable wagering interest.

(h) At any time after wagering begins on a Pick(N) pool should a horse, entire betting entry or mutuel field be scratched or declared a non-starter in any Pick(N) race, no further tickets selecting such horse betting entry or mutuel field shall be issued, and wagers upon such horse betting entry or mutuel field, for purposes of the Pick(N) pool shall be deemed wagers upon the horse, betting entry or mutuel field upon which the most money has been wagered in the win pool at the close of win pool betting for such race. In the event of a money tie, the tied horse, betting entry or mutuel field with the most inside post position shall be designated.

(i) The Pick(N) pool shall not be cancelled based upon the number of race cancellations or races being declared no contest, unless the following is true, in which case all Pick(N) wagers for the individual performance shall be refunded:

1. Three or more races of a Pick 4 or Pick 5 are cancelled or declared no contest;
2. Four or more races of a Pick 6 or Pick 7 are cancelled or declared no contest;
3. Five or more races of a Pick 8 or Pick 9 are cancelled or declared no contest;
4. Six or more races of a Pick 10, Pick 11 or more races are cancelled or declared no contest.

(j) If, on the last day on which the system of wagering is conducted at a race meeting, no bettor selects the winning horse in those designated races, the total amount of the pool which exists on that day in connection with those races shall be paid to the bettor or bettors who selected the largest number of winning horses in those races.

(k) If, for any reason, the Pick(N) carry-over cannot be paid out on the last scheduled day of a race meeting, the carry-over shall be deposited in an interest bearing account approved by the Commission. The Pick(N) carry-over plus accrued interest shall then be added to the net Pick(N) pool on a race date determined by the Commission.

(l) An association, with the written approval of the Commission, may contribute funds to the net Pick(N) pool or the carry-over pool.

(m) Should circumstances occur which are not foreseen in this section, questions arising thereby shall be resolved with general pari-mutuel practice. Decisions regarding distribution of Pick(N) pools will be final.

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Notice of Pre-Proposal Intrastate Dial-Around Compensation

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor, Commissioner, and Carmen J. Armenti, Commissioner.

Authority: N.J.S.A. 48:2-13.

BRC Docket Number: TO92080839.

Pre-Proposal Number: PPR 1993-5.

Submit written comments by November 3, 1993 to:

Michael P. Gallagher, Director
Division of Telecommunications
Board of Regulatory Commissioners
Two Gateway Center
Newark, New Jersey 07102

Submit reply comments by November 17, 1993 to the above address.

Take notice that the Board of Regulatory Commissioners (Board) is interested in receiving comments related to the establishment of rules regarding the possibility of permitting compensation for intrastate "dial-around" carrier access calls (1-800, 950 or 10XXX access) placed from non-local exchange telephone company public pay telephones. "Dial-around" refers to the ability of a customer to dial-around the presubscribed carrier on a pay telephone and use a carrier it chooses without compensating the payphone owner or using the owners operator. This investigation is in response to a petition filed by the New Jersey Payphone Association (NJPA) seeking such compensation either on a per-call or a per-minute basis or, in the interim, through a mechanism similar to that ordered by the Federal Communications Commission (FCC) pertaining to interstate dial-around traffic initiated from competitive payphones.

Pursuant to this Board's rules, Customer Provided Pay Telephone Service (CPPTS) providers, including NJPA members, are required to provide free access to the caller's carrier of choice for intrastate calls through an 800, 950 or 10XXX dialing sequence. N.J.A.C. 14:10-6.5. There is currently no requirement that compensation be provided to the CPPTS provider for the use of the pay telephone station for such carrier access calls.

The FCC has adopted an interim compensation plan for interstate dial-around access calls using a formula which results in a flat rate interim compensation level of \$6.00 per payphone per month. This compensation is to be paid directly by the interexchange carriers of sufficient size (\$100 million per year or greater interstate revenues), on a pro rata basis reflecting the carrier's relative share of the interstate toll market.

The Board seeks comment from interested parties on whether intrastate dial-around compensation should be required. If intrastate dial-around compensation is required: what is the proper amount of compensation; the proper procedure for implementation; should compensation be paid on a per-call or per-minute basis and how would per-call or per-minute compensation be accomplished technically; and who should pay and who should receive such compensation? The Board has developed a series of questions that it believes should be explored prior to making a final decision. The Board seeks specific factual information on these points rather than broad generalization or policy statements. Therefore, in order to assist its review, the Board believes that it is imperative that commenters supply detailed supporting information in responding to these issues. Additionally, commenters are encouraged to provide proposed texts of rules which the Board may consider for promulgation.

The Board will also permit the filing of reply comments. Copies of all comments are available for inspection at the Board's offices.

Commenters are asked to respond to any and all of the following:

- (1) Should the Board require intrastate dial-around compensation? Why or why not?
- (2) How should any such traffic be measured and which calls should be eligible for compensation?
- (3) What benefits/detriments are expected to be realized by consumers if intrastate dial-around compensation is allowed?
- (4) Will rates or service be impacted and how?

(5) Will pay telephone consumers be required to pay a surcharge or premium for calls using the consumers carrier of choice?

(6) If required, should intrastate dial-around compensation be paid on a per-call or per-minute basis? On a flat monthly basis? Are there any technical limitations to these or any other methods?

(7) If required, what is the proper method of determining intrastate dial-around compensation and the proper amount? Should it be based on lost revenue, opportunity cost, or some other factor? Provide detailed New Jersey specific data including, but not limited to, intrastate versus interstate calling patterns and state specific costs.

(8) If required, who should pay intrastate dial-around compensation and what criteria should be used to make this determination? For example, how should the compensation be allocated to each interexchange carrier? Which interexchange carriers should be required to pay?

(9) If required, who should receive intrastate dial-around compensation? CPPTS providers? Local exchange carriers? Inmate payphones in correctional institutions?

(10) If required, how will intrastate dial-around compensation be implemented? Should the Board use the direct billing approach utilized by the FCC or some other method?

(11) If required, will intrastate dial-around compensation help reduce or eliminate fraud from CPPTS locations?

(12) If required, will intrastate dial-around compensation increase or decrease compliance with the CPPTS provider's obligation to provide free access to the end users carrier of choice through its preferred access method? What action should be taken against those pay telephone providers that do not provide the required access to a carrier of choice?

(13) Have any other states authorized intrastate dial-around compensation? If yes, what is the level of compensation, how is it billed and collected, who receives such compensation and who is required to pay?

(14) How do New Jersey's coin telephone rates compare with those state jurisdictions which have allowed intrastate dial-around compensation? With interstate rates throughout the country?

(15) How many intrastate dial-around calls are placed annually in New Jersey? How does New Jersey's dial-around call volumes compare with other jurisdictions which have allowed intrastate dial-around compensation?

(16) How do New Jersey's interstate versus intrastate calling patterns compare with the other state jurisdictions which have allowed intrastate dial-around compensation? With calling patterns throughout the country?

(17) Any other relevant issues.

STATE

(a)

DIVISION OF ELECTIONS

Certification of Electronic Voting Systems

Proposed New Rules: N.J.A.C. 15:10-8

Authorized By: Daniel J. Dalton, Secretary of State, Department of State.

Authority: N.J.S.A. 19:53A-4.

Proposal Number: PRN 1993-557.

Submit comments by November 3, 1993 to:

Department of State
Division of Elections
Attn: Sharon Shinkle
State House, CN 300
Trenton, NJ 08625-0530

The Department intends to conduct a **public hearing** after the close of the comment period. The Department will provide the required 15 days notice of the hearing in the New Jersey Register if possible, or by other appropriate means in order to reach members of the public. The agency proposal follows:

Summary

N.J.S.A. 19:53A-1 et seq. provides that no electronic voting systems shall be used in an election in this State unless it has "been approved by the Secretary of State, or other person, agency or board charged with the examination and approval of voting machines." Chapter 53A,

however, does not set forth any standards or procedures by which electronic voting equipment is to be tested or examined.

The process established for the certification of mechanical voting systems, as established under N.J.S.A. 19:48-2, is inadequate to certify electronic voting systems, because computerized voting systems are far more sophisticated and intricate than traditional mechanical voting equipment. Also, N.J.S.A. 19:48-2 does not provide sufficient guidelines on the examination and approval of electronic voting machines to direct the three examiners who are required for such purpose under the statute.

The purpose of these proposed rules is to establish procedures for the certification, acceptance and operation of electronic voting systems. These rules also provide for due notice to interested parties of the process by which such equipment will be tested as well as to give notice to the public that electronic voting equipment utilized in this State will accurately count and record votes cast so that the true will of the electorate will be ascertained.

The proposed rules establish the procedure by which the Secretary of State will recognize independent testing authorities (ITAs), who will be authorized to determine whether electronic voting systems meet both the requirements of N.J.S.A. 19:53A-3 and the performance standards established by the Federal Elections Commission in "Performance and Test Standards for Punchcard, Marksense and Direct Recording Electronic Voting Systems" (FEC January 1990). The proposed rules also provide for sufficient procedural safeguards to insure the integrity of results recorded by those systems.

Following the implementation of these rules, no electronic voting equipment will be certified for use in the State that has not been qualified for use by an accredited independent testing authority recognized by the Secretary of State.

To insure the ongoing integrity of electronic voting systems, these proposed rules also establish requirements to insure that any modifications made to any electronic voting system used in the State, including those systems already in use in the State, must meet ITA qualification requirements.

The proposed rules also establish procedures for rescinding certification for the sale and use of electronic voting systems in the State that have been previously certified by the Secretary of State.

Social Impact

The proposed new rules will have a positive social impact on the public because it is anticipated that they will serve to effectively safeguard those election results in the State which are obtained from the use of computerized voting equipment, thereby securing to New Jersey's citizens the integrity of the electoral process. Such safeguards are necessary because of the recognized theory that any computerized equipment may be subject to deliberate or negligent misuse.

Economic Impact

The proposed new rules will not have or result in any direct economic impact on the general public. If county election agencies choose to utilize electronic voting equipment, they will incur administrative costs, such as postage and shipping costs of impacted voting system component parts between administering agencies and the State for regular pre-election verification testing. It should be noted that county agencies which do decide to use more advanced electronic equipment to better tabulate ballots could save on long term costs. The Division of Elections has reported that it has cost less for some counties which have purchased and used electronic systems to count absentee ballots for instance, than for them to employ workers to do manual counts of the ballots.

Manufacturers/vendors of electronic voting systems who wish to have those systems certified for use in New Jersey will incur the cost of fees which may range from \$5,000 to \$7,500 from independent testing authorities (ITAs) for the examination and qualification of their voting systems. In addition, manufacturers/vendors will be subject to administrative costs associated with the delivery of duplicate critical voting system component parts to the Secretary of State, for the purposes of establishing an escrow account.

The Department of State will incur administrative costs for the certification of voting systems under the proposed new rules. The primary cost for the certification of electronic voting systems, however, will be borne by vendors of such equipment seeking certification to do business in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules impose requirements on manufacturers/vendors of electronic voting systems seeking to have their equipment

certified for use in New Jersey. Some of these vendors may fall into the category of small business as defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. Electronic voting equipment prior to certification must be examined, tested and qualified by independent testing authorities (ITAs) recognized by the Secretary of State. Manufacturers/vendors will incur the cost of fees which may range from \$5,000 to \$7,500 from the independent testing authorities for their services, in addition to administrative costs associated with the delivery of system component parts to the Secretary of State.

The requirements imposed on small businesses by the rules promulgated herein are the minimum the Department believes necessary to maintain the integrity of elections in the State of New Jersey in which electronic voting systems are used.

Full text of the proposed new rules follows:

SUBCHAPTER 8. CERTIFICATION OF ELECTRONIC VOTING SYSTEMS

15:10-8.1 Definitions

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

“Acceptance test” means the examination of voting systems and their components by the purchasing election authority to find errors in hardware and software in a simulated use environment to validate performance of delivered units in accordance with procurement requirements. The acceptance test is conducted by the purchasing election authority upon receipt of the voting system.

“Audit log” means a record, either machine generated or manually prepared and maintained, providing a full and complete account for each election of all activities and events relevant to the preparation and installation of election parameters, initialization of vote counting systems, processing of voted ballots, and termination of the voting process.

“Auxiliary components” means any device, materials or equipment which is used to give assistance or aid to the actual voting device, but is not a permanent or enclosed part of the voting device.

“Ballot layout” means the positioning of all political parties, independent candidates, and public questions on the ballot in compliance with applicable election law.

“Ballot definition subsystem” means a subsystem which consists of hardware and software required to define ballot layouts for an election, to prepare election-peculiar software and firmware, and to validate the correctness of all materials and programs.

“Baseline” means the voting system software and critical system component parts configuration at the time of certification by an independent testing authority (ITA). This configuration is held in escrow, by the State. Future configurations of the software and critical system component parts will be identified in terms of the baseline and the approved changes thereto.

“Card reader” means a peripheral device for computers, used to read the data from punchcard or marksense ballots.

“Central vote tabulating system” means an accumulation of election results gathered from a geographic area and transmitted by telephone lines or by other means to a central counting system to provide countywide, citywide or district totals.

“Central processing unit (CPU)” means that part of an electronic voting system which performs all of the arithmetic and logic operations and controls the flow of information throughout the entire computer system.

“Certification” means the certification of electronic voting systems for sale and use in the State of New Jersey by the Secretary of State.

“Certification testing” means the examination and testing of a voting system or device to determine its compliance with the standards set forth by the Federal Election Commission in “Performance and Test Standards for Punchcard, Marksense and Direct Recording Electronic Voting Systems” (FEC January, 1990) (incorporated herein by reference) by an independent testing authority (ITA) recognized by the Secretary of State to perform such tests.

“Component parts” means independent items that are incorporated into an electronic voting system, such as a card reader, printer, or modem vote recorded, as contrasted with smaller parts such as circuit boards.

“Computer program” means a collection of instructions coded in a specific sequence according to specific rules that a computer can execute directly or that can be translated into object code which the computer can execute.

“Control subsystem” means a subsystem that is resident in the voting or ballot counting device. It controls the readying of equipment and software for election use.

“Conversion subsystem” means a subsystem applicable only to punchcard and marksense systems and consists of all devices and circuitry which are required to convert voting punches or marks into electronic signals.

“Critical system component parts” means those component parts identified by the ITA as essential to the operation of the voting system and required to be kept in escrow by the Secretary of State.

“Department” means the New Jersey Department of State.

“Division” means the New Jersey Division of Elections.

“Electronic voting systems” means any device or grouping of devices that are electronic or computer oriented in nature which are intended to record and/or tabulate individual choices in public elections.

“Escrow account” means the account consisting of all source codes, and system components parts, including all updates, modifications or new versions thereof which are held by the Division of Archives and Records Management.

“Existing systems” means any voting systems certified by the Department, purchased and in use prior to promulgation of these rules.

“Firmware” means computer programs stored in read-only memory (ROM) devices embedded in the system and not capable of being altered during system operation.

“Hardware” means the mechanical, electrical, or electronic assemblies including materials and supplies which are part of the system, such as microprocessor, disk drives, printer, circuit boards and integrated circuits.

“In-house system” means a computerized voting system comprised of commercial hardware (usually utilized by governmental entities for other administrative purposes) and specially tailored elections administration software.

“Independent testing authority (ITA)” means any entity currently accredited by the Federal Elections Commission, or other body so recognized by the Federal Election Commission, and therefore recognized by the New Jersey Secretary of State, to test and qualify electronic voting systems as meeting the standards established by that Commission.

“Maintenance log” means a written record which contains all information relating to system testing, performance of scheduled and non-scheduled maintenance requirements recommended by the vendor or manufacturer of such equipment, and all service visits performed by vendor or manufacturer.

“Marksense voting system” means a system where votes are recorded by filling in the voting response fields designated on one or both faces of a ballot card or series of cards with ink, pencil or other acceptable material.

“Modification” means any change in either software, firmware or hardware of the voting system, thus requiring re-examination of certified equipment by an independent testing authority.

“Modified system” means a voting system which was previously certified, but due to modifications of the system, must be reviewed by an independent testing authority recognized by the Secretary of State to determine continued compliance.

“New system” means an electronic or electromechanical voting system that is being marketed in the State of New Jersey by manufacturers/vendors to county election officials after promulgation of these rules which is not an expansion or modification to an existing system.

“Operational manual” means a detailed manual of all procedures used for the preparation and use of the equipment and provide proper maintenance procedures including the unpacking and storage procedures to be utilized by local elections officials, and operational and instructional procedures to be followed by local election officials that are specified by title.

"Pre-election verification" means the process by which OTIS or another State agency approved by the Secretary of State, verifies, by means of electronically comparing the baseline voting system with the actual voting system to be used in an upcoming election, that the system to be used in that upcoming election is actually the voting system that has been certified for use, and that the system has not been altered, or infected, since its last application.

"Punchcard voting system" means a system where votes are recorded by punches made in the voting response fields designated on one or both faces of a ballot card or series of cards.

"Qualify" means the granting of recognition to an electronic voting system by a certified independent testing authority after that voting system has successfully passed a series of tests to demonstrate that it has met all requirements made of electronic voting systems by the National Association of State Election Directors or other like body recognized by the Federal Election Commission.

"Recertification" means the examination, and possibly the retesting, of a voting system which was modified subsequent to receiving State certification. The object of this process is to determine if the modification still permits the system to function in accordance with State and Federal requirements.

"Remote device" means a peripheral device that is not on-site and is connected to a computer by a communications link, such as a telephone line, through the use of a modem.

"Reporting subsystem" means a subsystem consisting of hardware and software which is required to display status reports and messages while the polling place is open, to prepare hardcopy statements of the vote after the polling place has been closed, and to enable the transmission of voting data to a remote location.

"Software" means the programs and routines used to employ and control the capabilities of data processing hardware. Software includes, but is not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

"Source code" means a computer program written in a programming language and used to generate machine instructions through the use of assemblers or compilers.

"Subsystem" means a group of components or a single piece of equipment which performs a unique or identifiable function.

"Vendor" means any manufacturer, company or individual who seeks to sell, or sells, voting systems within the State of New Jersey.

"Voting data management subsystem" means a subsystem which controls the flow and interchange of voting and audit data after extraction from the polling place devices or after processing election district data at a central counting place. The voting data management subsystem consists of hardware and software required to acquire and consolidate voting data from polling place memory or data transfer devices, absentee ballots, manually reprocessed data, and data from external sources. It produces the official statement of the vote.

"Vote recording subsystem" means the subsystem consisting of hardware and software required to detect and record voter choices.

"Voting system" means a method of casting and processing votes that functions wholly or partly by use of mechanical, electromechanical, or electronic apparatus or by use of paper ballots. It includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, tabulating cards, printouts, and other software necessary for the system's operation.

15:10-8.2 Electronic voting system certification

(a) All electronic voting systems shall obtain certification by the Secretary of State prior to their sale and use in the State. Before consideration for such certification, the equipment must be examined and determined to be qualified by a nationally certified independent testing authority.

1. No independent testing authority (ITA) will be authorized by the Secretary of State to test and qualify electronic voting systems for use in this State unless it has been certified as an ITA from the National Association of State Election Directors or other national authority recognized by the Federal Election Commission for the purpose of certifying ITAs, and satisfies all or any ongoing requirements to maintain such certification.

2. The examination of the electronic voting systems shall consist of whatever tests the ITA deems necessary to determine the integrity of the voting system and the compliance of that system with the standards established by the Federal Election Commission and any other additional standards that may be established in this subchapter by the Secretary of State.

3. No electronic voting device or electronic voting system shall be used in any public election in this State unless it has been certified by the Secretary of State following successful qualification testing conducted by a recognized ITA.

15:10-8.3 Delivery and acceptance of electronic voting systems

(a) All critical system component parts, including software, shall be delivered to the counties by the voting system manufacturer/vendor only after such system parts have been approved by the ITA and certified by the Secretary of State.

(b) To insure performance of delivered units in accordance with certification requirements, an acceptance test must be conducted by purchasing election authorities upon receipt of electronic voting systems.

15:10-8.4 Administrative procedures for use of voting equipment

(a) To insure the proper administration of certified voting systems, no electronic voting system shall be used in any public election unless operational and procedural rules and guidelines for the administration of those electronic voting systems have been approved by the New Jersey Division of Elections, in addition to the certification of the new system.

1. The county board of elections or county superintendent of elections where applicable in each county is required to establish and follow operational and procedural rules and guidelines that address the following minimum standards:

- i. Limited access to each subsystem of the voting system;
- ii. The assignment of duties shall be spelled out by personnel title and function;
- iii. The assignment of duties for elections officials shall insure bipartisan oversight of all critical subsystem operations;
- iv. The assignment of duties shall also separate personnel duties between subsystem operations to provide further administrative oversight;
- v. Time frames for the implementation of all necessary pre-election and post-election functions and activities to be performed in the use and administration of the electronic voting system;
- vi. Establishment of written audit trails for the use, preparation, and repair of the electronic voting system; and
- vii. Establishment of formalized training requirements for all personnel for the functions to which they are responsible.

2. The appropriate elections officials are required to submit the county electronic voting system operational rules and guidelines to the Division of Elections for its review and approval no later than 90 days prior to use in the first election in which electronic equipment is to be used in the county.

i. The county board of elections shall not conduct any election using electronic voting systems until the Division of Elections has reviewed and approved the operational rules and guidelines. Any changes to approved operational rules must also be submitted to the Division of Elections for its review and approval, prior to implementation of same.

ii. The Division of Elections shall not approve any county's operational rules and guidelines until it is satisfied that those rules and guidelines sufficiently meet requirements specified in (a)1 above.

15:10-8.5 Establishment of escrow account

(a) Preceding the delivery of any electronic voting system in the State of New Jersey, the system vendor shall have delivered to the Secretary of State, for the purposes of establishing an escrow account, exact duplicates of the critical system component parts, including software, firmware and hardware, but excluding the actual voting booths. Delivery of the system component parts shall include certifying documentation from the ITA that those parts held in escrow are identical to the critical system component parts that have been qualified for use by the ITA.

(b) The escrowed component parts will not be made available to the public under any circumstances and will be stored by the Division of Archives and Records Management and shall be accessed only for the following purposes:

1. By the Office of Telecommunications and Information Systems (OTIS), or other State agency assigned by the Secretary of State, for the purpose of conducting pre-election verification analyses of voting systems prior to their use in any upcoming public election; and

2. By OTIS, or other State agency assigned by the Secretary of State, for the purpose of conducting a court ordered verification analysis in the case of a challenge of election results.

15:10-8.6 Modified voting system recertification

(a) Software, firmware or hardware changes introduced after an electronic voting system has completed qualification will necessitate further review by the independent testing authority (ITA). The ITA will determine what tests are necessary for requalification. For software changes, it is likely that full software qualification and system level tests will be undertaken.

(b) Limited qualification testing may be required of system vendors by an ITA, if the vendor can demonstrate to the ITA's satisfaction that the system modifications do not affect previously demonstrated compliance with qualification standards. The performance of essential system functions must remain in compliance, as must the overall flow of program control, and the manner in which ballots are interpreted, or voting data are processed. Unless system modifications fall into one or more of the following classifications, the system will be viewed as a new electronic voting system, requiring that the system be subjected to a complete qualification test by an ITA:

1. The modification is made for the purpose of correcting a defect, and test documentation is provided which verifies that the installation of the modified hardware, firmware, or software results solely in the elimination of the defect;

2. The modification is made solely for the purpose of providing additional audit or report generating capability, using existing audit and reprinting sub-routines;

3. The modification is made for the purpose of enabling interaction with other equipment (general purpose or qualified), or with other computer programs and databases. Procedural and test documentation shall be provided to the ITA to verify that such interaction does not involve or adversely affect vote counting and data storage; or

4. The modification is made for the purpose of permitting operation on a different processor, or of using additional peripheral devices, and does not alter the software's structure and function.

(c) The exemptions from full recertification requirements listed in (b) above are intended to facilitate the correction of defects, the incorporation of improvements, the enhancement of portability and flexibility, and the integration of vote-counting software with other system and elections software. The addition of a feature or function that produces any of these effects is encouraged.

(d) All voting system modifications, following successful ITA requalification requirements, shall be submitted to the Secretary of State for placement into archives for the purpose of being held in escrow, in replacement of those system component parts already held in escrow.

(e) At no time shall any system component part(s) be utilized in any public election unless the entire computer voting system has been both qualified for use by an ITA and certified for sale and use by the Secretary of State, and all duplicate system component parts have been placed into escrow as defined in N.J.A.C. 15:10-8.5(a).

(f) No modifications shall be provided to a county election authority unless those modifications have been qualified by an ITA.

(g) No electronic voting system component part replacements, regardless of any upgrades or modifications, shall be delivered to a county elections official unless those replacement parts are verified as identical to the qualified parts they are replacing. This verification shall be performed in the same manner as pre-election verifications, as stated in N.J.A.C. 15:10-8.7(a).

(h) All county elections officials shall be responsible for insuring that all electronic voting system component parts are fully and properly certified by an ITA and held in escrow by the State.

(i) All county elections officials shall be responsible for submitting all electronic system component parts to the State for pre-election verification tests as called for in N.J.A.C. 15:10-8.7.

15:10-8.7 Pre-election verification

(a) No electronic voting system software shall be used in any public election until it has been successfully verified by OTIS, or other State agency designated by the Secretary of State, for the purpose of verifying that the software is identical to the software currently certified by the Secretary of State for use in that county.

(b) County elections authorities shall deliver to OTIS or other State agency designated by the Secretary of State, the necessary voting system software for verification testing before any election in a timely manner that allows for the orderly administration of the election as required by law, and consistent with OTIS' or other State agency's mandated deadline for verification testing as set forth in this subchapter.

(c) OTIS, or other State agency appointed by the Secretary of State, shall conduct whatever comparison tests it deems necessary to verify that the voting system software submitted to them by the county elections authorities, for pre-election verification, is identical to the certified software held in escrow by the State.

(d) The comparison tests shall be completed and the voting system software returned to the county election authority within five working days of receipt of those parts for comparison testing.

(e) Upon completion of the comparison tests, the verifying agency shall either certify the submitted software as identical to their respective archived duplicates, or deny certification due to alteration or infection.

1. Should submitted software be denied certification, the county elections authority shall:

i. Resubmit the failing software for retesting after cleansing the system software of those contaminants and/or alterations that were found during the original comparison test;

ii. If the resubmitted software fails to gain certification after a second verification test, the county shall either attempt to resubmit the software to a third verification test or have their vendor provide, through an ITA, replacement software for verification and use in the upcoming election; and

iii. If the software fails to gain certification after a third verification test, the county elections authority shall have their system vendor provide, through an ITA, replacement software for verification and use in the upcoming election.

(f) The Secretary of State reserves the right to order pre-election verification testing of other components of a county's electronic voting system, in addition to its software, if it is deemed necessary.

15:10-8.8 Rescinding certification

(a) Certification shall be rescinded by the Secretary of State if it is found that:

1. The equipment does not produce accurate results and reports, as required by this subchapter;

2. Modifications, subsequent to certification, have been made to the system without meeting the requirements for modifications as specified in N.J.A.C. 15:10-8.6(b);

3. Any critical component part of a previously certified electronic voting system fails to meet current ITA qualification standards, when that part(s) is submitted to the ITA for requalification testing, as specified in N.J.A.C. 15:10-8.6; or

4. Any equipment which has been previously certified by the Secretary of State for sale and use in the State, has not been adopted by any county and does not meet the current standards established by this subchapter.

(b) The procedure for rescinding certification shall consist of the following:

1. Complaints, on any of the grounds listed in (a) above, regarding electronic voting systems shall be filed with the Secretary of State.

2. Where there is a rescission of certification, the Secretary of State will refer the complaints to the Office of Administrative Law

for a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

15:10-8.9 Applicability

(a) This subchapter shall apply to all electronic voting systems purchased after the effective date of these rules.

(b) All electronic voting systems, including electronic absentee ballot tabulating systems, purchased prior to the promulgation of these rules shall comply with this subchapter by three years after the effective date of these rules.

(c) Any modifications to any part of an electronic voting system, including electronic absentee ballot tabulating systems, purchased prior to the effective date of these rules shall subject that entire electronic voting system to all qualification testing and certification requirements of this subchapter.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax; Assessors

Proposed Amendments: N.J.A.C. 18:12-4.5 and 18:12A-1.18

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:1-35.1 et seq.; 54:4-26; and 54:50-1 et seq.

Proposal Number: PRN 1993-555.

Submit comments by November 3, 1993 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments will delete assessors from conflict of interest provisions that prohibit a person from having an interest in a revaluation firm engaging in revaluation work within a county where that person is employed as an assessor. The rules will continue to prevent county board of taxation personnel or commissioners from having such an interest.

Social Impact

The proposed amendments will increase the number of revaluation firms eligible to bid for work in the several counties of New Jersey. It will also open opportunities for certified tax assessors in county-wide

property tax assessment, where their local experience and qualifications can be of benefit to property taxpayers.

It should be noted that it is not unusual for tax assessors to have multiple employment. The law allows tax assessors to serve in such capacity in more than one taxing district in the same county. In addition, a tax assessor may also appear as an expert property appraisal witness in a county in which he or she serves as an assessor. In either situation, the public is protected from a conflict of interest under the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. This law, among other things, prohibits municipal officials and employees having an interest in any business which is in substantial conflict with the discharge of their public duties or which might reasonably be expected to impair objectivity or independence of judgment in the exercise of their official duties. There is no outright prohibition of outside employment in the statute.

Economic Impact

The proposed amendments should have a positive economic effect to the extent that it may increase the number of appraisal firms which can bid on revaluation contracts in certain counties. Competition may lower the price of revaluation contracts for local governments.

Regulatory Flexibility Statement

The proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. On the contrary, the proposed amendments would remove a regulatory prohibition, in favor of the general statutory standard governing conflicts of interest, which is of benefit to any assessor who may own or work for a small business engaged in property revaluations for local property tax purposes.

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

18:12-4.5 Conflict of interest

(a) A contract submitted to the Director shall include the following provisions with respect to officers, stockholders and employees of the firm:

1. No commissioner or employee of a county board of taxation within the county [and no assessor of a taxing district within the county] shall have any interest whatsoever, directly or indirectly, as an officer, stockholder, or employee or in any other capacity in the firm.

2. (No change.)

18:12A-1.18 Conflict of interest

No commissioner or employee of a county board of taxation[, and no assessor of a taxing district within a county,] shall have any interest whatsoever, directly or indirectly, as an officer, stockholder, or employee, or in any other capacity, in a revaluation firm engaged in revaluing properties in any taxing district within that county.

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Interpretations

Ordinary Repairs

Adopted Amendment: N.J.A.C. 5:23-2.7

Adopted New Rule: N.J.A.C. 5:23-9.3

Proposed: June 7, 1993 at 25 N.J.R. 2159(a).

Adopted: August 31, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.

Filed: September 7, 1993 as R.1993 d.487, 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: October 4, 1993.

Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from the following individuals and organizations: Alan J. Hazo, President, Society of Professional Energy and Environmental Contractors of New Jersey, Inc.; Ed Kelly, President, New Jersey State Council of Electrical Contractors Associations, Inc.; Andy Cattano, Director, Technical Services, New Jersey Builders Association; Jacque Eaker, New Jersey Apartment Association; William Hillermeier, Fire Protection Subcode Official, Village of Ridgefield Park; Anthony Giampietro, Lighthouse Electrical Construction; Anthony J. Livelli, Chairman, Legislative and Code Committee, New Jersey State League of Master Plumbers, Inc.; and Richard Schumm, R. Schumm Management Associates.

COMMENT: The following statement should be added to this rule: "Ordinary plumbing repairs require a licensed plumbing contractor to perform such work." In recent years, confusion over the terms "permit" and "license" has caused misunderstanding about the need to be licensed in order to perform ordinary repairs.

RESPONSE: N.J.S.A. 52:27D-139 provides that nothing contained in the State Uniform Construction Code Act "shall be deemed to affect, repeal or invalidate ... the regulation or licensing of any trade or profession engaged in construction work." N.J.A.C. 5:23-1.7(b) contains a similar provision regarding the administrative rules. The Department is therefore without authority to establish licensing requirements for persons doing work under the code. Furthermore, "ordinary repairs," by definition, do not require a permit. If no permit is required, the construction code enforcement process is inapplicable and there would be no way to enforce the proposed additional requirement.

COMMENT: N.J.A.C. 5:23-9.3(a)2i should be amended to require a permit for plumbing work done by unlicensed persons in single family dwellings in order to assure the installation of a vacuum breaker, as required by the plumbing subcode, to protect the water supply against contaminants.

RESPONSE: The need for a permit cannot be based on the qualifications of the person doing the work. The proposed new rule is intended to limit permit requirements to those types of work where inspection is essential for purposes of public safety and to allow other work to be performed without a permit. In the case of vacuum breakers, the Department does agree that those performing the work need to know that the device is required and will amend the language to make it clear that, when a hose bib is replaced, an atmospheric vacuum breaker must be installed.

COMMENT: The refinishing of plumbing fixtures could be considered to be "ordinary repairs," but "relining" of fixtures carries no clear definition. The rules should include a definition of "relining" and make clear how the term is to be applied.

RESPONSE: The term "relining" is commonly used to identify the process by which a premolded lining is placed on the interior of an existing fixture (usually a bathtub). The Department determined that this process involves considerably more work than refinishing.

COMMENT: N.J.A.C. 5:23-9.3(a)iii should be amended to include the statement that "the use of an approved anti-siphon ballcock is required, as cited in the National Standard Plumbing Code/1993, Section 10.4."

RESPONSE: The Department agrees and has made this change.

COMMENT: N.J.A.C. 5:23-9.3(a)2.vi should provide that replacement of a faucet should not require a permit if done by a licensed plumber, but should require one if done by an unlicensed person in a single-family home.

RESPONSE: Replacement of faucets is exempt from permit requirements regardless of who does the work. The Department is not aware of any threat to health or safety resulting from this exemption.

COMMENT: N.J.A.C. 5:23-9.3(a)2.vii should be amended to clarify the use of the term "valves," since there are many different types of valves.

RESPONSE: The Department is not aware that any particular type of valve has caused a problem. The commenter does not make clear what type of valve it is that his organization objects to in this context.

COMMENT: Permits should not be required for the replacement of any traps. There is no potential hazard as a result of replacement of traps in single-family dwellings; in all other types of buildings, public health and safety is protected by the requirement that a licensed master plumber do the work.

RESPONSE: As previously stated, these rules cannot distinguish between work done by a licensed master plumber and work done by someone else. The requirement that replacement of traps on culinary sinks require a permit is based upon the need for such sinks to have an indirect waste drain. The possibility of back-up of sewage into a food preparation sink at a food handling establishment represents enough of a hazard to justify requiring a permit.

COMMENT: Replacement of a water closet or lavatory or kitchen sink in a single family dwelling, as well as other seemingly simple jobs, should require permits if performed by unlicensed persons, but not if performed by licensed plumbers.

RESPONSE: As previously stated, no distinction can be made under these rules on the basis of who does the work. The listed items include elements that are clearly ordinary repairs, such as removal of a water closet, which is necessary in order to allow a line to be snaked, just as it is in order to replace the fixture.

COMMENT: Repair to air conditioning equipment, which is now to be classified as "ordinary repairs," should include replacement of package systems by new package systems of less or equal capacity and, if installed on a roof, of less or equal weight.

RESPONSE: The need to ensure that the existing conductors are sufficient to supply the new equipment is a significant enough issue to require a permit because of the potential fire hazard.

COMMENT: If interior finishes and wall papering are exempt from permit requirements, how will it be determined if the requirements of section 803.1.1 of the building subcode are met? Replacement of fire alarm heads with like devices and repair or replacement of components of fire alarm systems should only be allowed after notice to the fire official or the fire department because of the risk of false alarms. N.J.A.C. 5:23-9.3(a)5iii should be amended to exclude work where fire dampers are involved, due to the potential for false alarms and improper reinstallation of dampers.

RESPONSE: These items have been part of the Department's list of ordinary repairs since 1981. The Department has not received any evidence that they create any problems that would justify their deletion from that list. The building and fire subcode committees of the Code Advisory Board decided in favor of keeping them in the category of ordinary repairs because they do not pose any serious structural, egress, fire or life safety problem.

COMMENT: There should be no distinction between one- or two-family houses and multiple dwellings with regard to the treatment of wall coverages, carpeting and plumbing fixtures.

RESPONSE: In one- and two-family homes, the consequences of any work that is done are limited. This is in contrast to multiple dwellings, in which many families may be affected by any problem that may be created.

COMMENT: Paneling should be considered an "ordinary repair."

RESPONSE: Paneling is not included because it is necessary that panels be of a thickness and a material that conforms to the code and that it be securely attached.

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COMMENT: Window replacement should be an "ordinary repair" so long as it fits the same opening and the type and operation comply with the fire safety code (N.J.A.C. 5:18-4).

RESPONSE: N.J.A.C. 5:23-9.3(a)1v has been amended by deletion of the last sentence and inclusion of a provision allowing installation and replacement of means of egress and emergency escape windows and doors in the same opening without altering the dimensions or framing of the original opening or reducing the required height, width or net clear opening of the previous window or door assembly.

COMMENT: Repair and replacement of hot water heaters should be classified as "ordinary repairs" so long as no piping rearrangement is required. This work can be done by building superintendents and sometimes has to be done on an emergency basis when it is not possible to obtain a permit.

RESPONSE: Replacement of a hot water heater is "minor work" that can proceed before the issuance of a permit so long as notice is given to the enforcing agency before the work begins. In addition, the Uniform Construction Code contains a provision for emergency work at N.J.A.C. 5:23-2.14(b)3 that allows work to take place without a permit and without notification as long as a permit is obtained within 72 hours after the work is completed. Whether or not persons other than licensed plumbers can do this sort of work is not a matter to be determined under the construction code, for reasons previously stated.

COMMENT: The rules should provide clarification as to the status of: replacement of stoves, dishwashers and clothes washers; ducting and replacement of clothes dryers and oven hoods; installation, repair and replacement of door locks and other mechanical security systems; and replacement of kitchen cabinets and counter tops, bathroom vanities, hampers and medicine cabinets.

RESPONSE: The replacement of dishwashers and clothes washers is within the scope of "ordinary repairs." The replacement of kitchen range hoods in single family dwellings is also within the scope of ordinary repairs. The replacement of stoves and clothes dryers is regulated under the mechanical subcode and requires a construction permit for fire safety reasons. Locking systems in a building are part of the means of egress and are regulated by the building and fire subcodes; a construction permit is therefore required. Installation of kitchen cabinets and similar fixtures are "ordinary repairs" unless they involve relocation of plumbing fixtures or electrical outlets.

COMMENT: N.J.A.C. 5:23-9.3(a)1vi should be amended to use an example other than a railing, since handrails are subject to structural loading requirements in section 1615.8 of the building subcode.

RESPONSE: The word "railing" has been replaced by "a partition railing or a kitchen cabinet."

COMMENT: The provision concerning screens (N.J.A.C. 5:23-9.3(a)1xiii) should be incorporated into the provision concerning windows and doors (N.J.A.C. 5:23-9.3(a)1v).

RESPONSE: This would not be appropriate because replacement of screens may involve porches or covered patios and is not limited to windows and doors.

COMMENT: "Ordinary repairs" should include replacement of receptacles in locations where ground-fault circuit interrupter (GFCI) protection is required in the electrical subcode. This is so because this is a simple repair and, where the circuit is ungrounded, it is safer than the replacement of an ordinary receptacle. If this work is not an "ordinary repair" and a minimum permit fee must be paid, consumers will be discouraged from protecting themselves with GFCI because of the inordinate cost of permits.

RESPONSE: The Department believes that the public interest is best served by assuring thorough inspection of these life safety devices. This requirement is necessary to comply with section 210-7(d) of the 1993 edition of the electrical subcode and to address serious problems of reversal of "line" and "load" connections and "reversed polarity" at a GFCI receptacle when installed by an untrained person. The costs incurred for inspection are therefore justified.

COMMENT: If there are no permit requirements for replacement of water closets, how is the requirement to use 1.6 gallon flush toilets to be enforced? Similarly, how are the requirements concerning anti-scald shower valves, backflow devices on faucets with flexible spray hoses and lead-free solder and flux to be enforced?

RESPONSE: The sale of nonconforming toilets purchased by the distributor on or after July 1, 1991 is a violation of the Uniform Construction Code, as is the installation of nonconforming toilets manufactured on or after that date. New Federal requirements will require use of 1.6 gallon flush toilets in residences. This will prevent importation of noncon-

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forming toilets from other states. N.J.A.C. 5:23-9.3(a)2ix has been clarified accordingly. Anti-scald fixtures are not necessarily required in single-family dwellings, in accordance with section 10.50.6(c) of the plumbing subcode. The addition of kitchen faucets has long been regarded as an "ordinary repair" without any evidence of any problem. As far as solder and flux is concerned, the replacement of valves has always been considered an ordinary repair without any apparent detriment to public health and safety. The newly proposed items, changing of the fixtures themselves, has nothing to do with the solder and flux issue. In none of these cases does the Department think it necessary to require a permit despite the possibility of the violations mentioned.

COMMENT: Multiple dwellings of 10 or fewer units should be in the same category as one- and two-family houses for purposes of determining whether or not work is "ordinary repairs."

RESPONSE: Work that is done in one- and two-family dwellings has a minimal impact on other people. While work in smaller multiple dwellings obviously affects fewer people than work in larger multiple dwellings, the Department considers it more appropriate to use the well-established distinction between one- or two-unit dwellings, on one hand, and multiple dwellings of three or more units, on the other, rather than arbitrarily establishing some other demarcation.

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

5:23-2.7 Ordinary repairs

Ordinary repairs to structures may be made without application or notice to the construction official, but such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements, or any work affecting structural or fire safety, or any work which will increase the nonconformity of any existing building or structure with the requirements of the regulations; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

5:23-9.3 Interpretation: ordinary repairs

(a) The following items are ordinary repairs and shall be treated as such by every enforcing agency. No permits for, inspections of, or notice to the enforcing agency of ordinary repairs shall be required. This is not an all-inclusive listing of ordinary repairs.

1. Ordinary building repairs include:
 - i. Exterior and interior painting;
 - ii. Installation, repair or replacement of any interior finishes of less than 25 percent of the wall area in any given room, in a one or two family dwelling. This shall include plastering and drywall installation;
 - (1) Vinyl wall covering of any amount is an ordinary repair;
 - (2) Paneling shall not be considered an ordinary repair;
 - iii. Wall papering at any location;
 - iv. The replacement of glass in any window or door. However, the replacement glass shall be of a type and quality that complies with the minimum requirements of the code;
 - v. The installation and replacement of any window or door, including garage doors, in the same opening without altering the dimensions or framing of the original opening. This shall include storm windows and storm doors. *[Any new window or door shall be of the same type and operation as the existing window or door and conform to the requirements of the code regarding means of egress and emergency escape]* ***The installation and replacement of means of egress and emergency escape windows and doors may be made in the same opening without altering the dimensions or framing of the original opening, and shall not reduce the required height, width or net clear opening of the previous window or door assembly*;**
 - vi. The repair of any non-structural member such as a *[railing]* ***partition railing or kitchen cabinet*;**
 - vii. The repair or replacement of any interior or exterior trim, decoration or moldings;

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viii. The replacement or installation of any flooring material, except carpeting, with a new material. However, installation of carpeting in one and two family dwellings will be permitted under ordinary repairs;

ix. The repair of existing roofing material not exceeding 25 percent of the total roof area within any 12 month period;

x. The repair of existing siding with like material not exceeding 25 percent of the total building exterior wall area within any 12 month period;

xi. The repair or replacement of any part of a porch or stoop which does not structurally support a roof above;

xii. The replacement or installation of screens;

xiii. The installation of any roll or batt insulation when installed adjacent to or not more than one and a half inches from an interior finish; and

xiv. Replacement of exterior rain water gutters and leaders.

2. Ordinary plumbing repairs include:

i. Replacement of hose bib valves in single family dwellings*. **Replacement hose bib valves shall be provided with an approved atmospheric vacuum breaker*;**

ii. Refinishing of existing fixtures. Relining of fixtures shall not be considered to be an ordinary repair;

iii. Replacement of ball cocks*. **Replacement ball cocks must be an approved anti-siphon type*;**

iv. Repair of leaks involving the replacement of piping between two adjacent joints only;

v. Clearance of stoppages;

vi. Replacements of faucets or working parts of faucets;

vii. Replacements of working parts of valves;

viii. Replacement of traps except for traps on culinary sinks in food handling establishments; *[and]*

ix. Replacement of a water closet or lavatory or kitchen sink in a single family dwelling with an approved similar fixture provided that no change in the piping arrangement is made. ***Replacement water closets bearing a date stamp of July 1, 1991 or later must use an average of 1.6 gallons or less of water per flushing cycle; and**

x. **Replacement of domestic clothes washers and dishwashers.***

3. Ordinary electrical repairs include:

i. The replacement of any receptacle, switch, or lighting fixture rated at 20 amps or less and operating at less than 150 volts to ground with a like or similar item. Replacement of receptacles in locations where ground-fault circuit interrupter protection is required in the electrical subcode, shall not be considered ordinary electrical repairs;

ii. Repairs to any installed electrically operated equipment such as doorbells, communication systems, and any motor operated device. Provided, however, that if fire protection systems are interrupted for repairs the fire official shall be notified in accordance with the building subcode; *[and]*

iii. Installation of communications wiring as covered by article 800 of the electrical subcode in one and two family dwellings, or the alteration/rearrangement of existing communications wiring in other occupancies provided however that the rearrangement does not involve penetration of a fire rated assembly and is not in a hazardous location as defined in chapter 5 of the electrical subcode*.[.]* **and**

iv. Replacement of domestic dishwashers; and

v. Replacement of kitchen range hoods in single family dwellings.*

4. Ordinary fire protection repairs include:

i. The replacement of any sprinkler or smoke detector or heat detector head with a like device; and

ii. The repair or replacement of any component of a fire alarm or smoke and heat detection equipment.

5. Ordinary heating ventilation and air conditioning repairs shall include:

i. Replacement of motors, pumps and fans of the same capacity;

ii. Repair and replacement of heating, supply and return piping and radiation elements, which does not require rearrangement of the piping system;

iii. Repair and replacement of duct work;

iv. Repair of air conditioning equipment and systems; and
v. Repair or replacement of control devices for heating and air conditioning equipment*.[.]* **and**

vi. Replacement of kitchen range hoods in single family dwellings.*

6. Ordinary elevator repairs include:

i. The following work on elevator brakes:

(1) Installation of new linings;

(2) Replacement of brake switches, brake stand pivot bushings, and bearings or the reaming out and use of oversized pins. Replacement or repair of brake magnets, magnet coils and/or core sleeves;

(3) Renewal of phase splitting coils; and

(4) Re-babbiting of brake pin holes (gearless), and realigning of brake stands to pulleys.

ii. The following controller/selector repairs:

(1) Installation of overload relays and potential switches, and installation or replacement of reverse phase relays;

(2) Replacement of damaged resistance tubes, grids, broken controller panel sections, main power or brake rectifiers, power and light transformers, and microprocessor printed circuit boards. Replacement or reconditioning of dash pots and retarders. Replacement of a controller with a like or with the state of the art controller when only those features which are available on the existing controller will be made functional;

(3) Renewal of switch bases, armatures, hinge pins, coils, contacts and shunt leads; and

(4) Adjustment of controller to original design specifications.

iii. The following work on motor generators:

(1) Installation of four stem brush rigging on exciter, installation or renewal of bearing oil gauges, and renewal of sleeve or ball bearings;

(2) Replacement of generator armatures, commutators, commutator brushes, and turning down and undercutting of commutators;

(3) Rewinding of generator armatures, stators and field controls;

(4) Removal for testing on a work bench, reinsulating, banding and reinstallation of motor generators; and

(5) Repair of solid state drives and adjustments of generator compounding.

iv. The following work on hoist motors:

(1) Installation or renewal of bearing oil gauges, renewal of sleeve or ball bearings, and re-babbiting of sleeve bearings (gearless);

(2) Replacement of motor armatures, rotors, motor collector rings, commutators, commutator brushes, and turning down and undercutting of commutators;

(3) Rewinding of stators, armatures, and field coils; and

(4) Removal for testing on a work bench, reinsulation, banding and reinstallation of hoist motors and realignment of motors to worm shafts.

v. The following work on machines:

(1) Installation of new demountable drive sheave rims, new drive shafts, new integral drive sheaves, split couplings;

(2) Replacement of worms, gears, worm shaft housings, thrust bearings, thrust housings, external ring gears and pinions, machine drums, solid drive sheaves with demountable drive sheaves, and sheave bearing. Replacement or repair of stop motion switches, slack cable switches, replacement of drive sheave linings. Regrooving of drive sheaves;

(3) Re-babbiting of main bearings, external gears and bearings, and worm shaft housings;

(4) Renewal of sleeve bearings, drum buffers, and drum shafts;

(5) Re-securing of loose brake pulleys and realignment of brake pulleys, with motor gear shaft; and

(6) Removal of bearing shims.

vi. The following work on hoist ropes, compensating ropes and compensating chains:

(1) Replacement or re-socketing of hoist ropes and replacement of compensating ropes or chains, governor ropes, and hitches; and

(2) Shortening of hoist ropes due to a rope stretch.

vii. The following work on governors:

ADOPTIONS

(1) Re-calibration, sealing, and reconditioning of governors, or replacement of governors with like equipment; and

(2) Replacement or reconditioning of governor rope tension sheaves.

viii. The following work on overhead, deflector, car and counterweight sheaves:

(1) Replacement or repair of sheaves, sheave bearings and sheave shafts; and

(2) Re-babbiting of sheave bearings.

ix. The following work on hoistways:

(1) Replacement of traveling cables and other hoistway wiring;

(2) Repair of counterweights, hoistway switches, hydraulic pistons, oil lines in the pit, and repacking of packing glands; and

(3) Repair or replacement of hoistway door equipment, rollers relating cables, gibs, hall buttons, lanterns, position indicator stations, and all existing related equipment, selector tapes, cables, dust covers, toe guards and hoistway fascia, and repair or replacement of all existing pit equipment with like equipment.

x. The following work on rails and guides:

(1) Realignment or replacement of main or counterweight rail sections with like products; and

(2) Repair or replacement of guide shoe liners or car and counterweight guides with like product.

xi. The following work on cabs:

(1) Installation or replacement of main and auxiliary car operating panels, emergency lighting, communication devices, door protective and reopening devices, car position indicators, and in-car lanterns;

(2) Repair or replacement of operating station on top of cars, door operating devices, motors, linkages, hangers, etc., hoistway door drive mechanisms, clutches, etc., side emergency exit latching devices and electrical switches, floor leveling and selector drive devices, terminal slow down and limiting devices, load weighing devices (on top of car and under car isolation), keyless entry and security devices, top of car intrusion devices, closed-circuit TV surveillance devices, lighting fixtures in the car on top of the car and under the car; and

(3) Replacement of ceilings with code approved materials, and of door saddles, cab flooring, walls and panels with materials equivalent to those being replaced in respect to weight and fire resistance.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

WATER SUPPLY ELEMENT

Allocation of Water Supply Costs for Emergency Water Projects

Readoption with Amendments: N.J.A.C. 7:1D

Proposed: June 21, 1993 at 25 N.J.R. 2635(a).

Adopted: September 10, 1993 by Jeanne M. Fox, Acting

Commissioner, Department of Environmental Protection and Energy.

Filed: September 13, 1993 as R.1993 d.497, **without change**.

Authority: P.L. 1981, c.28, and P.L. 1981, c.29.

DEPE Docket Number: 35-93-05.

Effective Date: September 13, 1993, Readoption;

October 4, 1993, Amendments.

Expiration Date: September 13, 1998.

Summary of Public Comments and Agency Responses:

Notice of the proposed readoption with amendments was published on June 21, 1993, in the New Jersey Register at 25 N.J.R. 2635(a). In addition, secondary notice was provided through a direct mailing to affected water supply purveyors on June 18, 1993, and as published on June 19, 1993, in the Newark Star-Ledger. All notices invited written comments to be submitted by July 21, 1993.

No comments were received.

ENVIRONMENTAL PROTECTION

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:1D.

Full text of the adopted amendments follows:

7:1D-1.2 Construction

This chapter shall be liberally construed to permit the Department of Environmental Protection and Energy to discharge its statutory functions, and to effectuate the payback provision of P.L. 1981, c.28 and P.L. 1981, c.29.

7:1D-1.5 Definitions

...
"Department" means the Department of Environmental Protection and Energy.
...

7:1D-1.8 Payback period and annual accounting

(a) (No change.)

(b) The payback period shall commence upon there being in place and in effect a rate permitting each purveyor to recover the full amount of said charge through such rate.

1. (No change.)

2. Within 60 days after the effective date of this chapter, the purveyors shall make appropriate application to the Board of Regulatory Commissioners for inclusion of the reimbursement costs in their respective rate schedules.

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

7:1D-1.9 Rate treatment

For rates subject to the jurisdiction of the Board of Regulatory Commissioners, the costs of the reimbursement shall be recovered from customers in proportion to their water usage. Approval of said rates by the Board of Regulatory Commissioners shall be sought by the applicable purveyors in the manner prescribed by regulation and statute. (See N.J.A.C. 14:1-5.12 and N.J.S.A. 48:2-21.)

(b)

ENVIRONMENTAL REGULATION

Notice of Administrative Correction

Waste Management Rules

Public Access to Information and Requirements for Department Determination of Confidentiality; Hazardous Waste Landfills; Short Term Permits

N.J.A.C. 7:26-1.9, 11.4 and 12.9

Take notice that the Department of Environmental Protection and Energy has discovered the errors in the current text of N.J.A.C. 7:26-1.9, 11.4 and 12.9.

At N.J.A.C. 7:26-1.9, the concluding reference to N.J.A.C. 7:14A-17 should instead be to N.J.A.C. 7:26-17 (see 19 N.J.R. 1869(a) and 20 N.J.R. 273(a)).

At N.J.A.C. 7:26-11.4(a)8, subparagraphs (a)8i and ii were deleted effective November 18, 1991 (see 22 N.J.R. 3186(a) and 23 N.J.R. 3450(a)), but inadvertently not deleted from the Code.

At N.J.A.C. 7:26-12.9(b)6, the reference to N.J.A.C. 7:26-12.10(b)5 was proposed and adopted as a reference to N.J.A.C. 7:26-12.9(b)5 (see 23 N.J.R. 2453(b) and 24 N.J.R. 788(a)), and is corrected herein as a reference to "(b)5 above."

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:26-1.9 Public access to information and requirements for Department determination of confidentiality

Any confidential information obtained or used in the administration of the State hazardous waste program, as provided in Section 3006 of "The Resource Conservation and Recovery Act of 1976", 42 U.S.C. 3251 et seq., and amendments thereto, shall be treated in accordance with N.J.A.C. [7:14A-17] **7:26-17**.

HIGHER EDUCATION

ADOPTIONS

7:26-11.4 Hazardous waste landfills

(a) Operational standards for hazardous waste landfills include the following:

1.-7. (No change.)

8. Bulk or non-containerized liquid waste or waste containing free liquids, whether or not absorbents have been added, shall not be placed in a hazardous waste landfill;

[i. The hazardous waste landfill has a liner which is chemically and physically resistant to the added liquid and a functioning leachate collection and removal system with a capacity sufficient to remove all leachate produced; or

ii. Before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically, so that free liquids are no longer present;]

9.-13. (No change.)

(b)-(f) (No change.)

7:26-12.9 Short term permits

(a) (No change.)

(b) For the purpose of determining feasibility of compliance with the incinerator performance standard of N.J.A.C. 7:26-10.7(d) and of determining adequate incinerator operating conditions under N.J.A.C. 7:26-10.7(f) the Department may issue a trial burn permit to a facility to allow short term operation of a hazardous waste incinerator subject to (b)1 through 8 below.

1.-5. (No change.)

6. The applicant shall submit to the Department a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and the results of all determinations required in [N.J.A.C. 7:26-12.10] (b)5 **above**. To the extent possible, this submission shall be made 30 days after the completion of the trial burn or sooner if the Department so requests.

7.-8. (No change.)

(c) (No change.)

participating in the EOF Program. Degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration. An eligible student must exhibit evidence for potential success in college, but:

i.-iv. (No change.)

5. As a graduate or professional school student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to a graduate degree or certificate at an institution of collegiate grade in New Jersey approved or licensed by the State Board of Higher Education and participating in the EOF Program, provided that the student has not already received a graduate or professional degree at the same level of study that he or she is applying for. Graduate EOF degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration.

(d)-(e) (No change.)

9:11-1.2 Student residency

(a) (No change.)

(b) A dependent student as defined in N.J.A.C. 9:11-1.4 is presumed to be a legal resident of the state which his or her parent(s) or guardian(s) are residents. A dependent student whose parent(s) or guardian(s) are not legal residents of New Jersey is presumed to be in the state of the temporary purpose of obtaining an education. Any dependent student as defined in N.J.A.C. 9:11-1.4, who is domiciled in this state and who is enrolled as an EOF student in an institution of higher education in New Jersey, shall continue to be eligible for participation in the EOF Program 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. The student's eligibility continues only if the student received a State grant or scholarship for at least one semester before the parent(s)' or guardian(s)' change of domicile to another state.

9:11-1.4 Dependent/independent student defined

(a) (No change.)

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

1.-6. (No change.)

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

i.-ii. (No change.)

iii. (No change in text.)

iv. (No change in text.)

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

9:11-1.6 Verification of financial eligibility

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

(c) Students who have been found eligible to receive student assistance must provide an authorization to the Department of Higher Education, Office of Student Assistance, which permits the release of Internal Revenue Service and/or State income tax returns for verification purposes. Financial data provided on a financial aid form approved by the EOF Board and Student Assistance Board may be verified by the Department and/or institution through the comparison of information reported on income tax returns and other documentation. Discrepancies will require the reevaluation of the student's eligibility. Students as well as institutions will be notified if an adjustment in the value of aid is required.

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

9:11-1.10 Academic progress

(a) (No change.)

(b) Eligibility criteria for E.O.F. Article III Student Grants is as follows:

1.-2. (No change.)

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Adopted Amendments: N.J.A.C. 9:11-1.1, 1.2, 1.4, 1.6, 1.10, 1.22 and 1.23

Proposed: April 19, 1993 at 25 N.J.R. 1663(a).

Adopted: July 14, 1993 by the Educational Opportunity Fund

Board of Directors, Judith Gambria, Chairperson.

Filed: August 31, 1993 as R.1993 d.480, **without change**.

Authority: N.J.S.A. 18A:71-33.

Effective Date: October 4, 1993.

Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

9:11-1.1 Student eligibility

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

(c) To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1. (No change.)

2. Meets the financial criteria established in N.J.A.C. 9:11-1.5 and 1.6.

3. (No change.)

4. As an undergraduate student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to an undergraduate degree or certificate in an eligible institution as defined in N.J.S.A. 18A:71-47 of collegiate grade in New Jersey approved or licensed by the State Board of Higher Education and

ADOPTIONS

3. Students and institutions shall have the right to appeal the denial of State financial assistance based upon these guidelines through the established appeal procedures in N.J.A.C. 9:11-1.21. The Executive Director of E.O.F. will consider individual cases and shall have the authority to make such exceptions as unusual circumstances may warrant.

(c) (No change.)

9:11-1.22 Refunds and repayments of disbursements made to students

(a) If a refund is due to a student under the institution's refund policy and the student received State financial assistance under any State student financial assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the Treasurer, State of New Jersey, through the Office of Student Assistance:

$$\frac{\text{amount of State financial assistance (minus work earnings) awarded for the payment period}}{\text{total amount of financial aid (minus work earnings) awarded for the payment period}}$$

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

(d) The above formula should be applied if a full-time student reduces his or her academic course load to less than full-time, or a part-time student reduces the number of credits for which he or she is enrolled prior to the end of the institutional refund period. However, if the student reduces his or her academic course load to less than full-time, or reduces the number of credits for which the student is enrolled on less than a full-time basis, after the end of the institutional refund period, a refund to the State is not required.

(e) If a combination of State student funds has been packaged for the student and a refund is due the State, a prorated amount is applied to each of the State programs in the student's State financial assistance package.

(f) If a cash disbursement has been made by an institution for non-institutional costs from a State financial assistance program, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Department of Higher Education of the amount owed for each State financial assistance program. Non-institutional costs may include, but are not limited to, room and board, books and supplies, transportation, and miscellaneous expenses.

(g) (No change in text.)

9:11-1.23 Part-time students

(a) Eligibility for EOF grants shall be extended on an annual basis to part-time students upon the approval of the Board of Directors of EOF and the Board of Higher Education depending on the level of appropriated funds.

(b)-(g) (No change.)

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Adopted Amendments: N.J.A.C. 9:11-1.5

Proposed: May 17, 1993 at 25 N.J.R. 1946(a).

Adopted: July 14, 1993 by the Educational Opportunity Fund

Board of Directors, Judith Gambria, Chairperson.

Filed: August 31, 1993 as R.1993 d.479, **without change.**

Authority: N.J.S.A. 18A:71-33.

Effective Date: October 4, 1993.

Expiration Date: April 17, 1994.

HUMAN SERVICES

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	\$15,510
3	18,030
4	20,550
5	23,070
6	25,590
7	28,110

2. For each additional member of the household, an allowance of \$2,520 shall be added to this amount in order to determine eligibility for EOF for the 1993-94 Academic Year. This allowance shall be adjusted annually to reflect changes in the Income Protection 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 Income Protection Allowance.

3. The EOF Executive Director shall annually inform institutions of adjustments to the Income Eligibility Scale, in accordance with the Income Protection Allowance published by the College Scholarship Service.

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

(d) An independent student is financially eligible for an EOF 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:

- \$10,520 family size (including student) 1;
- \$13,100 family size (including spouse) 2;
- \$16,180 family size (including spouse) 3;
- \$19,090 family size (including spouse) 4;
- \$22,320 family size (including spouse) 5;
- Add \$2,520 for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Income Protection Allowance as published by the College Scholarship Service.

7. (No change in text.)

HUMAN SERVICES

(b)

DIVISION OF FAMILY DEVELOPMENT

Notice of Administrative Correction

Assistance Standards Handbook

Exempt Resources

N.J.A.C. 10:82-3.2

Take notice that the Division of Family Development has discovered an error in the current text of N.J.A.C. 10:82-3.2(b)6vi(2). The conjunction "and" at the end of the subparagraph should be "or" (see 19 N.J.R. 709(a) and 1559(c)). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

10:82-3.2 Exempt resources

(a) (No change.)

- (b) The exempt resources are as follows:
 - 1.-5. (No change.)
 - 6. Resources designated for special purposes as follows:
 - i.-v. (No change.)
 - vi. Supplemental aid by other agencies or organizations, whether public or private, provided that:
 - (1) (No change.)
 - (2) Such aid is for a special purpose not within the function of the public assistance agency (for example, vocational rehabilitation); [and] or
 - (3) (No change.)
 - vii.-viii. (No change.)
 - 7.-11. (No change.)

(a)

**DIVISION OF YOUTH AND FAMILY SERVICES
Social Services Program for Individuals and Families
Personal Needs Allowance: Residential Health Care
Facilities and Boarding Homes**

Adopted Amendment: N.J.A.C. 10:123-3.4
 Proposed: June 21, 1993 at 25 N.J.R. 2684(a).
 Adopted: September 7, 1993 by William Waldman,
 Commissioner, Department of Human Services.
 Filed: September 10, 1993 as R.1993 d.489, **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. 44:7-87.
 Effective Date: October 4, 1993.
 Expiration Date: July 13, 1995.

Summary of Public Comments and Agency Responses:

The proposed amendment was published on June 21, 1993. During the comment period, which closed on July 20, 1993, one comment was submitted by the New Jersey Association of Health Care Facilities:
 COMMENT: The commenter correctly points out that the Division has been prorating the full annual PNA amount so that residents of residential health care facilities and boarding houses receive their full annual increase in the months remaining after the increase has been put into effect. As a result, the commenter feels that language used in the proposed formula for calculating PNA increases should explicitly state that the current **annualized** base PNA is used in calculating future increases.

RESPONSE: Since it was the intent of the proposed amendment and is consistent with past practice for the annualized base PNA to be used in calculating future increases, the Division agrees with the comment. The suggested revision does not alter the content of the amendment; therefore, the recommended modification has been made.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*):

10:123-3.4 Amount

(a) The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income (SSI) recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least \$66.50 per month, set according to (b) below, and noticed in the New Jersey Register and otherwise publicized, in accordance with (c) below. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

(b) The personal needs allowance shall be adjusted annually based on the following calculations: the Federal portion of the current total SSI rate multiplied by the Federal Cost of Living Adjustment (COLA) to be applied to the succeeding year equals the actual dollar increase (rounded to the nearest dollar); the actual dollar increase divided by the current total SSI rate equals the adjusted COLA for the succeeding year; the adjusted COLA multiplied by the current

annualized base PNA equals the monthly PNA increase for the succeeding year. For the purposes of this rule, the COLA means the cost of living adjustment published annually in the Federal Register, in accordance with 42 U.S.C. 415i and 1382f.

(c) The personal needs allowance for each calendar year shall be noticed in the New Jersey Register on or about January 1 of that year, and shall be considered the current personal needs allowance for that calendar year. Additional notice shall be provided in at least three newspapers of general circulation in the State of New Jersey before January 1 of that year, and by other means reasonably calculated to inform those persons most likely to be affected by or interested in the personal needs allowance increase for that calendar year.

(b)

**DIVISION OF YOUTH AND FAMILY SERVICES
Case Goals**

Adopted New Rules: N.J.A.C. 10:133C-4

Proposed: May 17, 1993 at 25 N.J.R. 1947(a).
 Adopted: September 7, 1993 by William Waldman,
 Commissioner, Department of Human Services.
 Filed: September 10, 1993 as R.1993 d.490, **without change**.
 Authority: N.J.S.A. 30:4C-4(h).
 Effective Date: October 4, 1993.
 Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

Comments on the proposed new rule were submitted by Nancy Goldhill of Legal Services of New Jersey.

COMMENT: At N.J.A.C. 10:133C-4.3, everything beyond the second sentence should be deleted because it is addressed in N.J.A.C. 10:133C-4.5, or it should be revised to state that the priority goal is to maintain families together.

RESPONSE: While the Division's case goal for most children is to maintain a child at home with his or her family, it would be inaccurate to indicate in rules that this is automatically the preferred case goal. It is not the most appropriate case goal for every child.

COMMENT: At N.J.A.C. 10:133C-4.5(a), point 1 should be removed and replaced by the following two points:

- "1. Whenever possible, keeping families together in their own homes;
- 2. Where placement is necessary, placing the child in the least restrictive setting to afford access to family members and facilitate reunification."

Point 2 should be renumbered as 3 and the phrase "Where reunification cannot be effectuated" added to the beginning of the sentence.

RESPONSE: In point 1, the suggested revision changes the Division's focus from keeping the child safe in his or her home (with whomever the people in the home are) to having the child live with his or her family, safe or not. The Division believes that the issue of the child's safety is of paramount importance in selecting a case goal. The Division must retain that emphasis.

The suggested point 2 is related to selecting the most appropriate placement setting, rather than selecting the most appropriate case goal.

For Legal Services' renumbered point 3, the Division will not adopt the suggested phrase, as it unnecessarily narrows the scope of the criterion. The Division sees this criterion as crucial in deciding which of the case goals listed in N.J.A.C. 10:133C-4.5(c)2-7 to select.

COMMENT: At N.J.A.C. 10:133C-4.5(c), point 1 should be changed to family preservation and point 2 should be changed to family reunification.

RESPONSE: These rules are a product of the Operations Policy to Rules (OPTR) project. The OPTR group, which consists of approximately 90 members, thoroughly reviewed and discussed the names for the case goals. The OPTR group selected the published names as the most appropriate to express the concept of each case goal. The OPTR Group specifically rejected the term "family reunification." As no other member of the OPTR Group or the general public expressed a desire to change the names of the case goals, the Division will keep faith with the preferences of the OPTR Group and adopt the names as published.

Full text of the adoption follows:

SUBCHAPTER 4. CASE GOALS

10:133C-4.1 Authority

Pursuant to N.J.S.A. 30:4C-4(h), the Division of Youth and Family Services, Department of Human Services, shall establish reasonable rules for the purpose of carrying into effect the meaning of the statute.

10:133C-4.2 Scope

The provisions of this subchapter shall apply to each child receiving services, each family member receiving services, and to the Division.

10:133C-4.3 Purpose of a case goal

The purpose of a case goal is to define and guide Division activities in its provision of services to each child and each family member. The case goal guides the Division's activities in the achievement of the child's permanent living arrangement. Maintenance in his or her own home, or placement in the least restrictive setting that affords access to family members, is usually the most appropriate goal that meets the needs of the child and is the most permanent.

10:133C-4.4 Definitions

The definitions in N.J.A.C. 10:133-1.3 are incorporated herein by reference.

10:133C-4.5 Selecting a case goal

(a) The Division representative shall, in consultation with his or her supervisor and each family member receiving services, select a case goal. The guiding principles in selecting the case goal are:

1. Maintaining the child safely in his or her own home; or
2. Selecting the least restrictive, most appropriate goal that shall meet the needs of the child and shall lead to the most permanent living arrangement.

(b) The parent and the child shall be advised of the case goal and shall be provided with appropriate information about the case goal and how it may affect the relationship between the child and the parent.

(c) At the time of initial service delivery and in keeping with (a) above, one of the following case goals shall be selected for each child, and one for each family member receiving services:

1. Maintenance in own home;
2. Return home;
3. Permanency with a relative or family friend;
4. Adoption;
5. Long-term foster care custody;
6. Independent living; or
7. Other long-term, specialized care.

10:133C-4.6 Review of the case goal

(a) The Division shall review the case goal of each child and each family member receiving services at regularly scheduled intervals, but no less frequently than once every six months, and at the request of a family member, and when major changes in family circumstances occur which might affect the case goal. The purpose of the review is to determine:

1. Whether the case goal remains appropriate and, if not, to identify a more appropriate one;
2. The progress made toward achieving the case goal;
3. What, if any, barriers exist that impede achieving the case goal; and
4. Whether the case plan for achieving the case goal is appropriate.

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Discipline

Inmate Prohibited Act; Sexual Assault

Adopted Amendment: N.J.A.C. 10A:4-4.1

Proposed: August 2, 1993 at 25 N.J.R. 3416(a).

Adopted: September 7, 1993 by William H. Fauver, Commissioner, Department of Corrections.

Filed: September 10, 1993 as R.1993 d.488, **without change.**

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

Effective Date: October 4, 1993.

Expiration Date: May 7, 1996.

Summary of Public Comments and Agency Responses:

COMMENT: Commenter Mary C. Williams, Edna Mahan Correctional Facility for Women, stated her agreement with the proposal.

Full text of the adoption follows:

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts).

*.001-.008 (No change.)

*.050 Sexual Assault

.051-*.803 (No change.)

(b) (No change.)

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Driver Control Service

Point Assessment for Operating or Riding Motorcycle and or Motorized Bicycle without Protective Helmet

Adopted Amendment: N.J.A.C. 13:19-10.1

Proposed: June 21, 1993 at 25 N.J.R. 2646(a).

Adopted: August 26, 1993 by Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Filed: September 3, 1993 as R.1993 d.486, **without change.**

Authority: N.J.S.A. 39:3-76.7, 39:4-14.3q, 39:5-30.5 and 52:14B-10.

Effective Date: October 4, 1993.

Expiration Date: August 18, 1994.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the June 21, 1993 New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Full text of the adoption follows:

13:19-10.1 Point assessment

Any person who is convicted of any of the following offenses, including offenses committed while operating a motorized bicycle, shall be assessed points for each conviction in accordance with the following schedule:

Section Number Offense Points
1.-4. (No change.)
Recodify existing 6.53 as 5.52 (No change in text.)

(a)

**DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION**

**Notice of Administrative Correction
Sale of Animals**

**Required Practices Related to the Health of Animals
and Fitness for Sale and Purchase**

N.J.A.C. 13:45A-12.3

Take notice that the Office of Consumer Protection has discovered an error in a cross-reference contained in N.J.A.C. 13:45A-12.3(a)11. The cross-reference to N.J.A.C. 13:45A-12.3(a)6 should be to N.J.A.C. 13:45A-12.3(a)5, which contains the provisions for waiver (see also 20 N.J.R. 501(b) and 1463(a)). 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]):

13:45A-12.3 Required practices related to the health of animals and fitness for sale and purchase

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., it shall be a deceptive practice for a pet dealer to sell animals within the State of New Jersey without complying with the following minimum standards relating to the health of animals and fitness for sale and purchase:

1.-10. (No change.)

11. It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions of this section except as specifically authorized under [(a)6] (a)5 above.

(b)

NEW JERSEY RACING COMMISSION

**Thoroughbred Rules
Admission; Age**

Adopted Amendment: N.J.A.C. 13:70-3.40

Proposed: June 21, 1993 at 25 N.J.R. 2647(a).
Adopted: September 1, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: September 3, 1993 as R.1993 d.483, without change.
Authority: N.J.S.A. 5:5-30.

Effective Date: October 4, 1993.
Expiration Date: January 25, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-3.40 Admission; age

(a) Any child under 18 years of age must be accompanied by an adult, parent or guardian to be admitted to any racetrack enclosure as a spectator during the hours when the running of races is being conducted.

(b) (No change.)

(c)

NEW JERSEY RACING COMMISSION

**Harness Rules
Penalties**

Adopted Amendment: N.J.A.C. 13:71-2.3

Proposed: June 21, 1993 at 25 N.J.R. 2647(b).
Adopted: September 1, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: September 3, 1993 as R.1993 d.484, without change.
Authority: N.J.S.A. 5:5-30.
Effective Date: October 4, 1993.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-2.3 Penalties

(a) (No change.)

(b) Any penalty of suspension from driving shall commence after a hearing before the judges and shall be served on a continuing basis. Where the term of suspension equals or is less than the normal number of scheduled live race days during a week at the track association where the infraction occurred, the continuous suspension shall be imposed as soon as practical following the hearing and on dates where live racing there occurs. Where the term of suspension exceeds the normal number of scheduled live race days during a week at the track association where the infraction occurred, the continuous suspension shall be imposed as soon as practical following the hearing and on dates so as to encompass the maximum number of live race days there possible. However, where the term of suspension cannot be imposed consistent with the formulas set forth in this subsection due to the suspension of racing at the track where the infraction occurred, or where the judges determine that the application of such formulas would otherwise not be practical, the judges shall, in their discretion, determine the continuous dates over which the suspension is to be served. There shall be no exceptions for stakes, futurities, early closures, or feature races during the period of suspension.

(c) (No change.)

(d)

NEW JERSEY RACING COMMISSION

**Harness Rules
Age Limits**

Adopted Amendment: N.J.A.C. 13:71-5.18

Proposed: June 21, 1993 at 25 N.J.R. 2648(a).
Adopted: September 1, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: September 3, 1993 as R.1993 d.485, without change.
Authority: N.J.S.A. 5:5-30.
Effective Date: October 4, 1993.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-5.18 Age limits

(a) Any child under 18 years of age must be accompanied by an adult, parent or guardian to be admitted to any racetrack enclosure as a spectator during the hours when the running of races is being conducted. No person under the age of 18 shall be permitted to wager or in any manner participate in any pari-mutuel pool or system.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes N.J. 67 in Bergen County

Adopted Amendment: N.J.A.C. 16:28-1.125

Proposed: August 2, 1993 at 25 N.J.R. 3442(a).

Adopted: September 2, 1993 by Richard C. Dube, Director,
Division of Traffic Engineering and Local Aid.

Filed: September 14, 1993 as R.1993 d.500, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: October 4, 1993.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.125 Route 67

(a) The rate of speed designated for the certain parts of State highway Route 67 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Bergen County:

(1) Fort Lee Borough:

(A) Zone 1: 35 miles per hour between the junction of Route N.J. 5-Route N.J. 67 and Riverdale Drive (approximate mileposts 0.00 to 0.67); thence

(B) Zone 2: 30 miles per hour between Riverdale Drive and Hoym Street (approximate mileposts 0.67 to 1.03); thence

(C) Zone 3: 25 miles per hour between Hoym Street and 300 feet north of Main Street (approximate mileposts 1.03 to 1.13); thence

(D) Zone 4: 30 miles per hour between 300 feet north of Main Street and North Marginal Road (approximate mileposts 1.13 to 1.43); thence

(E) Zone 5: 35 miles per hour between North Marginal Road and Route U.S. 9W except while "25 MPH When Flashing" signs are operating when passing through the Fort Lee High School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 1.43 to 1.98).

(b)

DIVISION OF TRAFFIC AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes U.S. 1 and 9 in Union County; N.J. 45 in Gloucester County; N.J. 57 in Warren County; and N.J. 88 in Ocean County

Adopted Amendments: N.J.A.C. 16:28A-1.2, 1.31, 1.36 and 1.44

Proposed: August 2, 1993 at 25 N.J.R. 3443(a).

Adopted: September 2, 1993 by Richard C. Dube, Director,
Division of Traffic Engineering and Local Aid.

Filed: September 14, 1993 as R.1993 d.499, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-139, 39:4-198 and 39:4-199.

Effective Date: October 4, 1993.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28A-1.2 Route U.S. 1 and 9

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

(d) The certain parts of State highway Route U.S. 1 and 9 described in this subsection shall be designated and established as restricted parking space for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles in accordance with N.J.S.A. 39:4-197.5. Under the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. Restricted parking in the City of Elizabeth, Union County:
i. Along the Service Road southbound (Spring Street) west side:

(1) Beginning at a point 40 feet north of the northerly curb line of Fanny Street and extending to a point 22 feet north therefrom.

16:28A-1.31 Route 45

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

(c) The certain parts of State highway Route 45 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified below. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. (No change.)

2. In the City of Woodbury, Gloucester County:

i. Along the east side:

(1) South Broad Street:

(A) Two hours time limit parking between Carpenter Street—Penn Street and Cooper Street—Delaware Street daily 9:00 A.M. to 9:00 P.M.

(2) North Broad Street:

(A) Fifteen minutes time limit parking between Cooper Street and Federal Street (Post Office Driveway) daily 8:00 A.M. to 6:00 P.M.

(B) One hour time limit parking between Federal Street (Post Office Driveway) and Hunter Street daily 8:00 A.M. to 6:00 P.M.

(C) Two hours time limit parking between Hunter Street and the Deptford Township Line daily 8:00 A.M. to 6:00 P.M.

ii. Along the west side:

(1) South Broad Street:

(A) Two hours time limit parking between Carpenter Street—Penn Street and Wester Center Street daily 9:00 A.M. to 9:00 P.M.

(2) North Broad Street:

(A) Fifteen minutes time limit parking between Delaware Street and Federal Street (Post Office Driveway) daily 8:00 A.M. to 4:00 P.M.

(B) One hour time limit parking between Federal Street (Post Office Driveway) and Hunter Street daily 8:00 A.M. to 4:00 P.M.

(C) Two hours time limit parking between Hunter Street and Red Bank Avenue daily 8:00 A.M. to 4:00 P.M.

(D) Two hours time limit parking between Red Bank Avenue and the West Deptford Township Line daily 8:00 A.M. to 6:00 P.M.

16:28A-1.36 Route 57

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

(c) The certain parts of State highway Route 57 described in this subsection shall be designated and established as a restricted parking space, for the use of persons who have been issued Special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. In the Borough of Washington, Warren County:

i. Along the south side:

(1) West Washington Avenue:

(A) Beginning at a point 93 feet east of the easterly curb line of Broad Street and extending 23 feet easterly therefrom.

ii. Along the north side:

- (1) West Washington Avenue:
 - (A) Beginning at a point 25 feet west of the westerly curb line of School Street and extending 20 feet westerly therefrom.
 - (B) Beginning at a point 45 feet west of the westerly curb line of School Street and extending 23 feet westerly therefrom.

16:28A-1.44 Route 88

(a) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.

- 1.-2. (No change.)
- 3. No stopping or standing in Lakewood Township, Ocean County:

- i. Along the southerly side (Ocean Avenue):
 - (1) From a point 300 feet west of the prolongation of the westerly curb line of Lexington Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue;
- ii. Along the southerly side (Main Street):
 - (1) (No change.)
 - (2) From a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 300 feet west of the prolongation of the westerly curb line of Lexington Avenue between the hours of 3:00 A.M. and 8:00 A.M. (except Sundays and legal holidays).

- iii. Along the northerly side (Main Street):
 - (1)-(2) (No change.)
 - (3) From a point 212 feet east of the easterly curb line of Route U.S. 9 to Railroad Avenue between the hours of 3:00 A.M. and 8:00 A.M. (except Sundays and legal holidays).

- iv. Along the northerly side (Ocean Avenue):
 - (1) From a point 150 feet west of the westerly curb line of New Hampshire Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue.

- 4. No stopping or standing in Brick Township, Ocean County:

- i. Along both sides:
 - (1) For the entire length within the corporate limits, including all ramps, service roads and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30.

(b) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1. In the Township of Lakewood, Ocean County:
 - i. No parking bus stops—7:00 A.M. to 2:00 P.M.—Sunday only:
 - (1) Along the eastbound side:
 - (A) Mid-block bus stop: From a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 190 feet east of the easterly curb line of Route U.S. 9.
 - (2) Along the westbound (northerly) side:
 - (A) Far side bus stop: New Hampshire Avenue—Beginning at the westerly curb line of New Hampshire Avenue and extending 200 feet westerly therefrom.

(c) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times and all hours. In accordance with N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established loading zones:

- 1. In the Township of Lakewood, Ocean County:
 - i. Along the northerly side:
 - (1) Between points 258 feet and 318 feet west of the westerly curb line of Lexington Avenue.

(a)

**DIVISION OF TRAFFIC AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY
PROGRAMS**

**Restricted Parking and Stopping
Route N.J. 29 in Hunterdon County; N.J. 35 in Ocean
County; N.J. 45 in Gloucester County; and N.J. 77
in Cumberland County**

**Adopted Amendments: N.J.A.C. 16:28A-1.20, 1.25,
1.31 and 1.41**

Proposed: July 19, 1993 at 25 N.J.R. 3127(a).
Adopted: August 19, 1993 by Richard C. Dube, Director,
Division of Traffic Engineering and Local Aid.
Filed: September 14, 1993 as R.1993 d.501, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-197.5,
39:4-198 and 39:4-199.

Effective Date: October 4, 1993.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.20 Route 29

- (a)-(d) (No change.)
- (e) The certain part of State highway Route 29 described in this subsection shall be designated and established as a "restricted parking" space, for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in this area. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:
 - 1. Restricted parking space zone in Hunterdon County:
 - i. In the City of Lambertville:
 - (1) Along the southbound (westerly) side:
 - (A) Beginning 182 feet south of the southerly curb line of Swan Street and extending 22 feet south therefrom.

16:28A-1.25 Route 35

- (a) The certain parts of State highway Route 35 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.
 - 1.-21. (No change.)
 - 22. No stopping or standing in Berkeley Township, Ocean County:
 - i. Along the southbound (westerly) side:
 - (1) Beginning 100 feet north of the northerly curb line of 20th Avenue to the southerly curb line of 24th Avenue.
 - ii. Along the northbound (easterly) side:
 - (1) Beginning at the northerly curb line of 24th Avenue to the southerly curb line of 14th Avenue.

16:28A-1.31 Route 45

- (a) (No change.)
- (b) The certain parts of State highway Route 45 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
 - 1.-2. (No change.)
 - 3. Along the northbound (easterly) side (North Broad Street) side in the City of Woodbury, Gloucester County:
 - i. Near side bus stops:
 - (1) Watkins Avenue—Beginning at the prolongation of the southerly curb line of Watkins Avenue and extending 120 feet southerly therefrom.

(2) Walnut Avenue—Beginning at the prolongation of the southerly curb line of Walnut Street and extending 105 feet southerly therefrom.

(3) Carpenter Street—Beginning at the southerly curb line of Carpenter Street and extending 100 feet southerly therefrom.

(4) Stuart Street—Beginning at the southerly curb line of Stuart Street and extending 100 feet southerly therefrom.

ii. Far side bus stops:

(1)-(2) (No change.)

4. Along the southbound (westerly) (Broad Street) side in the City of Woodbury, Gloucester County:

i. Far side bus stops:

Recodify existing (2)-(5) as (1)-(4) (No change in text.)

ii. Near side bus stops:

(1)-(4) (No change.)

(5) (No change in text.)

iii. (No change.)

5.-9. (No change.)

(c) (No change.)

16:28A-1.41 Route 77

(a) (No change.)

(b) The certain parts of State highway Route 77 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. In the City of Bridgeton, Cumberland County:

i. Along the southbound (westerly) side:

(1) Far side bus stops:

(A) Washington Street—Beginning at the southerly curb line of Washington Street and extending 108.57 feet southerly therefrom.

(B)-(C) (No change.)

(d) East Commerce Street—Beginning at the southerly curb line of East Commerce Street and extending 142.95 feet southerly therefrom.

(2) (No change.)

ii. Along the northbound (easterly) side:

(1) Far side bus stops:

(A) East Commerce Street—Beginning at the northerly curb line of East Commerce Street and extending 100 feet northerly therefrom.

(B) Washington Street—Beginning at the northerly curb line of Washington Street and extending 100 feet northerly therefrom.

(C)-(E) (No change.)

(2) (No change.)

2.-4. (No change.)

(c) (No change.)

(d) The certain parts of State highway Route 77 described in this subsection shall be designated and established as restricted parking space, for use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking spaces:

1. Restricted parking in the City of Bridgeton, Cumberland County:

i. Along the southerly side:

(1) 223 Pearl Street—Beginning 84 feet north of the prolongation of the northerly curb line of Rose Street and extending 22 feet northerly therefrom.

ii. Along the southbound (westerly) side:

(1) 282 Pearl Street—Beginning 384 feet south of the prolongation of the southerly curb line of Orchard Street and extending 22 feet south therefrom.

(a)

DIVISION OF TRAFFIC AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Mid-Block Crosswalk

Routes N.J. 27 in Middlesex and Somerset Counties

Adopted New Rule: N.J.A.C. 16:30-10.15

Proposed: July 19, 1993 at 25 N.J.R. 3128(a).

Adopted: August 19, 1993 by Richard C. Dube, Director,

Division of Traffic Engineering and Local Aid.

Filed: September 14, 1993 as R.1993 d.502, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-34.

Effective Date: October 4, 1993.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:30-10.15 Route 27

(a) The certain parts of State highway Route 27 described in this subsection shall be designated and established as a mid-block crosswalk:

1. In Franklin Township, Somerset County and in North Brunswick Township, Middlesex County:

i. From a point 290 feet south of the southerly curb line of Schmidt Lane to a point six feet southerly therefrom.

(b)

DIVISION OF TRAFFIC AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Route U.S. 30 in Camden County

Adopted Amendment: N.J.A.C. 16:31-1.10

Proposed: August 2, 1993 at 25 N.J.R. 3445(a).

Adopted: September 2, 1993 by Richard C. Dube, Director,

Division of Traffic Engineering and Local Aid.

Filed: September 14, 1993 as R.1993 d.503, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6 and 39:4-199.

Effective Date: October 4, 1993.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:31-1.10 Route U.S. 30

(a) Turning movements of traffic on certain parts of State highway Route U.S. 30 described in this subsection are regulated as follows:

1. No left turns:

i. In the City of Absecon, Atlantic County:

(1)-(2) (No change.)

ii. In the Township of Waterford, Camden County:

(1) (No change.)

iii. In the Borough of Magnolia, Camden County:

(1) Eastbound into the Lions Head Plaza entrance (northbound) (approximate milepost 9.81), 90 feet east of Monroe Avenue.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax

Adopted New Rules: N.J.A.C. 18:12-1, 2, 3, 4 and 10

Proposed: June 21, 1993 at 25 N.J.R. 2652(a).

Adopted: September 2, 1993 by Leslie A. Thompson, Director, Division of Taxation.

Filed: September 3, 1993 as R.1993 d.482, **without change**.

Authority: N.J.S.A. 54:1-35.1 et seq.; 54:4-26; 54:50-1 et seq.; 54:4-1 et seq.; and 446:15-5 et seq.

Effective Date: October 4, 1993.

Expiration Date: October 4, 1998.

Summary of Public Comments and Agency Responses:

N.J.A.C. 18:12 expired on July 29, 1993, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for re-adoption are adopted herein as new rules. The four subchapters proposed for repeal (N.J.A.C. 18:12-5, 7, 8 and 9), having expired, need not have their repeals adopted, as they are not included in the adoption of new rules.

COMMENT: Richard M. Conley, Esq. submitted comments concerning N.J.A.C. 18:12-4.5 and 18:12A-1.18 objecting to the parts of these rules which prohibit assessors from participating in certain property revaluation work. Mr. Conley argued that there is no conflict of interest when an assessor of a taxing district within a county has an interest in or is employed by a revaluation firm engaging in revaluing properties in other taxing districts within that county.

RESPONSE: The Division replied that the issue should be open for public comment and the participation of other parties who may have an interest in the contested rules. Thus, the Division will adopt the chapters as proposed but immediately submit a new proposal to delete by amendment any reference to assessors in N.J.A.C. 18:12-4.5 and 18:12A-1.18. (See notice of proposal published elsewhere in this issue of the New Jersey Register.)

Full text of the adopted new rules proposed as rules to be re-adopted can be found in the New Jersey Administrative Code at N.J.A.C. 18:12.

(b)

DIVISION OF TAXATION

Local Property Tax

Adopted New Rules: N.J.A.C. 18:12A through 18:17

Proposed: June 21, 1993 at 25 N.J.R. 2653(a).

Adopted: September 2, 1993 by Leslie A. Thompson, Director, Division of Taxation.

Filed: September 3, 1993 as R.1993 d.481, **without change**.

Authority: N.J.S.A. 54:1-35.1, et seq.; 54:4-26; 54:4-23.21; 54:3-21.5; 54:50-1, et seq.; 54:4-1, et seq.; 54:3-14; and P.L. 1968, c.49, sec. 7.

Effective Date: October 4, 1993.

Expiration Date: October 4, 1998.

Summary of Public Comments and Agency Responses:

N.J.A.C. 18:12A through 18:17 expired on July 29, 1993, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for re-adoption are adopted herein as new rules.

COMMENT: Richard M. Conley, Esq. submitted comments concerning N.J.A.C. 18:12-4.5 and 18:12A-1.18 objecting to the parts of these rules which prohibit assessors from participating in certain property revaluation work. Mr. Conley argued that there is no conflict of interest when an assessor of a taxing district within a county has an interest in or is employed by a revaluation firm engaging in revaluing properties in other taxing districts within that county.

RESPONSE: The Division replied that the issue should be open for public comment and the participation of other parties who may have

an interest in the contested rules. Thus, the Division will adopt the chapters as proposed but immediately submit a new proposal to delete by amendment any reference to assessors in N.J.A.C. 18:12-4.5 and 18:12A-1.18. (See notice of proposal published elsewhere in this issue of the New Jersey Register.)

Full text of the adopted new rules proposed as rules to be re-adopted can be found in the New Jersey Administrative Code at N.J.A.C. 18:12A through 18:17.

Full text of the adopted amendments to the new rules as proposed for re-adoption follows:

18:12A-1.2 Educational requirements, organization and meetings, annual report by board president

(a) Each member shall, within 24 months of appointment, furnish proof that he or she has received certificates indicating satisfactory completion of training course designated in Section 4 of P.L. 1967, c.44 (C.54:1-35.28), or that he or she possesses an assessor's certificate issued pursuant to P.L. 1967, c.44.

(b) (No change.)

(c) If any board, so required, does not furnish such proof within said 24-month period, or 30-month period for any member serving on January 1, 1980, the Administrator shall immediately notify the President of the Board and the Director of the Division of Taxation who shall upon receipt of such notification declare the position to be vacant and shall notify the Governor of the existence of such vacancies. The Governor shall thereupon appoint with the advice and consent of the Senate, a different citizen and resident of the relevant county to fill such position for the unexpired term.

(d)-(g) (No change.)

(h) Annually, on or before April 1, the president of the board shall report to the Director of the Division of Taxation in such form as prescribed by the Director, information and statistics as may be appropriate to demonstrate for the immediately preceding three-month period during which tax appeals were heard by the board. The report shall contain the number of appeals filed with the board, the disposition of the appeals disposed of during that period; the character of appeals filed with regard to the classification of properties appealed; the total amount of assessments involved in those appeals, the number of appeals filed in each filing fee category in that period; the total amount of reductions and increases of assessed valuation granted by the board during that period; and, any other information deemed necessary by the Director.

18:12A-1.3 County Tax Administrator

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

(g) No person shall be appointed to a first term as county tax administrator after August 5, 1988, unless having served for four years in property tax administration at a State, county or municipal level.

(h) All persons appointed county tax administrator after August 5, 1988 shall complete a training program developed for county tax administrators by the Bureau of Government Research at Rutgers within 24 months following appointment.

Recodify existing (g)-(l) as (i)-(n) (No change in text.)

18:12A-1.6 Petitions of appeal; cross-petitions of appeal

(a) (No change.)

(b) A petition of appeal filed by a party respondent in a tax appeal shall be denominated as a "cross-petition of appeal" and shall be filed on the same form and subject to the same standards applicable to petitions of appeal. Where a petition of appeal is filed within the period covering 19 days next preceding April 1, a respondent shall have 20 days from the date of service to file a cross-petition with the county board of taxation.

(c) A separate petition of appeal shall be received and filed by the board on or before April 1 for each separately assessed property under appeal. Where an appeal involved assessments of more than one property, separate petitions of appeal shall be filed for each property separately assessed unless prior permission has been obtained from the board.

(d) (No change.)

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(e) A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the first three quarters of taxes assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66 even though his petition to the county board of taxation might request a reduction in excess of one quarter of the taxes assessed for the full year. In the event a taxpayer who has filed a tax appeal has failed to pay the first three quarters of the current year's taxes and in the further event the municipality appropriately makes an application before the county board of taxation for a dismissal of the petition of appeal, the county board of taxation shall allow the taxpayer a 10-day period of time to pay such taxes prior to the entry of a judgment of dismissal. The 10-day period may be extended by the county board in the interest of justice. If such taxes are not paid within the 10-day period, then the county board of taxation shall enter a judgment dismissing the petition for failure to pay taxes. Such a 10-day period for the payment of taxes should be limited where necessary by the July 1 annual deadline imposed upon county boards by law for the entry of judgments.

(f)-(l) (No change.)

18:12A-1.20 Appeals; late filing

(a) Where a petition or cross-petition of appeal to a county board of taxation is actually received by the board after April 1 of the tax year (except if April 1 shall fall on a Saturday, Sunday or holiday, then after the first business day immediately thereafter), the county board of taxation or the county tax administrator, if authorized by the board by resolution, shall not accept said petition or cross-petition of appeal for filing but shall forthwith return the same to the person filing it, together with the filing fee, if the filing fee accompanied said petition or was otherwise paid. The petition or cross-petition to be returned shall have endorsed thereon the date of receipt and a statement "Petition or cross-petition is returned by reason of late filing", and shall be accompanied by a judgment of dismissal by the county board of taxation for late filing.

(b) (No change.)

18:14-3.11 Appeals

An aggrieved taxpayer may appeal from the disposition of a claim for a real property tax deduction in the same manner as is provided for appeals from assessments generally. However, in the event that a claimant's application for allowance of a real property tax deduction is disallowed by the assessor or collector at a date too late to permit the applicant to file an appeal with the county board of taxation on or before April 1 of such year, then, in such case, the applicant would be entitled to file an appeal at any time on or before April 1 of the succeeding year. If such appeal is filed by the applicant within such time as to permit it to be calendared and heard by the county board of taxation during the year immediately following the year to which such appeal relates, the county board of taxation may hear and decide such appeal for the tax year to which the appeal relates. The appeal should set forth the reasons, the nature and the location of the property and relief sought.

18:16-2.1 Conditions for recording of deed

(a) No county recording officer shall record any deed evidencing transfer of title to real property unless:

1.-2. (No change.)

3. A fee at the rate of \$1.75 for each \$500.00 of consideration or fractional part thereof (which shall be in addition to the recording imposed by P.L. 1965, Chapter 123, Section 2 (R.S. 22A:4-4.1)) shall be paid to the county recording officer at the time the deed is offered for recording. An additional fee at the rate of \$.75 for each \$500.00 of consideration or fractional part thereof in excess of \$150.00 of consideration shall be paid to the county recording officer. Every deed subject to the additional fee required by this Act, which is in fact recorded, shall be conclusively deemed to have been entitled to recording, notwithstanding that the amount of the consideration shall have been incorrectly stated, or that the correct amount of such additional fee, if any, shall not have been paid, and no such defect shall in any way affect or impair the validity of the title conveyed or render the same unmarketable, but the person or persons re-

quired to pay said additional fee at the time of recording shall be and remain liable to the county recording officer for the payment of the proper amount thereof;

4. (No change.)

18:16-5.1 Recording without payment of fee

(a) No fee is required to be paid where it is established to the satisfaction of the recording officer that the deed was given for one of the following reasons:

1.-14. (No change.)

15. By an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.

16. Recorded within 90 days following the entry of a divorce decree which dissolves the marriage between the grantor and grantee.

18:16-5.2 Exemption from payment of \$1.25 portion of \$1.75 fee

(a) A conveyance of a one or two-family residence is not subject to payment of the \$1.25 portion of the \$1.75 fee when the grantor qualifies under one or more of the following categories:

1. "Senior citizen";
2. "Blind person";
3. "Disabled person"; or
4. "Low and moderate income housing."

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

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(a)

NEW JERSEY TURNPIKE AUTHORITY

New Jersey Turnpike Authority Rules

Readoption with Amendments: N.J.A.C. 19:9

Proposed: July 6, 1993 at 25 N.J.R. 2839(b). See also 25 N.J.R. 3685(a).

Adopted: September 10, 1993 by the New Jersey Turnpike Authority, Herbert I. Olarsch, Administrative Practices Officer.

Filed: September 13, 1993 as R.1993 d.496, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:23-1 and 27:23-29.

Effective Date: September 13, 1993, Readoption;
October 4, 1993, Amendments.

Expiration Date: September 13, 1993.

Summary of Public Comments and Agency Responses:

The Department of Law and Public Safety, Division of Motor Vehicles commented (i) that the statutory reference for issuing special permits pursuant to N.J.A.C. 19:9-1.9(a)13 should specify N.J.S.A. 39:3-84, rather than Title 39 generally, (ii) that such special permits pursuant to N.J.S.A. 39:3-84 are issued by the Division of Motor Vehicles, not the Department of Transportation, as was indicated in the Summary of the proposed readoption, and (iii) that the definition of "construction equipment" in N.J.A.C. 19:19-1.1 should reference N.J.S.A. 39:3-20, not 39:4-20, as was indicated in text of the proposed readoption. Both of the suggested changes to the text of the readoption, which are purely technical in nature, have been made. No other comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:9.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

19:9-1.1 Definitions

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

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"Abandoned vehicles" means any vehicle whose occupants leave the vehicle unattended on the Turnpike for any reason for any period of time.

"Authority" means the New Jersey Turnpike Authority, the body corporate and politic defined in N.J.S.A. 27:23-1 et seq., acting by and through the duly appointed commissioners thereof and their designees.

"Commercial vehicles" means every type of motor driven vehicle used for commercial purposes on the Turnpike such as the transportation of goods, wares and merchandise, excepting such vehicle of the passenger car type.

"Construction equipment" means all vehicles, machinery and equipment enumerated in N.J.S.A. *[39:4-20]* *39:3-20*.

"Interstate 95 Extension" means that portion of Interstate Highway 95 previously maintained by the New Jersey Department of Transportation and transferred to the Authority by N.J.S.A. 27:23-23.7, beginning at milepost 117.9+ and thence in a general northerly direction to milepost 122.0+, and all bridges, tunnels, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service stations, service facilities, communication facilities, and administration, storage and other buildings which the Authority may deem necessary for the operation of such extension, together with all property, rights, easements and interests which may be acquired by the Authority for the construction or the operation of such extension and all other property within the Interstate 95 Extension right-of-way.

"Official traffic control devices" means only those signs, signals, markings and devices approved and accepted by the Authority and placed, erected or caused to be placed or erected by the Authority for the purpose of regulating, warning or guiding traffic on the Turnpike.

"Omnibus" means any motor vehicle capable of transporting 10 or more passengers and registered as a bus, as indicated by the letter "O" preceding the registration number or the word "Bus" or "Omnibus" on the vehicle's license plate. Vehicles with the letters "CV" or the word "Livery" or "Autocab" on the license plate are excluded from this definition.

"Turnpike" means any express highway, superhighway or motorway at such locations and between such termini as may hereafter be established by law, owned and/or operated under the provisions of N.J.S.A. 27:23-1 et seq. by the Authority, and shall include, but not be limited to, all bridges, tunnels, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service stations, service facilities, communication facilities, and administration, storage and other buildings which the Authority may deem necessary for the operation of such project, together with all property, rights, easements and interests which may be acquired by the Authority for the construction or the operation of such project and all other property within the Turnpike right-of-way.

"Turnpike right-of-way" means the area continued within the right-of-way lines as designated on Turnpike parcel property maps filed in the respective county clerk's office of each county in which the Turnpike is located.

19:9-1.2 Speed limits

(a) Vehicles shall not be operated on the Turnpike between Interchange 14 (milepost N-0) and Interchange 14C (milepost N-8) or between the Pennsylvania-New Jersey State line on the Delaware River-Turnpike Bridge (milepost P-0) and the toll booths at Interchange 6 (milepost P-1.2) at a speed in excess of 50 miles per hour.

(b) Vehicles shall not be operated elsewhere on the Turnpike at a speed in excess of 55 miles per hour except at such locations as shall be designated for test purposes.

(c) Where signs prescribing a lesser speed are posted or erected by a person or persons authorized by the Authority to post or erect

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such signs, no vehicle within the area or zone or section where such signs are posted or erected shall be operated in excess of the speed prescribed by said signs.

(d) Consistent with the requirements of this section, any vehicle operated on the Turnpike shall at all times be operated at an appropriate reduced speed when specified hazards exist with respect to traffic, road, weather or other conditions irrespective of the posted speed limit.

(e) No vehicle shall be operated anywhere on the Turnpike at a speed of less than 35 miles per hour on level ground, except where otherwise posted or when specific hazards exist with respect to traffic, road or weather conditions.

19:9-1.3 Traffic control

(a) The regulating, warning or guiding of all traffic on the Turnpike shall be governed by official traffic control devices.

(b) No vehicle shall operate an emergency flashing light of any color on the Turnpike except State Police vehicles, the Authority's maintenance and official vehicles, contractors' private vehicles while in the performance of authorized duties, vehicle on the Turnpike for the purpose of furnishing authorized towing and other services to disabled vehicles, and all other vehicles performing emergency services, such as ambulances and fire engines, when they are properly in use in the performance of authorized duties.

(c) All official traffic control devices on the Turnpike shall be obeyed by the operators of all vehicles unless a State Police officer or authorized Authority personnel directs otherwise.

19:9-1.4 Uniform direction of traffic

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

(c) Excepted from the provisions of this section are State Police vehicles, the Authority's maintenance and official vehicles and vehicles authorized to furnish towing and other services to disabled vehicles on the Turnpike, and all other vehicles discharging emergency functions, such as ambulances and fire engines, when they are properly in use in the performance of authorized duties; provided that no such excepted vehicles shall be operated against the normal flow of traffic or contrary to classification prohibitions so as to create a hazard to other vehicles.

19:9-1.5 "U" turns prohibited

(a) The making of a "U" turn at any point on the Turnpike is prohibited.

(b) The direction of travel of any vehicle operated on the Turnpike shall be reversed only by passing through an interchange.

(c) Excepted from the provisions of this section are State Police vehicles, the Authority's maintenance and official vehicles and vehicles authorized to furnish towing and other services to disabled vehicles on the Turnpike, and all other vehicles discharging emergency functions, such as ambulances and fire engines, when they are properly in use in the performance of authorized duties; provided however, that this exception shall be for the sole purpose of crossing from a traffic lane carrying vehicles in one direction to a traffic lane carrying vehicles bound in the opposite direction; and provided further, that no such excepted vehicles shall make such crossing so as to create a hazard to other vehicles.

(d) (No change.)

19:9-1.6 Parking, standing or stopping on Turnpike prohibited except in case of emergency

(a) No vehicle shall be parked, stopped, loaded or unloaded or allowed to stand on the Turnpike except where otherwise posted or expressly permitted by the Authority. Excepted from the provisions of this section while in the performance of assigned duties are State Police vehicles, and the Authority's maintenance and official vehicles and vehicles authorized to furnish towing and other services to disabled vehicles on the Turnpike, and all other vehicles discharging emergency functions, such as ambulances and fire engines, when they are properly in use in the performances of authorized duties, provided that no such excepted vehicles shall be stopped so as to create a hazard to other vehicles.

(b) (No change.)

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(c) On those portions of the Turnpike where there are no shoulders, vehicles shall not be permitted to stop or stand, except in those instances where the vehicle is physically inoperable through no fault on the part of the operator or owner.

(d) (No change.)

(e) Any vehicle involved in an emergency as defined above shall be removed as promptly as possible from the Turnpike.

(f) No vehicle shall be permitted to stop or stand on any portion of the Turnpike for more than two continuous hours.

(g) Any vehicle stopped or standing in violation of this section will be towed away at the owner's expense.

(h) Notwithstanding any contrary provisions of this chapter, under no circumstances shall any vehicle be parked, stopped or allowed to stand upon the Turnpike:

1.-3. (No change.)

(i) Whenever any vehicle shall be parked, stopped or allowed to stand upon the Turnpike for any of the reasons prohibited by this chapter, such vehicle shall be removed forthwith from the Turnpike and impounded by the Authority at the owner's expense until all towing and storage costs have been satisfied.

(j) To insure the health, safety and welfare of motorists, the general public and the Authority, no person shall be permitted to take photographs or motion pictures on the Turnpike except as may be authorized by the Authority.

19:9-1.7 Use of medial strip prohibited

The medial strip between the traffic lanes of the Turnpike shall not be used for driving upon any part thereof or for crossing between said lanes by vehicles or by persons on foot. Excepted from the provisions of this section are State Police vehicles, the Authority's maintenance and official vehicles and vehicles authorized to furnish towing and other services to disabled vehicles on the Turnpike, and all other vehicles discharging emergency functions, such as ambulances and fire engines, when they are properly in use in the performance of authorized duties, provided that no excepted vehicle shall use the medial strip so as to create a hazard to other vehicles.

19:9-1.8 (Reserved)

19:9-1.9 Limitations on use of Turnpike

(a) Use of the Turnpike and entry thereon by the following, unless otherwise authorized by the Authority, is prohibited:

1.-6. (No change.)

7. Vehicles with improperly inflated pneumatic tires; also vehicles with tires in such condition that they are, in the judgment of the Authority, unsafe for use upon the Turnpike;

8. (No change.)

9. Passenger vehicles and passenger vehicle-drawn trailers carrying any load on the top or sides with lateral or horizontal projection in excess of 12 inches from body of vehicle or vertical projection in excess of 24 inches from body of vehicle;

10. Vehicles with metal tire or solid tire worn to metal and vehicles with caterpillar treads;

11. (No change.)

12. Vehicles or combinations of vehicles, including any load thereon, exceeding the following extreme overall dimensions¹ or weights:

i.-iv. (No change.)

v. Notwithstanding the above limitations, a combination of vehicles designed, built and used to transport other motor vehicles may carry a load which does not exceed 65 feet overall length, including load overhang. The overhang shall be limited to seven feet and may not exceed three feet at the front and four feet at the rear and that the overhang shall be above the height of the average passenger car.

¹No private utility, house-type semitrailer or trailer with a maximum length for a single vehicle of more than 35 feet, a maximum length for a semitrailer and its towing vehicle of more than 45 feet and a maximum length for a trailer and its towing vehicle of more than 50 feet shall be operated on the New Jersey Turnpike.

13. Except for the Interstate 95 Extension, any vehicle operated pursuant to a special permit issued *[under Title 39]* ***pursuant to N.J.S.A. 39:3-84***, unless said permit or its equivalent is issued by the Authority;

14. Passenger vehicles or passenger vehicle-drawn trailers being towed by other vehicles, unless both vehicles and the connecting and control devices between them meet the following requirements:

i. Not more than one vehicle is being towed;

ii. A hitch bar is used in combination with chain strong enough to hold if the bar became disconnected from either vehicle; and

iii. Brakes, brake lights and directional signals on both vehicles are controlled by the driver of towing vehicle and synchronized. A trailer with a gross weight of 3,000 pounds or less may be operated without brakes if it is towed by a vehicle whose gross weight is at least 2½ times the gross weight of the trailer;

15. Vehicles with loads extending more than four feet:

i. Beyond the rear of the vehicle body or other supporting member; or

ii. Beyond the rear of vehicle-drawn trailer;

16. (No change.)

17. Vehicles so loaded or operated that the contents or any part thereof may be scattered on the Turnpike roadway;

18. Vehicles that are not capable of maintaining a speed of at least 35 miles per hour on a level grade;

19. Vehicles not otherwise specified in this section that create a probable hazard to other vehicles or to persons;

20. During winds or during the prevalence of other adverse weather conditions, house trailers, horse trailers, boat trailers, utility trailers, motorcycles and all passenger vehicle-drawn trailers;

21. Vehicles in tow:

i. With an axle or combination of axles raised off the ground and supported by cable, chains, rope, dollies or other devices;

ii. Without axles raised, if interconnected with rope, chains, cable or pipe or tow bars without chains; or

iii. By a fifth wheel crane or hoist mounted on a truck-tractor.

22. Vehicles owned or operated by a member or employee of a diplomatic mission, where said member or employee of the diplomatic mission has been sent prior written notice from the Authority that said member or employee violated any provision of N.J.A.C. 19:9 and who, subsequent to said notice, a provision of N.J.A.C. 19:9. Upon occurrence of the second violation, said vehicle or vehicles shall be escorted off the Turnpike at the nearest point of exit or interchange;

23. (No change.)

24. Three-vehicle combinations, commonly known as "Double Saddlemount," wherein a tractor is hauling two additional tractors; and

25. Omnibuses exceeding 40 feet in length, excluding bumpers, and articulated omnibuses exceeding 61 feet in length, excluding bumpers.

(b) In addition to the State Police, toll collection employees of the Authority are authorized to enforce the provisions of this section, and all persons shall comply with the orders of such employees given to prevent the use of the Turnpike by any of the aforesaid prohibited vehicles.

19:9-1.10 Waste and rubbish

(a) Littering of the Turnpike with bottles, cans, papers, garbage or rubbish including tobacco and tobacco products or other materials of any kind or description is prohibited.

(b) The throwing or discarding of any such material from Turnpike structures is also prohibited.

19:9-1.11 Loose cargo; discharges

(a) Vehicles carrying material likely to spill that is not otherwise boxed, crated, bagged or packaged must be firmly secured on all sides with a tarpaulin completely covering the material, and capable of preventing the escape of said material.

(b) No material, whether solid, liquid or gaseous, shall be discharged on Turnpike property, whether intentionally or unintentionally. This prohibition shall apply to any material being carried as cargo, whether or not for hire, and to any material that is a part of the vehicle or necessary for the operation of the vehicle or any apparatus affixed thereon, but shall not apply to ordinary vehicular emissions anticipated by the original design of the vehicle or the apparatus affixed thereto.

19:9-1.12 Damaging of Turnpike property

(a) No person shall cut, mutilate or remove any trees, shrubs or plants located on the Turnpike.

(b) No person shall deface, damage, mutilate or remove any official traffic control device, delineator, structure, fence or other property or equipment of the Authority or its concessionaires.

(c) No person shall install or attempt to install, construct or place upon any portion of the Turnpike, any item, sign, structure or equipment for any purpose whatsoever, without prior written approval of the Authority.

(d) No material shall be discharged on Turnpike property, whether intentionally or unintentionally, that may cause damage to the Turnpike, the general public, the Authority, its agents and employees, or any real or personal property owned, leased or under the supervision of the Authority. For purposes of this subsection only, "damage" includes any effect which may be injurious to health, safety or welfare, or which may cause financial loss or delay the movement of traffic.

(e) The operator, owner or lessee of any vehicle from which a discharge in violation of any provision of this section or N.J.A.C. 19:9-1.10, 1.11(b) or 1.15 occurs, regardless of the cause of the discharge, shall cooperate fully with the Authority, its employees, agents, and third parties authorized to respond to an emergency, discharge or blockage of traffic by the Authority, the State Police and the Department of Environmental Protection and Energy and shall take any action deemed necessary by them to restore normal traffic conditions and to remove spilled or otherwise discharged material from the Turnpike immediately. The vehicle operated, owned or leased by any person failing to cooperate or take such action as deemed necessary by the official in charge of the scene where the discharge occurred is subject to impoundment by the Authority, the State Police, or the New Jersey Department of Transportation and their agents and employees until such time as all penalties, towing and storage fees and costs have been satisfied.

(f) In addition to any penalties prescribed by this chapter or by the laws and regulations of other government entities including, but not limited to, Titles 2C, 13, 27, 39 and 58 of the New Jersey Statutes and Federal law or regulation, any person violating any provision of this section or N.J.A.C. 19:9-1.10, 1.11(b) or 1.15, shall be liable to the Authority for any and all costs arising out of said violation, including the costs of:

1. Collecting, testing and disposing of the material and restoring the Turnpike to its condition immediately prior to the violation;
2. Replacing or repairing, in the Authority's sole discretion, any property damaged by reason of said violation;
3. Toll and concession revenue lost because of the closing of the Turnpike, any part thereof, or any interchange by reason of said violation;
4. Medical care, supervision or other costs relating to personal injury suffered by the general public, the Authority, its agents or employees; and
5. Any other costs arising out of said violation and incurred by the Authority or third parties.

(g) The Authority may recover the costs under (f) above by way of complaint filed in Superior Court, Law Division or United States District Court, by an administrative consent order executed by an authorized representative of the Department of Environmental Protection and Energy, or by any other lawful means.

19:9-1.13 Hitch-hiking, loitering, soliciting, and distributing prohibited

The soliciting of rides commonly known as "hitch-hiking" at or near toll booths, service areas, and all other portions of the Turnpike is prohibited. Loitering, soliciting funds or services, selling goods, distributing pamphlets and literature in or about the toll booths, service areas and all other portions of the Turnpike is prohibited.

19:9-1.14 Repairs and towing

(a) Subject to the provisions of N.J.A.C. 19:9-1.6, a vehicle that becomes disabled while using the Turnpike may be repaired by the occupants thereof, provided that the occupants can complete repairs within a two-hour period from the time of disablement and the

occupants do not leave the vehicle unattended. A vehicle disabled and abandoned by its occupants will be removed immediately by an authorized service of the Authority at the expense of the owner.

(b) If other mechanical services or towing is required, such services or towing must be performed by a service agency authorized by the Authority to furnish such service on the Turnpike.

(c) If towed, such disabled vehicles must be removed at the nearest exit in the original direction of travel.

(d) A truck or bus company may obtain a private mechanical and towing service permit provided they conform to the rules and regulations governing said permits.

(e) A truck or bus company may obtain a permit to perform their own tire service or designate a prearranged tire service; said permits are obtainable from the Office of the Director of Operations. Truck or bus companies not holding a private tire service permit may either receive tire service from a service agency authorized by the Authority or be removed by a towing service authorized by the Authority.

19:9-1.15 Transportation of hazardous materials

(a) The transportation or shipment on the Turnpike of any hazardous materials, as defined in Part 172 of the regulations of the United States Department of Transportation (49 CFR 172), shall be subject to the requirements of parts 171 to 178 inclusive of such regulations (49 CFR 171 to 178) governing the preparation of the materials for transportation, construction of containers, packing, weighing, marking, labeling, billing and certification of such materials.

(b) The transportation or shipment on the Turnpike of radioactive materials or devices, and transportation of Class A, B and C explosives, as defined in Part 173 of the regulations of the United States Department of Transportation (49 CFR 173), shall be subject to the prior written approval of the Authority. All applications for such approval shall be made in writing addressed to the Director of Operations and shall provide, to the satisfaction of the Authority, that the shipment shall comply in all respects with the provisions of parts 171 to 178 and 397 inclusive of the Regulations (49 CFR 171-178, 397).

(c) The Authority reserves the right to withhold the approval required in (b) above, and to prohibit entry to the Turnpike of any carrier of any hazardous materials, despite compliance with the aforementioned regulations of the United States Department of Transportation or any other pertinent regulations or law, if in the Authority's opinion, the transportation or shipment will be likely to endanger life or property.

(d) (No change.)

(e) Any operator, owner or lessee of a vehicle on the Turnpike which contains any hazardous material shall be subject to all provisions and penalties hereunder, in addition to any provisions of the United States Code, the New Jersey Statutes and the New Jersey Administrative Code.

(f) In the event of a discharge of hazardous materials on the Turnpike, all remedial efforts shall be conducted in compliance with these rules and under the supervision of the Authority, the State Police, and/or the Department of Environmental Protection and Energy.

1. Where practicable, not contrary to the rules of the Department of Environmental Protection and Energy, and not contrary to the safety of the operator, the general public, or the Turnpike, the operator, owner or lessee of the vehicle may be afforded the opportunity to contain and remove discharged material using personnel, materials and equipment provided:

- i. Aboard the vehicle from which the discharge occurred;
- ii. By another vehicle owned or leased by the operator, owner or lessee of the vehicle from which the discharge occurred;
- iii. By a specialized response team operated by the manufacturer or distributor of the hazardous material that has been discharged (hereafter, "manufacturers' response team"); or
- iv. By third parties contracted to contain, clean up, and/or dispose of the discharge (hereafter, "emergency response contractors") by the operator, owner or lessee of the vehicle specifically for the purpose of remediating hazardous materials discharges from the operator's vehicle.

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2. No emergency response services may be provided pursuant to (f)1ii through iv above unless all the entities undertaking such services have provided to the Authority proof of adequate insurance and such other information as may be required by the Director of Operations.

3. The Authority shall make available to any operator, owner or lessee so requesting a list of emergency response contractors that have met the requirements of (f)2 above to perform emergency response services on the Turnpike. The operator, owner or lessee shall arrange and pay for emergency response services to be performed by such contractors. Approval of such contractors pursuant to (f)2 above is not to be considered a warranty or assurance by the Authority of such contractors' ability to perform emergency response services.

4. Whenever the operator, owner or lessee refuses to arrange for an emergency response contractor, or whenever exigent circumstances or the risk posed by the discharge to Turnpike patrons, the general public, or the Authority's agents or employees is too great to await the arrival of the emergency response contractor(s) arranged by the operator, owner or lessee in the opinion of the Director of Operations or the Director's designee, the Director or the Director's designee may arrange for emergency response services and long-term remedial efforts to be provided by a third party of the Authority's choice. Emergency response and long term remedial services may be performed by or through the Department of Environmental Protection and Energy or its agents, including any county environmental health department, or by private organizations engaged by the Authority. The cost of services pursuant to this paragraph shall be based on the most recent agreement between the Authority and the third party, or if there is no such agreement, shall be based on the schedule of rates normally charged to commercial concerns for emergency response or long-term remedial services, and shall be borne by the operator, owner or lessee of the vehicle.

i. If, at the time the emergency response contractor arrives at the scene of the discharge, the operator, owner or lessee of the vehicle refuses to agree to pay or complete any documents necessary to engage the contractor for such services, the Authority may impound the vehicle and any cargo or contents thereof until such time as the costs of remedial services are satisfied. If such costs are not satisfied within 14 days, the Authority shall have the right to sell the vehicle, its cargo and contents at public auction and/or to recover any unsatisfied costs by filing a civil action in the Superior Court of New Jersey or in any District Court of the United States having jurisdiction over such action.

ii. If the emergency response contractor refuses to contract with the operator, owner or lessee of the vehicle because of a bona fide concern about the operator's, owner's or lessee's ability or willingness to pay for such services, the Director or the Director's designee may authorize such services to be performed at the Authority's expense, and the Authority may thereafter recover the costs thereof from the operator, owner or lessee by filing a civil action in Superior Court of New Jersey or in any District Court of the United States having jurisdiction over such action. The emergency response contractor's concern shall be deemed bona fide if the operator's, owner's or lessee's credit record indicates a history of refusal or failure to pay commercial debts.

19:9-1.16 Intoxicating beverages

No person shall consume or imbibe any intoxicating beverage from a bottle or container containing liquor, beer, wine or other alcoholic beverage while operating a vehicle on the Turnpike.

19:9-1.17 Operation of vehicles on Turnpike projects; care required

No vehicle shall be operated carelessly, without due caution or prudence, or in a manner so as to endanger any person or property, or while the operator is under the influence of intoxicating liquors or any narcotic or habit-forming drug.

19:9-1.18 Noise limits

(a) No vehicle shall be operated on the Turnpike in violation of 49 C.F.R. 325 or any other noise standards promulgated by the United States or the State of New Jersey and applicable to that class of vehicle.

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(b) No vehicle shall be operated on the Turnpike whose exhaust system is:

1.-3. (No change.)

19:9-1.19 Tolls; payment required

No vehicle shall be operated on the Turnpike except upon the payment of such tolls as are required by the Authority.

19:9-1.20 Records

(a) Any operator of a commercial motor vehicle, omnibus, motor bus, or tractor in interstate commerce upon the Turnpike shall keep records showing the day and hour when, and the place where, the operator went on and was released from duty, whether in or outside of this State. In the event the operator went on duty at a place outside of this State, the operator shall, immediately upon entering the Turnpike, certify upon such records that they are correct.

(b) Records showing the day and hour when, and the place where the operator went on duty and was released from duty are not needed, provided:

1. The operator does not operate beyond the 100-mile radius of the work reporting location more than one time in any seven consecutive day period;

2. The operator, except a driver salesperson, returns to the work reporting location within 12 hours;

3. At least eight consecutive hours off-duty separate each 12 hours on duty; and

4. The motor carrier which employs the operator maintains accurate and true records showing:

i. The total number of hours the operator is on duty each day;

ii. The time the operator reports for duty each day;

iii. The time the operator is released from duty each day; and

iv. The total on-duty time for the preceding seven days for operators used for the first time or intermittently.

19:9-1.21 Other regulations

In addition to these traffic rules, users of the Turnpike are subject to all applicable statutory provisions, including, but not limited to, penalties for nonpayment of tolls (N.J.S.A. 27:23-25), penalties for violation of any of the Authority's regulations (N.J.S.A. 27:23-32), United States Department of Transportation regulations, and, except as otherwise provided hereinabove, the Motor Vehicle and Traffic Acts of New Jersey relating to lights, brakes, weights, registration and other matters (N.J.S.A. 39:3-1 et seq. and 39:4-1 et seq.). Commercial vehicles in interstate commerce using the Turnpike remain subject to Interstate Commerce Commission regulations.

19:9-2.2 Purchases for amounts requiring public advertising

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

(c) Rules concerning receipt, opening, and award of bids:

1.-4. (No change.)

5. Correction or withdrawal of inadvertently erroneous bids after opening, or cancellation of awards or contracts based on such mistakes, may be permitted in the sole discretion and determination of the Authority. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Authority or fair competition shall be permitted and a decision to permit the correction or withdrawal of bids, or to cancel awards or contracts, based on bid mistakes, shall be supported by a written determination made by the Director of Administrative Services and Technology or the Chief Engineer.

6. (No change.)

7. When it is determined impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids or Advertisement for Proposals may be issued requesting the submission of unpriced proposals to be followed by an Invitation for Bids or Advertisement for Proposals limited to those bidders whose unpriced proposals have been determined as qualified for the project by the Director of Administrative Services and Technology or the Chief Engineer.

8. Bid or proposal guarantees or bid or proposal bonds may be required in such form and amount as deemed necessary by the Director of Administrative Services and Technology or Chief

Engineer to insure faithful performance of the contract or for the payment of persons performing work on the project. In that event, the requirement of a bid or proposal guarantee or bond, and the form and amount thereof shall be set forth or specified in the bid specifications.

9. Performance bonds, contract bonds or consents of surety may be required in such form and amount as deemed necessary by the Director of Administrative Services and Technology or Chief Engineer to insure faithful performance of the contract or for the payment of persons performing work on the project. In that event, the requirement of a performance or contract bond or consent of surety, and the form and amount thereof shall be set forth or specified in the bid specifications. The bond shall be submitted by the successful bidder upon notification.

(d) Rules concerning dispensing with public bid procedure:

1. A contract may be awarded for a supply, service, or product without competitive sealed proposals when the Authority upon written recommendation of the Director of Administrative Services and Technology or the Chief Engineer determines and acts by appropriate resolution that there is only one source for the required supply, service or product.

2. When the Authority deems that there exists threat to the health, welfare or safety of the public or of property under emergency conditions, or the exigency of the situation does not allow sufficient time to advertise and award bids by public bidding, the Authority may, by appropriate resolution, acting on the written recommendation of Director of Administrative Services and Technology or Chief Engineer, waive the requirement of public bidding provided that such emergency requirements shall be made with such competition as is practicable under the circumstances.

19:9-2.3 Purchases under amount requiring public advertising

(a) In the case of purchases of personal property or services, where the aggregate cost or amount involved is less than the minimum amount for which public advertising for bids is required, competitive bidding is not required. As determined in the discretion of the Director of Administrative Services and Technology or Chief Engineer, price quotations may be solicited from vendors to the extent determined appropriate by the Director of Administrative Services and Technology or Chief Engineer.

(b) Awards of bids may be to other than the lowest bidder for valid reasons, if specifically recommended by the Director of Administrative Services and Technology or Chief Engineer.

19:9-2.4 Termination of contract

A contract awarded to the successful bidder may be terminated by the Authority at any time for inadequate or improper performance, or for breach of any terms, conditions, or obligations of the contract, as determined by the Authority, or if the vendor shall make an assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or if an involuntary petition in bankruptcy is filed against the vendor and the act of bankruptcy therein alleged is not denied by the vendor and the act of bankruptcy therein alleged is not denied by the vendor. Upon termination, the Authority shall be liable only for payment of goods or services properly performed in accordance with the contract. The Authority shall have the right to purchase non-delivered goods to replace defective goods and services on the open market and hold the vendor liable for the difference between the price set forth in the contract for such goods or services and the prices paid on the open market. Further, the Authority reserves the right to terminate any contract entered into provided written notice has been given to the contractor at least 15 days prior to such proposed termination date. In addition, the Authority shall have the right, without the necessity of court proceedings, to recover all equipment, material or supplies that are the property of the Authority and have been entrusted with the vendor to be used in the performance of said contract. Nothing in this section is intended to limit the Authority's right to legally pursue all costs which exceed the amount due and owing the vendor under said contract. The list of remedies in this section is not exclusive.

19:9-2.5 Purchases under or in combination with State or other agency contracts

(a) When it is determined to be proper and in the best interest of the Authority, the Authority may purchase equipment, goods, materials and supplies directly, without advertising, from vendors who hold contracts with the State of New Jersey or other State or multi-state authorities or agencies.

(b) When it is determined to be proper and in the best interests of the Authority, the Authority may contract with and purchase by public bid procedure, services, equipment, goods, materials and supplies, in combination with the requirements of the State of New Jersey or other State or multi-state authorities or agencies.

(c) In either event, the Director of Administrative Services and Technology or Chief Engineer will submit a written recommendation to the Authority which shall set forth the details of the proposed acquisition and shall state the reasons for proceeding under or in combination with such State or other State authority contract or requirements.

19:9-2.6 Sale of surplus personal property

(a) Sales of surplus personal property, where the anticipated aggregate proceeds are estimated by the Director of Administrative Services and Technology or exceed the minimum amount requiring public advertising of purchases, shall be made after public advertisement and competitive bids. The advertising and bid procedures shall be basically as set forth in N.J.A.C. 19:9-2.2(a), (b) and (c). The Authority may by resolution waive the requirement of public advertising on a particular sale.

(b) In the case of sales of surplus personal property, where the anticipated aggregate proceeds are estimated by the Director of Administrative Services and Technology to be less than the minimum amount requiring public advertising or purchases, competitive bidding is not required. As determined in the discretion of the Director of Administrative Services and Technology, price quotations may be solicited from vendors to the extent determined appropriate by the Director of Administrative Services and Technology.

(c) (No change.)

(d) In the event no bids, or inadequate or low bids, in the determination of the Director of Administrative Services and Technology, are received, the Director of Administrative Services and Technology may in his discretion reject all bids, reoffer for sale, negotiate, trade-in or scrap the sale items.

(e) Upon determination by the Director of Administrative Services and Technology, surplus personal property or equipment may be sold in conjunction with or as part of an auction or sale proceeding conducted by the State of New Jersey or other State authorities.

19:9-2.7 Procedure for prequalification and award of construction contracts

(a) All prospective bidders for construction in excess of \$50,000 shall be prequalified annually into classifications by the Chief Engineer. Prospective bidders will be classified according to the type of work and the amount of work on which they are entitled to bid as set out in the schedule of classifications set forth at Appendix A to this chapter, incorporated herein by reference. Proposals submitted by prequalified bidders who have received classification ratings as set forth in Appendix A within 10 percent of the total price of the proposal will be considered for award by the Authority. The Chief Engineer may, from time to time, add additional specialized work categories to the schedule of classifications.

(b) In order to prequalify in classification, prospective bidders shall submit annually or at least 21 calendar days prior to bid opening of a specific contract, proof of the following:

1. As to type of work, recent satisfactory experience as a contractor on a contract involving substantially the same or similar work to the classification being sought;

2. As to amount of work, recent satisfactory experience as a contractor on a single contract having a value of at least 60 percent of the maximum limit of the classification rating being sought; several contracts performed at or about the same time having a cumulative value of at least 60 percent of the said maximum limit;

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3. Satisfactory financial condition of the prospective bidder;

4. Adequate facilities, including plant, equipment and experience of key personnel and officers of the prospective bidder;

5. That the bidder is not now, nor has been involved, directly or indirectly, in any proceeding, conduct or activity relating to, or reflecting upon, the moral integrity of the bidder by means of sworn affidavit; and

6. A Contractor's Qualifying Statement showing the prospective bidder's status at the end of the month prior to the date of the statement. When submitting a proposal, prequalified bidders may not submit another Qualifying Statement but will instead submit a prequalification recapitulation in such form as may be prescribed by the Authority.

(c) The Chief Engineer shall review the statement and other information submitted by the prospective bidder and shall notify the prospective bidder of the decision as to their classification by certified mail. The classification will be valid for a period of one year from the date of the Chief Engineer's decision, and the prospective bidder will be allowed to bid on all Authority contracts within its classification limits for this one year period without the need of additional prequalification, subject to subsections (d) and (g) below. At the end of this one year period, the prequalification of the bidder will expire, and to be renewed, the prospective bidder must meet the requirement of (b) above.

(d) The Chief Engineer shall reserve the right to require a prospective bidder to submit such additional evidence of qualifications as deemed necessary, and shall consider any evidence available of the financial, technical, and other qualifications and ability of the bidder. The Chief Engineer may change or revoke at any time the classifications of any bidder upon any evidence that said bidder does not meet the financial, technical, moral or other qualifications of the classification.

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

(g) A bidder may be disqualified from future bidding on any Authority project if such bidder claims, whether successfully or not, its right to withdraw its bid because of a unilateral mistake. Such qualification may be effective for a period of up to six months from the date of opening the bid sought to be withdrawn. Only in cases where the withdrawing bidder did not act in a commercially reasonable manner would the Authority choose to disqualify the bidder, unless the bidder previously sought to withdraw a bid within the 12 months preceding the date of opening of the bid sought to be withdrawn, in which event the bidder may be disqualified regardless of whether the second mistake was commercially reasonable.

(h) (No change.)

19:9-2.8 Procedure to resolve protested solicitations and awards

(a) Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract or its prequalification status or classification may protest to the Authority. The protest shall be submitted in writing within five business days after such aggrieved person knows or should have known of the facts giving rise thereto. Failure to file a timely protest shall bar any further action. The written protest shall set forth in detail the facts upon which the protestant bases its protest.

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

(e) In the event of a timely protest under (a) above, the Authority shall not proceed further with the solicitation, or with the award of the contract until the decision is rendered under subsection (c) above, or until the Executive Director after consultation with the Director of Administrative Services and Technology or Chief Engineer makes a written determination that the continued solicitation or award of the contract without delay is necessary to protect the interests of the Authority or the public.

19:9-2.9 Licenses to cross

(a) A license to cross is a formal agreement with the Authority granting permission to cross and/or access any Turnpike property of any nature or description. This normally pertains to public and private utilities which must cross the Turnpike roadway in order to provide service to the public. In addition, licenses to cross are utilized by adjacent property owners to the Turnpike roadway that must

utilize the Turnpike property for drainage and access purposes. Before seeking a license to cross, applicants are strongly advised to first consult with the Authority's Director of Law to ascertain what information will be required as part of the application and to meet with representatives of appropriate departments of the Authority. Said consultation may be arranged in the discretion of the Director of Law upon the applicant's request.

(b) In order to apply for a license to cross, an original and 11 copies of a letter containing the location of the Turnpike property affected, the purpose of the crossing and such other information as may be required by the Authority, along with 12 copies of the engineering plans in such form as may be required by the Authority shall be submitted to:

Director of Law
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, New Jersey 08903

(c) A license to cross shall be evaluated based on the following:

1. Adherence to the New Jersey Turnpike Authority Standard Specifications, as amended and supplemented;

2.-6. (No change.)

7. The effect of the proposed crossing on the financial, economic or engineering aspects of the activities of the Authority, the public or neighboring property, owners.

(d) Competing applications will be assessed based upon (a) through (c) above. The award will be based on the application which most closely serves the needs of the Authority and the public.

(e) (No change.)

19:9-2.10 Procedure to resolve protested applications for, and awards of, licenses to cross

(a) Any actual or prospective applicant for a license to cross on any Authority property or facility who is aggrieved in connection with the application for and/or award of such a license, may protest to the Authority. The protest shall be submitted in writing to the Director of Law within five business days after such aggrieved party knows or should have known of the facts giving rise to the grievance. Failure to file a timely protest shall bar any further action. The written protest shall set forth in detail the facts upon which the aggrieved applicant bases its protest and shall define, as clearly as the available information permits, those issues or facts in dispute.

(b) (No change.)

(c) If the protest is not resolved by mutual agreement, the Executive Directors shall promptly issue a decision in writing. The Executive Director's decision shall state the determination made and the reasons for the action taken. The Executive Director's decision shall be mailed or furnished promptly to the aggrieved applicant and any other interested party. The members of the Authority shall review the decision of the Executive Director and shall adopt, review or modify the decision of the Executive Director within 45 days of said decision.

(d) (No change.)

(e) In the event of a timely protest under (a) above, the Authority shall not proceed further with the application for, or with the award of, the license to cross in issue until the decision is rendered pursuant to (c) above.

19:9-3.1 Towing rates

(a) Towing rates charged by Authority-authorized companies shall conform to the following rates or such rates as may be approved and amended by the Commissioners from time to time, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules on agency rulemaking, N.J.A.C. 1:30.

1. Class 1 vehicles (24 hours):

i. Service charge, \$40.00 or \$50.00 for flatbed; plus

ii. \$2.00 per mile on Turnpike to a maximum of \$60.00 or \$70.00 for flatbed plus;

iii. Additional charge of \$5.00 for the use of dolly wheels;

iv. An additional charge of \$15.00 for disconnecting a drive shaft;

v. An additional charge of \$30.00 for removing a chrome bumper;

and

vi. An additional charge of \$20.00 for removing an axle.

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2. Class 2-6 vehicles:

- i. Service charge, \$70.00 for straight truck, car with trailer, or trailer without car of \$100.00 for tractor trailer or bus;
 - ii. \$3.00 per mile on Turnpike to a maximum of \$100.00 for straight truck, car with trailer, or trailer without car or \$5.00 per mile for tractor trailer or bus to a maximum of \$150.00; plus
 - iii. An additional charge of \$15.00 for connecting air lines;
 - iv. An additional charge of \$15.00 for disconnecting drive shaft on cars and small trucks or \$30.00 on large trucks;
 - v. An additional charge of \$30.00 for removing a chrome bumper;
 - vi. Additional charge of \$20.00 for removing an axle; and
 - vii. Additional charge of \$45.00 for removing an air scoop.
- ### 3. Winching and wrecking (all classes of vehicles):
- i. \$50.00 per hour for a light wrecker;
 - ii. \$100.00 per hour for a heavy wrecker;
 - iii. \$350.00 per hour, two hour minimum for construction-type cranes in excess of 40,000 pounds and
 - iv. \$225.00 per hour, two hour minimum for specialized equipment, including heavy duty underreach, Landoll Hydraulic Trailer, 40 to 45 ton Challenger, Oshkosh, Sterling-type wrecker crane, box trailer with tractor and driver or wrecker with wheel lift.

19:9-3.2 Road service rates

(a) Road service rates for Class 1 vehicles charged by Authority-authorized service companies shall conform with the following rates or such rates as may be approved and amended by the Commissioners from time to time, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the rules on agency rulemaking, N.J.A.C. 1:30.

1. Road service charge: \$30.00;
2. Gasoline/diesel: Cost of product plus road service charge;
3. Tire change: Road service charge;
4. Tire repair/replacement: Cost of product plus road service charge;
5. Battery service: Road service charge; and
6. Water: Road service charge.

19:9-3.3 Questions and disputes

Questions and disputes concerning the rates or quality of towing or road service provided by Authority-authorized companies may be directed to the Director of Operations.

SUBCHAPTER 4. INSPECTION AND OBTAINING OF AUTHORITY RECORDS

19:9-4.1 General provisions

(a) Except as otherwise provided by law, all Authority records required by law to be made, maintained, or kept on file shall be available to any individual for the purpose of inspection or hand copying during regular business hours at the Authority's main offices at the Administration Building, Turnpike Interchange 9 at Route 18 North, East Brunswick, New Jersey. Other records within the possession of the Authority may be made available for inspection or hand copying subject to N.J.A.C. 19:9-4.2.

(b) Except as otherwise specified herein, copies of records may be obtained by written request to:

New Jersey Turnpike Authority
Law Department
Records Request
P.O. Box 1121
New Brunswick, New Jersey 08903

(c) Copies of New Jersey State Police Troop D accident reports concerning accident on the Turnpike may be obtained upon payment of a \$10.00 report charge payable to the New Jersey Turnpike Authority, accompanied by a written request to:

New Jersey Turnpike Authority
Operations Department
Accident Report Request
P.O. Box 1121
New Brunswick, New Jersey 08903

(d) Criminal reports statements, photographs and other evidential reports, if any, attached to accident reports will be furnished only in accordance with applicable laws and the New Jersey court rules.

(e) Photographs of the Turnpike roadway, structures and/or appurtenances will be taken by the Authority upon written request to the Director of Public Affairs at the address set forth in (b) above. Requests must specify the exact location of the site, accompanied by a brief description of the item to be photographed. Such photographs shall not be taken by persons other than those employed or contracted by the Authority without first making written or verbal request to the Director of Public Affairs, whose approval shall be subject to the terms of N.J.A.C. 19:9-1.6(j).

(f) Records sought in connection with a claim or suit against the Authority, its agents, servants or employees, will be furnished only in accordance with applicable laws and the New Jersey court rules.

(g) Copies of bid documents for contractors and vendors bidding on work, services or materials shall be obtained at fees established by the Turnpike Authority to cover printing and distribution costs and published in the advertisement for the receipt of bids.

(h) The fees for obtaining Authority records, which are set forth in N.J.A.C. 19:9-4.4 shall be collectable at or before delivery of the documents copied. Payment shall be made by check or money order payable to the New Jersey Turnpike Authority.

19:9-4.2 Nonpublic information

(a) The following records, if not required by law to be made, maintained, or kept on file, may be deemed by the Director of Law not to constitute public records subject to the inspection, examination and copying provisions of this subchapter:

1. All evaluative reports or memoranda submitted to, or prepared by, the Authority, its consultants, agents, or employees;
2. All records that are interagency or intraagency communications other than statistical or factual tabulations of data or final Authority policy or determinations;
3. All records concerning applications for employment with the Authority;
4. All records containing personal, financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing business or seeking to do business with the Authority;
5. All records which, if disclosed, would impair present or imminent contract awards or collective bargaining negotiations;
6. All records which, if disclosed, would constitute an invasion of personal privacy;
7. All records compiled for law enforcement or official investigatory purposes if their disclosure would interfere with law enforcement investigations or legislative, judicial, administrative, or disciplinary proceedings or hearings, or deprive a person of a right to a fair trial or hearing or impartial adjudication, or identify a confidential source or disclose confidential information relating to a criminal, administrative or disciplinary investigation, or reveal criminal investigative techniques or procedures, except routine techniques or procedures, or where disclosure would endanger the life or safety of any person or prejudice the Authority's ability to seek judicial or administrative relief;
8. All records otherwise exempted from disclosure by State or Federal law; and
9. Any other documents protected by a privilege.

19:9-4.3 Procedures for obtaining Authority records

(a) Requests for inspection or copying of records shall be made in person or in writing to the Authority at the address set forth in N.J.A.C. 19:9-4.1. Each request must set forth the name and address of the party requesting the document, the reason for the request, and the intended use of the document. The Director of Law shall review all requests and shall notify the person making a request of the time and date, or alternative times and dates, that the records will be made available for inspection and copying. If the request is denied, the person will be notified of the denial and the reasons for such denial.

(b) Records shall be inspected only under the supervision of the Director of Law or such other officer or employee as may be designated by the Director of Law. Such inspections shall be made

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at the Administration Building during regular business hours or at such other times and/or locations as the Director of Law deems convenient.

(c) All duplication shall be done by, or at the request of, the Authority, and the charges shall be in accordance with those set forth in N.J.A.C. 19:9-4.4. If the Director of Law finds that there is no risk of damage, mutilation or loss of such records and that it would not be incompatible with the economic and efficient operation of the Authority, the Director of Law may permit an individual or entity seeking to copy more than 100 pages to use his or her own photographic process, approved by the Director of Law upon the payment of a reasonable fee, considering the equipment and the time involved, to be fixed by the Director of Law at not less than \$10.00 nor more than \$50.00 per day. If it is not practicable for the Authority to copy any document, that document will be copied commercially, and the person requesting the copy shall be charged a fee equal to the Authority's cost for such commercial reproduction.

19:9-4.4 Fees

(a) Copies of Authority records by the Authority shall be made available to the requesting individual or entity upon full payment of copying costs. Copying costs shall be determined in accordance with the following fee schedule:

1. Documents up to 8½ by 13 inches: \$.50 per page;
2. Documents over 8½ by 13 inches: \$1.00 per page;
3. Drawings, maps, and plan sheets: \$1.00 per page;
4. Microfilm copies, any size: \$1.00 per page;
5. Existing Photographs:
 - i. Photographs up to 8 by 10 inches, black and white glossy: \$10.00 per picture;
 - ii. Photographs 8 by 10 inches, color glossy: \$15.00 per picture;
6. Photographs taken upon request (prices include travel time, materials and film processing) up to 8 by 10 inches, black and white glossy:
 - i. First photograph: \$30.00;
 - ii. Each additional photograph: \$15.00;
7. Slides, 35 millimeter: \$10.00 per slide;
8. State Police Accident reports, all pages \$10.00;
9. State Police Photographs up to 8 by 10 inches, color glossy:
 - i. First photograph: \$5.00;
 - ii. Each additional photograph: \$3.00.

(b) Payment may be waived when the request is made by the United States, the State of New Jersey, or any agency or political subdivision thereof, individuals or firms doing work or performing services for the Authority, organizations or associations of which the Authority is a member, credentialed media organizations, and organizations exchanging information with the Authority on a reciprocal basis.

(c) A fee of \$5.00 per document or photograph will be charged for certification by the Secretary of the Authority that an Authority document is authentic or that a record of which the Authority is legal custodian cannot be found.

SUBCHAPTER 5. ADMINISTRATIVE PRACTICES

19:9-5.1 Pre-employment screening

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

(c) A medical examination, including drug screening, may be performed on any applicant for employment by the Authority's designated medical representative. Annual medical evaluations may subsequently be performed on all employees, and for appropriate personnel, may include drug screening.

19:9-5.2 Waivers generally

Nothing in these rules shall be construed to prohibit the Authority from granting waivers from any provisions hereof, the New Jersey Turnpike Authority Standard Specifications.

19:9-5.3 Procedure for waiver

Any party desiring a waiver or release from the express provisions of any of these rules, the New Jersey Turnpike Authority's Standard Specifications shall submit a written request to the Executive Director. Any waiver so requested may be granted only upon a finding that such waiver would not jeopardize the health, safety or welfare

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of the Turnpike, its patrons or the general public, would not contravene the provisions of N.J.S.A. 27:23-1 et seq., and that granting the waiver would be consistent with the Authority's statutory purposes.

SUBCHAPTER 7. ORGANIZATION OF THE NEW JERSEY TURNPIKE AUTHORITY

19:9-7.1 Authority responsibilities

The Authority is responsible for the design, construction, maintenance and operation of a limited access, high-speed roadway, for related projects designed at N.J.S.A. 27:23-1 et seq. and for such other activities as may be authorized by law.

19:9-7.2 Table of organization

A table of organization showing the general course and method of operation within the Authority is appended to this chapter as Appendix B, incorporated herein by reference.

19:9-7.3 Functions of departmental units

(a) Functions of the various departments within the Authority are as follows:

1. (No change.)
2. Maintenance: This department is responsible for the care and maintenance of the Authority's existing facilities, real property, equipment and communications system.
3. (No change.)
4. Operations: This department manages all activities related to day-to-day operation of the Turnpike. Its responsibilities include traffic engineering, traffic regulations, emergency services, coordination of construction and maintenance activities, hazardous materials response, employee safety, communications, towing and hazardous materials concessionaires, and liaison with the New Jersey State Police assigned to the Turnpike.
5. Finance and Budgets: This department is responsible for all fiscal matters for the Authority, including financing and investment issues, annual capital and operating budgets, asset management, payroll, other disbursements, and toll collection audits.
6. Law: This department provides legal service to all Authority departments, including the review of contracts, acquisition of property, management of all legal and quasi-legal hearings, the handling of matters associated with labor relations, and the performance of contract administration duties. In addition, this department has all responsibility for risk management and insurance functions and operations.

7. Human Resources: This department is responsible for all employment activities (recruiting, promotions, etc.), labor relations management, training of Authority employees, and administration of employee benefits programs.

8. Administrative Services and Technology: This department is responsible for concessionaire services (including road service) and for providing support services to the Authority departments and its employees, including management information systems, office services, mail activities, duplication, purchasing of all materials, supplies, and services for the maintenance, repair and operation of all departments, and management of the disposal of surplus property.

9. Public Affairs: This department coordinates Authority interaction with the media, provides information to the press and public and manages all community relations.

10. Secretary to the Authority: This office manages all activities of the Authority's Commissioners, and manages the official records of the Authority and their disposition.

19:9-7.4 Information

Interested persons can obtain information from the Authority by addressing inquiries to:

Executive Director
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, NJ 08903

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**APPENDIX A
SCHEDULE OF CLASSIFICATIONS**

Classification	Brief Description
1. Bridge Structures	Bridge, viaducts, retaining walls, foundations, fabrication and erection of structural steel, intermediate members, deck repair and/or replacement.
2. Communications	Installation and testing of switching equipment, telecommunications and all other communication systems.
3. Computer Systems	Fabrication of computer system, installation, electrical and other work incidental thereto, including associated software.
4. Concrete Maintenance	Concrete repairs, concrete sawing, sealing, curing.
5. Demolition	Demolition and/or removal of buildings, structures.
6. Dredging	Grading and drainage, excavation, embankment, fill, subgrade material, muck removal—primarily by dredging methods.
7. Electrical Work, Buildings	All electrical work for buildings.
8. General Construction, Buildings	General construction of buildings, including all incidental work.
9. General Construction, Highway	Work involving grading, drainage, paving (no bridges).
10. Grading and Drainage	All grading and drainage, clearing, including drainage structures.
11. Guard Rail and Fencing	All types of guardrail, all types of fencing.
12. Heating, Ventilating and Air Conditioning	All heating, ventilating, air conditioning work involved for building construction.
13. Heavy Highway	Work involving any combination of excavation, grading, drainage, paving, bridges.
14. Kitchen Equipment	Fabrication, installation of kitchen and restaurant equipment for buildings.
15. Landscaping	Planting, seeding, topsoiling, grading, jute mesh, erosion control and all other landscaping procedures.
16. Electrical Work, Highway	Roadway, area, parking and ramp lighting, lighting standards, electrical distribution panels and other underground and overhead electrical work.
17. Painting	Cleaning, priming, painting of structural steel and members (bridges, towers, tanks).
18. Paving	Work involving all types of paving, new and resurfacing.
19. Plumbing	All plumbing work for building construction including sanitary facilities.
20. Sewerage and Water Supply	Construction of sewerage and water treatment plants, including structures and equipment, installation and repair; erection, repair and/or replacement of water towers.
21. Signing	All types of signing, delineation, overhead sign structures.
22. Structural Steel and Iron Buildings	Fabrication and erection of structural steel for buildings, including reinforcing, and ornamental iron work.

23. Toll booths and Equipment	Toll booth fabrication and installation, toll collection equipment, canopies, roofing, soffit lane lights, luminous signing.
24. Special Classifications	Specialized work not sufficiently included in other defined classifications; such as, but not limited to the following:
Toll Revenue and Computer Systems	Toll revenue system design fabrication, testing, installation, including associated computer and communication subsystems with software development.
Timber Construction	Bridge fender systems and all types of timber construction.
Architectural Metal Panel Construction	All types of architectural metal panel construction.
Fencing	All types of fencing.
Fuel Distribution Systems	Construction of fuel distribution systems including installation of dispensers, storage tanks, and all associated electrical work and piping.
Interior Furnishings	Carpeting and other interior furnishings.
Water Supply Well Construction and Rehabilitation	Construction, rehabilitation and testing of water supply wells.
Lining Fuel Storage Tanks	Epoxy resin lining of fuel storage tanks.
Automotive Service Equipment	Vehicle lifts and all types of automotive service equipment.
Concrete Median Barrier	Construction and installation of precast or cast-in-place concrete median barrier, sidewalks, curbs and other similar concrete components.
Bridge Drainage Systems	Construction and modification of bridge supported and in-ground bridge drainage systems.
Prefabricated Buildings	Installation of all types of prefabricated buildings.
Roofing	Construction and rehabilitation of all types of roofing systems.
Fire Protection Systems	Construction of dry chemical, pre-engineered and CO ₂ type fire protection systems.
Telephone Systems	Design, fabrication and installation of computer controlled telephone systems with special interfaces including testing, equipment maintenance, software development and owner training.
Asbestos Removal/Treatment	Work involving removal, replacement, repair, enclosure, encapsulation, and/or legal disposal of asbestos and asbestos containing materials.
Local Area Network	Contractor has provided a complete baseband or broadband local area network, such as "Ehernet", Manufacturing Automation Protocol (MAP) or "Token Ring." These installations shall also include related electrical work.
	Basic materials involved consist of coaxial cable, communications cable, radio cable, connectors, terminal blocks, equipment jacks, modems, terminal servers, routers, transceivers, electronic enclosures, and other miscellaneous compo-

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Pre-cast-Concrete Noise Barriers

nents. This type of work shall be demonstrated to have been completed by the Contractor and not subcontracted to others.

Fabricating and furnishing reinforced precast concrete noise barriers consisting of sound absorbing materials of light-weight concrete or mineralized wood chips and portland cement such as "Sound-Lok" as manufactured by Easi-Set Industries, Midland, VA or "Durisol" as manufactured by Fanwell Corp., Arlington, VA.

Fabricating plant must be capable of fabricating 5,000 square feet per day of precast concrete noise barrier panels and storing 200,000 square feet of such panels.

Signing—Fabrication only

Fabricating and furnishing all types of signing, delineation and overhead sign structures.

Traffic Control Electronics and Association Equipment

Fabrication, testing and installation of traffic control unit enclosures complete with electronics and associated computer subsystems.

Precast-Concrete Noise Barriers—Non-Absorptive Materials

Fabrication and furnishing reinforced precast concrete noise barrier system components consisting of posts and modular panels. Fabrication methods shall employ form liners for precasting standard materials consisting of concrete, reinforced with epoxy coated deformed bars. No sound absorptive materials should be integrated within these barrier components.

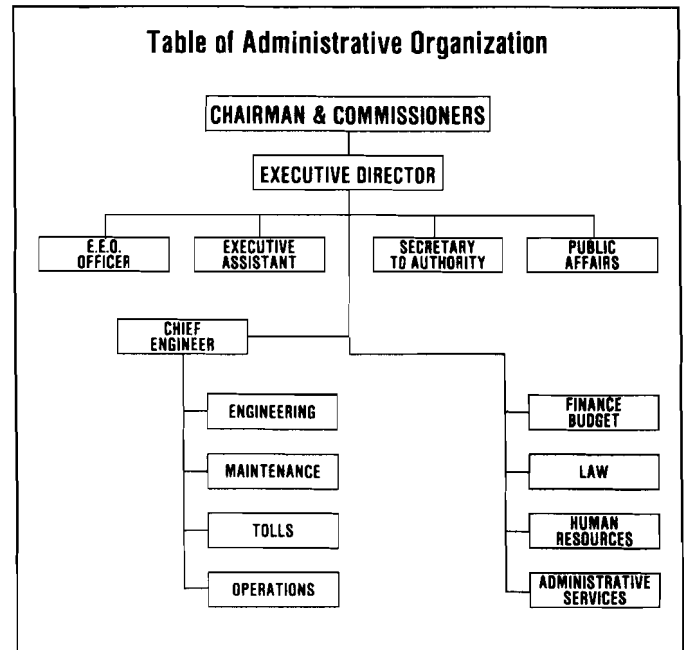
Fabricating plant must be capable of fabricating 5,000 square feet per day of precast concrete noise barrier panels and storing 200,000 square feet of such panels.

CLASSIFICATION RATINGS:

- A. up to \$150,000 maximum
- B. up to \$500,000 maximum
- C. up to \$1,000,000 maximum
- D. up to \$2,000,000 maximum
- E. up to \$5,000,000 maximum
- F. up to \$10,000,000 maximum
- G. Unlimited

Special Rating—(Limits to be established in specific situations where other Classification Rating is not adequate)

APPENDIX B
TABLE OF ORGANIZATION



(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Definitions

Jackpot Payouts of Cash or Slot Tokens That Are Not Paid Directly From the Slot Machine

Adopted Amendments: N.J.A.C. 19:45-1.1 and 1.40

Proposed: June 7, 1993 at 25 N.J.R. 2227(b).
 Adopted: September 8, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
 Filed: September 13, 1993 as R.1993 d.491, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
 Authority: N.J.S.A. 5:12-63(c), 99(a)4 and 12.
 Effective Date: October 4, 1993.
 Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement commented that N.J.A.C. 19:45-1.40 should be amended to eliminate the participation of slot mechanics in manual jackpot payouts. The Division commented that to permit a slot mechanic to participate in manual jackpot payouts would represent an incompatible function and is not provided for in N.J.A.C. 19:45-1.12(g)1 regarding the slot mechanic's job responsibilities.
 RESPONSE: Accepted.

COMMENT: Marina Associates commented that N.J.A.C. 19:45-1.40(b) should be amended to eliminate the requirement that a security officer sign the Request for Jackpot Payout Slip when the slot machine is reset before the jackpot is paid by the cashier.
 RESPONSE: Rejected. Having the casino security department member sign the Request for Jackpot Payout Slip provides additional control over gross revenue deductions since the payment of a jackpot is a gross revenue related transaction.

COMMENT: Greate Bay Hotel and Casino, Inc. (Sands) commented that a casino security department member should be permitted to transport the Request for Jackpot Payout Slip and Receipt to the cashier for preparation of the Jackpot Payout Slip.
 RESPONSE: Accepted. The Commission has made minor changes to N.J.A.C. 19:45-1.40(c) and (e)1 to permit a casino security department

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member to transport the Request for Jackpot Payout Slip and Receipt to the cashier for preparation of the Jackpot Payout Slip.

COMMENT: Sands also commented that a casino security department member should be permitted to transport the jackpot funds to a slot attendant, slot attendant supervisor or slot shift manager for payment to the patron.

RESPONSE: Rejected. N.J.A.C. 19:45-1.40(k)2ii already permits a casino security department member to transport the funds to a slot attendant, slot attendant supervisor or slot shift manager for payment to the patron.

COMMENT: Sands also recommended that forgotten winnings be addressed by the regulation.

RESPONSE: Rejected. The subject of uncollected winnings is beyond the scope of this proposal and may be addressed by the Commission in a future proposal concerning similar issues.

Agency Note: At the time these rules were re-proposed in the New Jersey Register on June 7, 1993, the Commission had a separate pending proposal that also sought to amend N.J.A.C. 19:45-1.40 by, among other things, deleting the requirement that casino check serial numbers appear on the triplicate copy of jackpot payout slips or in stored data. See 25 N.J.R. 917(a). The Commission adopted that proposal on May 21, 1993, and those amendments became effective upon publication in the New Jersey Register on June 21, 1993. See: 25 N.J.R. 2702(b). Given that the re-proposed amendments as hereby adopted were published for comment prior to the effective date of the amendments regarding casino check serial numbers, the pending re-proposed amendments did not contain, nor could they have contained, the language presently found in N.J.A.C. 19:45-1.40.

Consequently, the Commission is now adopting technical changes which will reconcile the pending re-proposed amendments with the existing version of N.J.A.C. 19:45-1.40. In order for that reconciliation to be effective, the Commission intends that the versions of 19:45-1.40(i), (j) and (o) which are being adopted with the changes noted herein will be substituted in their entirety for the existing versions of those subsections which are currently codified at N.J.A.C. 19:45-1.40(e), (f) and (j), respectively.

Given the foregoing, the Commission appreciates that it may be difficult to discern readily which language is intended for codification. Anticipating that the typical reader will expect to find that any changes made by this notice of adoption will be based on the proposal published at 25 N.J.R. 2227(b), the Commission, to the fullest extent possible, will give effect to that notice and will show changes on the basis thereof, provided that doing so is not inconsistent with the intervening amendments adopted at 25 N.J.R. 2702(b).

As a further aid to the reader, the Commission will use italics, *thus* to depict the intervening changes which were made to N.J.A.C. 19:45-1.40 by the casino check serial number amendments but which were not incorporated when the reproposal was published. The deletion upon this adoption of such intervening changed text will be shown as a deletion of italicized text upon adoption, *[thus]**.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***; rule text added subsequent to proposal indicated in italics *thus*; deletion of rule text added subsequent to proposal indicated in italics in brackets with asterisks ***[thus]***):

19:45-1.1 Definitions

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

...
"Jackpot Payout Receipt" is defined in N.J.A.C. 19:45-1.40.

"Jackpot Payout Slip" is defined in N.J.A.C. 19:45-1.40.

...
"Request for Jackpot Payout Slip" is defined in N.J.A.C. 19:45-1.40.

...

19:45-1.40 Jackpot payouts of cash or slot tokens that are not paid directly paid from the slot machine

(a) Whenever a patron wins a jackpot of coins or slot tokens that is not totally and automatically paid directly from the slot machine, a Request for Jackpot Payout Slip ("Request") shall be prepared

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after the preparer observes the combinations on the slot machine and determines the appropriate amount of the payout, based on the winning combinations. If the manual jackpot is less than \$10,000, the preparer of the Request shall be a slot attendant*[, slot mechanic]* or a slot attendant supervisor. If the manual jackpot is \$10,000 or more, the preparer of the Request shall be a slot attendant supervisor. The Request shall be, at a minimum, a one-part form or the information required on it maintained in stored data, access to which, prior to use or input, shall be restricted to slot attendants*[, slot mechanics]* and slot attendant supervisors.

(b) The following information, at a minimum, shall be on the Request or maintained in stored data:

1. The date and time of the jackpot;
2. The asset number of the slot machine on which the jackpot was registered;
3. The winning combination of characters constituting the jackpot;
4. The amount to be paid to the winning patron;
5. The method of payment requested by the patron (cash, slot tokens or casino check);
6. The signature or identification code of the preparer; and
7. The following additional signatures or identification codes shall be required if the slot machine or the progressive meter is reset prior to the patron being paid or if payment is made directly to the patron by a slot cashier, master coin bank cashier or general cashier:

i. The signature or identification code of the casino security department member attesting to the characters constituting the jackpot and the amount to be paid to the winning patron; and

ii. The signature or identification code of the slot shift manager attesting to the characters constituting the jackpot and the amount to be paid to the winning patron when the jackpot amount is \$25,000 or more.

(c) Following preparation, the Request shall be immediately transported by the preparer or the information maintained in stored data shall be available to a slot booth, the master coin bank or the cashiers' cage where it will serve to authorize the preparation of a Jackpot Payout Slip ("Payout") by a slot cashier, master coin bank cashier or general cashier.

(d) If the winning patron will not be paid before the slot machine or progressive meter is reset, the preparer of the Request required by (a) above shall also prepare a Jackpot Payout Receipt ("Receipt"). The Receipt shall be, at a minimum, a two-part form, and shall contain the following information:

1. The date and time of the jackpot;
2. The asset number of the slot machine on which the jackpot was registered;
3. The winning combination of characters constituting the jackpot;
4. The amount to be paid to the winning patron stated in numbers and in words;
5. The signature of the winning patron on the original form only; and
6. The signature of the preparer indicating that the information on the Receipt is correct and agrees with the information on the Request or as maintained in the stored data required by (a) above.

(e) Upon preparation, the Receipt shall be distributed as follows:

1. The original shall be immediately delivered to the slot cashier, master coin bank cashier or general cashier ***by the preparer or a casino security department member*** along with the Request if manually generated in accordance with (c) above; and

2. The duplicate shall be immediately presented to the winning patron who shall be required to present the duplicate ***[Request]* *Receipt*** before being paid the jackpot in accordance with the procedures set forth in this section.

(f) ***[Jackpot payout slips]* *Payouts*** shall be serially prenumbered forms, each series of which shall be used in sequential order, and the series of numbers of all ***[jackpot payout slips]* *Payouts*** received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department. All original and duplicate void ***[jackpot payout slips]* *Payouts*** shall be marked "VOID" and shall require the signature of the preparer. Notwithstanding the above, a serially prenumbered combined

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jackpot payout hopper fill form may be utilized in conjunction with N.J.A.C. 19:45-1.41(b), as approved by the Commission, provided that the combined form shall be used in a manner which otherwise complies with the procedures and requirements established by this section.

(g) For establishments in which *[jackpot payout slips]* ***Payouts*** are manually prepared, the following procedures and requirements shall be observed:

1. Each series of *[jackpot payout slips]* ***Payouts*** shall be a three-part form, at a minimum, and shall be inserted in a locked dispenser that will permit an individual slip in the series and its copies to be written upon simultaneously while still locked in the dispenser, and that will discharge the original and duplicate while the triplicate remains in a continuous, unbroken form in the dispenser; and

2. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of *[jackpot payout slips]* ***Payouts***, placing *[jackpot payout slips]* ***Payouts*** in the dispensers, and removing from the dispensers each day the triplicates remaining therein. These employees shall have no incompatible functions.

(h) For establishments in which *[jackpot payout slips]* ***Payouts*** are computer prepared, each series of *[jackpot payout slips]* ***Payouts*** shall be a two-part form, at a minimum, and shall be inserted in a printer that will: simultaneously print an original and a duplicate and store, in a machine-readable form, all information printed on the original and duplicate, other than the serial number of any casino check issued to the patron who won the jackpot for which the slip was prepared; and discharge the original and duplicate. The stored data shall not be susceptible to change or removal by any personnel after preparation of a *[jackpot payout slip]* ***Payout***.

(i) On ***Payout*** originals, duplicates, triplicates, or in stored data, the preparer shall record, or if computerized, the printer shall print, at a minimum, the following information:

1. (No change.)
2. The winning combination of characters constituting the jackpot;
3. The date *on* ***[during]*** which the jackpot occurred;
4. The amount to be paid from cashiers' cage, master coin bank or slot booth funds;
- 5.-6. (No change in text.)

(j) The time of preparation of the payment *and the serial number of any casino check issued incident to the jackpot* ***payment*** shall be recorded*,* at a minimum, on the original and duplicate upon preparation of the *[jackpot payout slip]* ***Payout***.

(k) All cash or slot tokens paid or any casino check issued to a patron as a result of winning a jackpot shall be:

1. Distributed by the slot cashier, general cashier or master coin bank cashier directly to the patron in accordance with the procedures in (l) below; or

2. Disbursed by a slot cashier, general cashier or master coin bank cashier to:

i. A slot attendant*, [slot mechanic]* or slot attendant supervisor, if the manual jackpot is less than \$10,000 or to a slot attendant supervisor if the manual jackpot is \$10,000 or more who shall transport the cash, slot tokens or casino check directly to the patron in accordance with (m) below; or

ii. A casino security department member who shall transport the cash, slot tokens or casino check to a slot attendant*, [slot mechanic]* or slot attendant supervisor if the manual jackpot is less than \$10,000 or to a slot attendant supervisor if the manual jackpot is \$10,000 or more for payment to the patron in accordance with (m) below.

(l) Whenever the winning patron is paid directly by the slot cashier, general cashier or master coin bank cashier, the following procedures shall be followed:

1. The cashier shall prepare or generate a Payout in accordance with (i) and (j) above;

2. If a casino security department member has not signed the Request, the cashier shall summon a casino security department member and provide him or her with the Request. The casino

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security department member shall proceed to the slot machine identified on the Request and shall verify that the winning characters on the slot machine and the amount to be paid match those which appear on the Request and sign the Request. If the jackpot amount is \$25,000 or more, a slot shift manager shall similarly verify that the winning characters of the slot machine and the amount to be paid match those which appear on the Request and sign the Request. The Request shall then be immediately returned to the cashier by the casino security department member;

3. After the cashier determines that all required signatures verifying the characters of the slot machine and the amount to be paid have been placed on the Request, if the amount being paid is less than \$10,000, the cashier shall pay the winning patron in the presence of the casino security department member and the slot attendant*, [slot mechanic]* or slot attendant supervisor who signed the Request in accordance with this section, or if the amount being paid is \$10,000 or more but less than \$25,000, the cashier shall pay the winning patron in the presence of the casino security department member and the slot attendant supervisor who signed the Request in accordance with this section. If the amount being paid by the cashier is \$25,000 or more, the cashier shall pay the winning patron in the presence of the casino security department member, the slot attendant supervisor, and the slot shift manager who signed the Request in accordance with this section. All casino personnel required by this section to witness the payment shall sign the duplicate Payout attesting to the accuracy of the information on the Payout and the disbursement of the payment to the patron;

4. If a Receipt was issued and all the required verifications of the characters were completed in accordance with (b) above, the cashier shall summon a casino security department member and a slot attendant*, [slot mechanic]* or slot attendant supervisor*, []* if the manual jackpot is less than \$10,000, a casino security department member and slot attendant supervisor ***[or]*** if the manual jackpot is \$10,000 or more and if the jackpot is \$25,000 or more, a slot shift manager shall also be summoned. The patron shall be required to present the duplicate Receipt to the cashier and sign it in his or her presence in order to receive payment. The cashier shall compare the duplicate Receipt to the original Receipt and, if in agreement, make the payment to the winning patron. All casino personnel required by this section to witness the payment shall sign the duplicate Payout attesting to the accuracy of the information on the Payout and the disbursement of the payment to the patron;

5. Once payment has been made and all required signatures obtained, the cashier shall give the duplicate Payout to the casino security department member, who shall as expeditiously as possible deposit it into a locked accounting box at the casino security podium or other location as approved by the Commission; and

6. The cashier shall attach the Request, if applicable, and the original and duplicate Receipt, if applicable, to the original Payout. If the disbursement is made from a slot booth all forms shall be forwarded by the end of the gaming day to the master coin bank for reimbursement. If the disbursement is made from the cashiers' cage, all forms shall be forwarded by the end of the gaming day to the main bank for reimbursement.

(m) Whenever a winning patron will be paid by a slot attendant*, [slot mechanic]* or slot attendant supervisor, the following procedures shall be followed:

1. The slot cashier, general cashier or master coin bank cashier shall prepare or generate a Payout in accordance with (i) or (j) above;

2. The cashier shall disburse the cash, slot tokens or casino check to the slot attendant*, [slot mechanic]* or slot attendant supervisor. The casino employee receiving the payment shall verify the amount to be paid to the patron and sign the original and duplicate Payout attesting to the accuracy of the information on the Payout and the receipt of the payment from the cashier. The cashier shall retain the original Payout and the duplicate Payout shall be transported with the payment by the casino employee;

3. If a casino security department member has not signed the Request, the slot attendant*, [slot mechanic]* or slot attendant supervisor shall provide the duplicate Payout to the casino security

department member who shall verify that the winning characters of the slot machine and the amount to be paid match those which appear on the duplicate Payout. If the jackpot amount is \$25,000 or more and the slot shift manager has not signed the Request, the slot shift manager shall similarly verify that the winning characters of the slot machine and the amount to be paid match those which appear on the duplicate Payout;

4. Once the verifications required by (m)3 above have been completed, if the payment is less than \$10,000, the slot attendant*[, slot mechanic]* or slot attendant supervisor shall pay the winning patron in the presence of the casino security department member who verified the winning characters and the amount to be paid, if the payment is \$10,000 or more but less than \$25,000, the payment shall be made by a slot attendant supervisor in the presence of the casino security department member who verified the winning characters and the amount to be paid, and if the payment is \$25,000 or more, the payment shall be made in the presence of the casino security department member and the slot shift manager who verified the winning characters and the amount to be paid. Once the patron has been paid, all casino personnel required by this section to witness the payment shall sign the duplicate Payout attesting to the verification of the characters, the accuracy of the information on the Payout and the disbursement of the payment to the winning patron;

5. If a Receipt was issued and all the required verifications of the characters were completed in accordance with (b) above, the cashier shall give the slot attendant*[, slot mechanic]* or slot attendant supervisor the original Receipt along with the duplicate Payout in accordance with (m)2 above to be transported with the payment. The patron shall be required to present the duplicate Receipt to the slot attendant*[, slot mechanic]* or slot attendant supervisor and sign it in his or her presence in order to receive the payment. The slot attendant*[, slot mechanic]* or slot attendant supervisor shall compare the duplicate Receipt to the original Receipt and if in agreement make the payment to the winning patron;

6. Once the patron has been paid and all necessary signatures have been obtained on the duplicate Payout in accordance with (m)4 above, a casino security department member shall as expeditiously as possible deposit the duplicate Payout into a locked accounting box at the security podium or other location as approved by the Commission;

7. The slot attendant*[, slot mechanic]* or slot attendant supervisor shall immediately return the original and duplicate Receipt, if applicable, to the slot booth, cashiers' cage or master coin bank; and

8. The cashier shall attach the Request, if applicable, and the original and duplicate Receipt, if applicable, to the original Payout. If the disbursement is made from a slot booth all forms shall be forwarded by the end of the gaming day to the master coin bank for reimbursement. If the disbursement is made from the cashiers' cage, all forms shall be forwarded by the end of the gaming day to the main bank for reimbursement.

(n) Nothing in this section shall preclude the use of a computerized data storage system, as approved by the Commission, that electronically records the information required on a Request.

(o) At the end of each gaming day, at a minimum, all forms required by this section shall be forwarded as follows:

1. The original Payout with the attached Request, if applicable, and the original and duplicate Receipt, if applicable, shall be forwarded to the accounting department *[for agreement with]* , *which, as reasonably practicable after receipt, shall confirm that the information required to appear thereon pursuant to *(e)* *(b), (d) and (i)* above agrees with the information required to appear on the triplicate *Payout* or in stored data pursuant to *(e)* *(i)* above [for, if prepared in the master coin bank, the master coin bank cashier shall forward the original directly to the accounting department, which, as reasonably practicable after receipt, shall confirm that the information required to appear thereon pursuant to (e) above agrees with the information required to appear on the triplicate or in stored data pursuant to (e) above]*; and*

*[2. The general cashier shall forward the original to the main bank cashier in exchange for coin, currency or credit, after which the original

*shall be forwarded to the accounting department, which, as reasonably practicable after receipt, shall confirm that the information required to appear thereon pursuant to (e) above agrees with the information required to appear on the triplicate or in stored data pursuant to (e) above;]**

2. The duplicate Payout shall be collected from the locked accounting boxes located at the security podium or other approved location by an accounting department employee and returned to the accounting department *[for recording]**, **which, as reasonably practicable after receipt, shall record the information therefrom* on the Slot Win Sheet*[, agreement with the]* ***and shall confirm that the information required to appear on the duplicate Payout pursuant to (i) above agrees with:****

i. **The* meter reading recorded on the Slot Meter Sheet*[, and agreement with]* ***, *and confirmation, as reasonably practicable after receipt of the duplicate, that the information required to appear on the duplicate pursuant to (e) above agrees with the]* *; **and***

ii. **The information required to appear on* the triplicate Payout or in stored data pursuant to *(e)* *(i)* above.**

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Definitions

Changepersons Exchanging Currency and Gaming Chips

Adopted Amendments: N.J.A.C. 19:45-1.1, 1.34, 1.35, 1.46, and 19:46-1.5

Proposed: July 19, 1993 at 25 N.J.R. 3107(b).

Adopted: September 10, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: September 13, 1993 as R.1993 d.492, **with substantive and technical changes** not requiring additional public notice and comment, (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g) and 99(a)3.

Effective Date: October 4, 1993.

Expiration Date: August 15, 1997, N.J.A.C. 19:45

April 15, 1998, N.J.A.C. 19:46

Summary of Public Comments and Agency Response:

COMMENT: TropWorld Casino and Entertainment Resort and the Division of Gaming Enforcement supported the adoption of the proposed amendments.

RESPONSE: Accepted.

COMMENT: Harrah's Casino Hotel (Harrah's) also supported the adoption of the proposal, and further suggested that N.J.A.C. 19:45-1.46(j)1, which requires cancellation of a coupon upon acceptance, be implemented by the use of a hole punch device, which would permanently deface the coupon.

RESPONSE: Accepted in part. N.J.A.C. 19:45-1.46(j)1 does not specify the manner in which the coupon must be cancelled. Several methods of cancellation may be acceptable, as long as the cancellation will "permit subsequent identification of the individual who accepted and cancelled the coupon," as the above regulation requires.

The details of the particular cancellation methods desired by Harrah's or other casino licensees should be specified in their proposed internal control submissions for acceptance of coupons by changepersons and slot attendants. These proposed internal controls would be submitted for review and approval by the Commission staff after this regulation has been adopted.

COMMENT: The Sands Hotel & Casino (Sands) and Caesars objected to the requirement in N.J.A.C. 19:45-1.34(a)12 that requires any exchanges of cash or coupons by a changeperson with a slot booth to be documented in a manner approved by the Commission. They contend the requirement is unnecessary, and that similar exchanges have occurred for years without such documentation.

RESPONSE: Rejected. The proposed documentation requirement is not new, and merely codifies the existing practice in several casinos. The

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Commission has determined to retain the requirement, which it believes is needed to provide a record of such exchanges, should a dispute or problem later arise.

COMMENT: The Sands suggested the definition of "change person" in N.J.A.C. 19:45-1.1 should be expanded to allow change persons to perform even exchanges of cash or coupons with the cage or master coin bank, in addition to slot booths, as presently permitted by N.J.A.C. 19:46-1.35(d).

RESPONSE: Accepted in part. N.J.A.C. 19:45-1.35(d) provides that if a change person's inventory is to be obtained from a location other than a slot booth, the location and the procedures for the issuance and maintenance of the inventory shall be approved by the Commission. This option will now be incorporated by reference into the definition of "change person" in N.J.A.C. 19:45-1.1.

COMMENT: Sands also suggested that N.J.A.C. 19:45-1.35(d) be revised to clarify the procedures for even exchanges of currency, coupons and gaming chips between a change person and a slot booth.

RESPONSE: Accepted.

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

19:45-1.1 Definitions

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

... "Change person" means a person employed in the operation of a casino to possess an imprest inventory of coin, currency and slot tokens *[created from slot booth funds]* ***received pursuant to N.J.A.C. 19:45-1.35(d)*** and used for the even exchange with slot machine patrons of coupons, coin, currency, gaming chips and slot tokens.

19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-11. (No change.)

12. The exchange with the cashiers' cage or master coin bank of any coin, currency, slot tokens, chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier or master coin bank cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of coin, currency and slot tokens with change persons, the slot booth shall not be allowed to obtain coin, currency or slot tokens, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage, the master coin bank, or a coin vault approved pursuant to N.J.A.C. 19:45-1.14(e). An exchange with the cashiers' cage, main coin bank or coin vault must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booth. An exchange with a change person must be documented in accordance with procedures approved by the Commission.

(b) (No change.)

19:45-1.35 Accounting controls for slot booths and change machines

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

(d) The slot booth inventory may be used to supply change persons with an imprest inventory of coin, currency and slot tokens, provided that such inventory shall only be used to accept currency, coin, gaming chips, slot tokens and coupons presented by a patron in exchange for an equivalent amount of currency, coin, and slot tokens. ***The slot booth inventory may also be used to provide a change person with coin, currency and slot tokens in exchange for an equal amount of coin, currency, coupons and gaming chips.*** The exchange of coupons shall be in accordance with N.J.A.C. 19:45-1.46(i). If a change person's inventory is obtained from a loca-

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tion other than a slot booth, the location and the procedures for the issuance and maintenance of the inventory shall be approved by the Commission.

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

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(i) (No change.)

(j) Coupons shall be redeemed in the following manner:

1. Coupons redeemable for coin, currency or slot tokens shall only be redeemed by change persons or at the slot change booths or the cashiers' cage located on the casino floor. A change person, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. A coupon redeemable for currency may also be redeemed by slot attendants, who shall accept the coupon in exchange for the stated amount of currency and shall cancel the coupon upon acceptance. Cancellation of coupons by change persons and slot attendants shall be in a manner that will permit subsequent identification of the individual who accepted and canceled the coupon.

2.-4. (No change.)

(k)-(o) (No change.)

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques

(a) (No change.)

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths or with change persons for currency, coin or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 to play the slot machines and may be used for simulcast wagering.

(c)-(k) (No change.)

(a)

**CASINO CONTROL COMMISSION
Accounting and Internal Controls
Complimentary Services or Items; Procedures for
Complimentary Cash and Noncash Gifts
Adopted Amendments: N.J.A.C. 19:45-1.9 and 1.9B**

Proposed: July 19, 1993 at 25 N.J.R. 3108(a).

Adopted: September 10, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: September 13, 1993 as R.1993 d.494, **with substantive changes** not requiring additional public notice and comment, (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70j, 70l, 99 and 102.

Effective Date: October 4, 1993.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division), Resorts International Hotel, Inc. (Resorts), Bally's Park Place, Inc. and GNOC Corp. (Bally's), the Sands Hotel and Casino (Sands), TropWorld Casino and Entertainment Resort (TropWorld), Caesars Atlantic City (Caesars), Atlantic City Showboat, Inc. (Showboat), Harrah's Atlantic City (Harrah's), Trump Taj Mahal Associates (Taj Mahal) and Trump Plaza Associates (Plaza).

COMMENT: The Division submitted a comment supporting the adoption of the proposal.

RESPONSE: Accepted.

COMMENT: Resorts expressed a general objection to the manner in which the issuance and reporting of cash complimentaries are being regulated but supported the adoption of the proposal since it relieves casino licensees of some of the burdens caused by the most recently

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adopted amendments to N.J.A.C. 19:45-1.9 and 1.9B. Resorts noted, however, that the proposal failed to address the regulatory burdens associated with the classification of mass market direct mail programs as cash complimentaries and suggested that such programs should also be exempted from the requirements of N.J.A.C. 19:45-1.9 and 1.9B and regulated by the provisions of N.J.A.C. 19:45-1.46 instead. The comments of Resorts were echoed by TropWorld, Taj Mahal, Bally's, Showboat, Harrah's and Sands.

RESPONSE: The Commission accepts the comments to the extent that they support the adoption of the proposal. The Commission also recognizes and agrees with the commenters' argument that mass market direct mail programs are similar to the other types of complimentary programs excepted from the regulatory requirements generally applied to cash complimentaries. The staff of the Commission has already initiated discussions with the industry and the Division concerning the development of additional regulatory amendments which would permit mass market direct mail programs to be regulated pursuant to the provisions of N.J.A.C. 19:45-1.46. It is anticipated that this proposal will be published in the next issue of the Register.

COMMENT: Caesars argued that N.J.A.C. 19:45-1.9(e)1 should be amended to exempt all complimentaries with a value of less than \$100.00, both cash and noncash, from the reporting requirements imposed by that subsection. According to Caesars, if a complimentary transaction is de minimis, by definition it simply need not be reported; it should not matter whether the complimentary is delivered in the form of cash or in any other form.

RESPONSE: The comment is rejected. Section 102 of the Casino Control Act requires the Commission to impose an annual limit on the amount of cash complimentaries which may be provided to a person each year. Accordingly, all cash complimentaries need to be included in the reports which enable the State to determine compliance with this annual limit unless there is some independent basis to except such complimentaries from these reporting requirements (for example, the rationales which underlie the exceptions contained in N.J.A.C. 19:45-1.9(e)2).

COMMENT: The Sands suggested that N.J.A.C. 19:45-1.9(f)4 should be amended to eliminate any implication that the data to be recorded pursuant to that provision has to be maintained in a written format.

RESPONSE: A minor change was made to N.J.A.C. 19:45-1.9(f)4 at adoption in response to the comment.

COMMENT: Plaza objected to the provision in N.J.A.C. 19:45-1.9(g)2 which requires a complimentary program for invited guests to include at least 25 participants in order to be exempt from the general cash complimentary reporting requirements and annual limits. According to Plaza, the 25 participating requirement is arbitrary and prevents smaller events of a more intimate nature. In addition, Plaza expressed its concern about having to cancel scheduled events which were anticipated to include at least 25 participants but did not due to unexpected cancellations. Plaza noted that cancelling such events at the last minute could alienate casino patrons or lead to potential legal liability.

RESPONSE: The requirement for a minimum number of participants in complimentary programs for invited guests was included in N.J.A.C. 19:45-1.9(g)2 so that this special exception could not be used to circumvent the general cash complimentary reporting requirements and limits which would otherwise have to be observed. Absent such a requirement, a casino licensee acting in bad faith could hold a "contest" for two special patrons, award them each a cash prize, and claim that the complimentary cash was not subject to the requirements of N.J.A.C. 19:45-1.9 and 1.9B. Any number of minimum participants selected by the Commission to try to assure that a legitimate contest was involved would by its very nature be arbitrary to some extent. The Commission determined to use 25 participants and until it can be demonstrated that some other number would be more appropriate; it does not see any reason to change the requirement at this time.

The concerns expressed by Plaza about last minute cancellations of contests with less than the required number of participants can easily be addressed through advance notice of the requirements of the contest to the participants or through alternative rules (for example, if there are less than 25 participants, noncash prizes will be awarded instead). Moreover, even if the contest no longer qualified as a complimentary program for invited guests, it could still be conducted as long as any cash complimentaries awarded were reported as such and the recipients were qualified to receive same under the standards of N.J.A.C. 19:45-1.9B. Accordingly, the comments of Plaza on this issue are rejected.

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COMMENT: Plaza and the Sands both objected to the provision in N.J.A.C. 19:45-1.9(g)4 which limits the amount of cash complimentaries which any person may receive from complimentary programs for invited guests conducted by each casino licensee to \$100,000 per 12 month period. Plaza argued for an alternative interpretation of this language which would permit the \$100,000 limit to be exceeded. Both Plaza and the Sands expressed the view that this limit is unnecessary and unduly restricts the discretion of a casino licensee to give a patron an amount of complimentary cash that the casino licensee deems appropriate.

RESPONSE: As noted above, the Casino Control Act requires the Commission to adopt regulations limiting the amount of cash complimentaries which a casino licensee may provide to a patron per year. This annual limitation is implemented by the provisions of N.J.A.C. 19:45-1.9B(g). After this limitation was adopted, several casino licensees protested that it was unduly burdensome to attempt to track and report certain types of complimentary cash programs, previously approved by the Commission, within one central reporting system and further argued that these programs possessed special characteristics which justified their being separately regulated. The special complimentary cash reporting requirements and limits contained in N.J.A.C. 19:45-1.9(f) and (g) were created by the Commission in response to these industry comments. The Commission was not obligated to acknowledge these exceptions or to permit unlimited use of their provisions. The Commission believes that it is more than reasonable to permit a casino licensee to give a patron, through invited participation in special contests, up to \$100,000 in cash complimentaries which are not otherwise subject to the objective standards created by N.J.A.C. 19:45-1.9B(g). If a casino licensee wishes to award a particular patron with cash complimentaries which exceed this \$100,000 limit, it is free to do so as long as the casino licensee can demonstrate that the patron is entitled to the complimentary under the objective standards of N.J.A.C. 19:45-1.9B(g) and it is reported in accordance with the requirements applicable to cash complimentaries. The comments of Plaza and Sands are rejected. The Commission has made some minor amendments to N.J.A.C. 19:45-1.9(g)4 upon adoption, however, to clarify that the limit established by that paragraph is in fact a limit of \$100,000 in any 12 month period.

COMMENT: TropWorld and Caesars suggested that N.J.A.C. 19:45-1.9(g)5 be amended to eliminate the requirement that a record be maintained of each person invited to participate in a complimentary program for invited guests. According to the commenters, this requirement provides the State with no useful information about persons who actually receive complimentaries from casino licensees.

RESPONSE: The comments of TropWorld and Caesars are accepted and the language at issue was deleted at adoption.

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

19:45-1.9 Complimentary services or items

(a) (No change.)

(b) No casino licensee may offer or provide any complimentary services, gifts, cash or other items of value to any person except as authorized by N.J.S.A. 5:12-102(m). Each casino licensee shall, pursuant to the provisions of N.J.S.A. 5:12-99a(2) and N.J.A.C. 19:45-1.3, prepare and maintain internal controls for the authorization and issuance of complimentary services and items, including cash and noncash gifts issued pursuant to N.J.S.A. 5:12-102(m) and N.J.A.C. 19:45-1.9B. Such internal controls shall include, without limitation, the procedures by which the casino licensee delegates to its employees the authority to approve the issuance of complimentary services and items and the procedures by which conditions or limits, if any, which may apply to such authority are established and modified, including limits based on relationships between the authorizer and recipient, and shall further include effective provisions for audit purposes. Notwithstanding the provisions of N.J.A.C. 19:45-1.3, a casino licensee shall submit the internal controls, or any changes thereto, required by this section to the Commission and Division at least 15 days prior to their implementation. Such internal controls shall be deemed approved by the Commission 15 days after submission unless the casino licensee is notified in writing to the contrary. Notwithstanding the foregoing:

1.-2. (No change.)

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3. Nothing herein shall be deemed to require a casino licensee to identify in its submission the terms or conditions pursuant to which a complimentary service or item may be granted, except as otherwise provided in (f)3 below, or to obtain Commission approval of any limits or conditions which may be placed on the authority of its employees to approve or issue complimentary services or items, except as otherwise provided in N.J.A.C. 19:45-1.9B; provided, however, that each casino licensee shall be required to maintain a written record of all such terms, limits or conditions and the specific employees to whom they apply.

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

(e) Each casino licensee shall record, on a daily basis, the name of each person provided with complimentary services or items, the category of service or item provided, the value (as calculated in accordance with (c) above) of the services or items provided to such person, and the person authorizing the issuance of such services or items. A copy of this record shall be submitted to the Division's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving:

1. Each noncash complimentary service or item which has a value (as calculated in accordance with (c) above) of \$100.00 or less; and

2. Any complimentary service or item, including a cash or noncash gift, which is issued pursuant to:

i. A table game or slot machine complimentary incentive program regulated by (f) below;

ii. A complimentary program for invited guests regulated by (g) below; or

iii. A complimentary distribution program regulated by N.J.A.C. 19:45-1.46.

(f) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a table game or slot machine complimentary incentive program shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complementaries established by N.J.A.C. 19:45-1.9B(g) if:

1.-2. (No change.)

3. Each participant in the program is issued complementaries in accordance with a predetermined schedule as a result of his or her table game or slot play, which schedule shall, with regard to cash complementaries, be based on and shall not exceed the theoretical win of the casino licensee from each participant as reasonably determined from data maintained pursuant to the approved internal controls for the complimentary incentive program; and

4. A record is maintained of the name of each participant who receives a complimentary service or item as a result of his or her participation in the program, the amount of each complimentary and the type of complimentary, which record shall be made available to the Division upon request in the *[report]* format used by the casino licensee.

(g) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a complimentary program for invited guests shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complementaries established by N.J.A.C. 19:45-1.9B(g) if:

1. The program is submitted to and approved by the Commission in accordance with the requirements of N.J.A.C. 19:45-1.46 as if the program were a complimentary distribution program;

2. The program is open to participation by invited guests only and there are at least 25 participants;

3. The program involves a contest of chance or skill which is used to determine the distribution of the complementaries to the participants;

4. The recipient of any cash complimentary issued as part of the program *[has]* ***will*** not ***have*** received more than \$100,000 in cash complementaries from complimentary programs for invited guests conducted by the casino licensee*, **including the current program,*** during the previous 12 month period; and

5. A record is maintained of the name of each *[person invited to participate]* ***participant*** in the program*[*, the name of each participant]* who receives a complimentary service or item as a result of his or her participation *[in the program]*, the amount of each complimentary and the type of complimentary, which record shall be made available to the Division upon request.

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m(1) through (3), N.J.A.C. 19:45-1.9(f) or N.J.A.C. 19:45-1.46. Complimentary cash gifts shall include, without limitation:

1. (No change.)

2. Travel or walk money payments made for the purpose of enabling a patron to return home;

3. Slot tokens issued to any person;

4. Cash complementaries issued to patrons as a result of actual gaming activity; and

5. Cash complementaries issued to participants in complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g), except as otherwise provided in this section.

(b) Except as otherwise provided in N.J.A.C. 19:45-1.9(e), all complimentary cash and noncash gifts provided by a casino licensee shall be recorded in accordance with the provisions of N.J.A.C. 19:45-1.9(e). If a complimentary cash or noncash gift has a value of \$500.00 or more, the casino licensee shall also:

1.-3. (No change.)

(c) All complimentary cash gifts shall be disbursed directly to the patron by a general cashier at the cashiers' cage after receipt of appropriate documentation or in any other manner approved by the Commission in a casino licensee's internal control submission.

(d) (No change.)

(e) If a casino licensee provides complimentary cash and noncash gifts worth \$2,000 or more to a person or his or her guests within any five day period, the casino licensee shall record the reason why such gifts were provided and maintain such records available for inspection by the Commission or Division upon request. Such reasons may include, without limitation, the participation of the person in a complimentary program for invited guests conducted pursuant to N.J.A.C. 19:45-1.9(g) or information concerning the person's player rating, which rating shall be based upon the actual amount and frequency of play by the person as recorded in the casino licensee's player rating system.

(f) (No change.)

(g) No casino licensee shall provide to any patron, during any 12-month period, complimentary cash gifts which exceed the greater of:

1.-3. (No change.)

(h) Notwithstanding the provisions of (g) above, complimentary cash gifts which are provided to persons pursuant to complimentary incentive programs regulated by N.J.A.C. 19:45-1.9(f), complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g) or complimentary distribution programs regulated by N.J.A.C. 19:45-1.46 shall be governed by any limitations contained in those respective rules and shall not be subject to the annual limits specified in (g) above.

(a)

CASINO CONTROL COMMISSION**Accounting and Internal Controls
Count Rooms; Characteristics
Slot Count; Procedure for Counting and Recording
Contents of Slot Drop Buckets; Presence of
Commission Inspectors****Adopted Amendments: N.J.A.C. 19:45-1.32 and 1.43**

Proposed: July 6, 1993 at 25 N.J.R. 2855(a).

Adopted: September 10, 1993 by the Casino Control
Commission, Steven P. Perskie, Chairman.Filed: September 13, 1993 as R.1993 d.493, with substantive and
technical changes not requiring additional public notice and
comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: October 4, 1993.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: Harrah's Casino Hotel (Harrah's) opposes the provision in N.J.A.C. 19:45-1.43(i)2 that requires slot tokens in denominations of \$25.00 or more to be counted or weighed in the presence of a Commission inspector. Harrah's contends that a Commission inspector should not be required to be present when such slot tokens are counted; in its view, such tokens do not present any more exposure than any other slot tokens.

RESPONSE: Rejected. The Commission believes there is a significant difference in exposure between coin and slot tokens of lower denominations, and tokens of denominations of \$25.00, \$50.00, \$100.00 and more. Permitting these higher denomination tokens to be counted and weighed without a Commission inspector present would defeat the purpose of the proposal. Having the inspector present at the beginning and the conclusion of the count safeguards the State's interest in the gross revenue represented by these high denomination slot tokens and maintains the security and the integrity of the hard count, while still permitting Commission inspectors and casino licensees some flexibility in the count process.

COMMENT: Harrah's notes that N.J.A.C. 19:45-1.43(e) provides that no one except a Commission inspector or a Division agent may enter or leave the hard count room during the hard count, except in an emergency or a normal work break. N.J.A.C. 19:45-1.43(i)9 provides that no one may enter or leave the hard count room when a Commission inspector is not present, except in an emergency. Harrah's suggests that the latter section be amended to conform with the former, to provide that when a Commission inspector is not present, persons may enter or leave the count room for a normal work break as well as an emergency.

RESPONSE: Rejected. The two sections deal with two different situations, and the exception for "normal work breaks" was intentionally omitted from N.J.A.C. 19:45-1.43(i)9. However, this does not imply that the count team cannot take work breaks; it merely requires that a Commission inspector must be present during the wandering of all count room personnel, pursuant to N.J.A.C. 19:45-1.43(e), before a work break can be taken.

COMMENT: Harrah's suggests that N.J.A.C. 19:45-1.43(j)7 be revised to provide that, at the conclusion of the hard count, the hard count room be inspected before the hard count personnel are wanded, rather than afterwards. This would avoid the necessity of a separate wandering of the inspection personnel after the inspection is completed.

RESPONSE: Rejected. The Commission believes that permitting an inspection of the hard count room while the hard count team is still present would not permit the search personnel to conduct an effective and complete search of the hard count room. The Commission has reviewed the present procedure, which requires the room to be vacant when inspected, and believes it should remain unchanged at this time, for security reasons.

COMMENT: Harrah's suggests that N.J.A.C. 19:45-1.43(j)5 be amended to provide that the contents of each slot drop bucket be recorded separately during the hard count, to conform with actual practice.

RESPONSE: Rejected as redundant; N.J.A.C. 19:45-1.43(i)7 already requires the separate recording of the contents of each bucket.

COMMENT: Harrah's suggests that N.J.A.C. 19:45-1.43(j)5 be amended to include coin as well as tokens on the Commission inspector's countdown sheet.

RESPONSE: Rejected as unnecessary; the countdown sheet includes only the high denomination tokens counted at the beginning of the count. The Slot Win Sheet required by N.J.A.C. 19:45-1.43(j)6 does contain coin as well as slot token counts, and is verified by the inspector at the conclusion of the hard count.

COMMENT: The Trump Taj Mahal Casino Resort suggests that N.J.A.C. 19:45-1.43(i)2 be amended to provide that the high denomination slot tokens be permitted to be counted not only at the beginning of the hard count, but at "another predetermined time in the hard count process that has been approved by the Principal Inspector. . . ."

RESPONSE: Rejected. Requiring the high denomination slot tokens to be counted first helps insure that they will be counted in the presence of a Commission inspector, and that the count will not begin without an inspector present. This would not necessarily be the case if the high denomination count was conducted at some other point during the hard count. Additionally, from the Commissioner's perspective, it is desirable to have a uniform hard count procedure for all casino licensees.

COMMENT: Boardwalk Regency Corporation (Caesars) supports the proposal, with the exception of a portion of N.J.A.C. 19:45-1.43(i)2, which requires slot tokens in denominations of \$25.00 and above to be counted "prior to any other slot tokens being counted or weighed."

Caesars notes that the higher denomination slot tokens are weighed, counted and wrapped by a separate count team that works simultaneously with, but independently of, the other count room personnel. Caesars contends that requiring the high denomination count to be completed before the lower denomination counts could begin would result in no additional security, would not speed up the count process, and would not allow the Commission inspector to exit the count room any sooner than if the requirement was omitted. In fact, the requirement would slow down the count process because it would prevent the remainder of the count team from counting any lower denomination slot tokens until the high denomination count is completed.

Caesars agrees that the high denomination count should begin first and continue uninterrupted to completion. However, for the above reasons, it suggests that N.J.A.C. 19:45-1.43(i)2 should be amended to delete the requirement that no other tokens may be counted until the high denomination count is completed.

RESPONSE: Accepted. The lower denomination counts could proceed simultaneously with the high denomination count, as long as the latter count begins first and continues uninterrupted to completion. N.J.A.C. 19:45-1.43(i)2 has been amended to clarify this point.

COMMENT: The Sands Hotel and Casino (Sands) generally supports the proposal, subject to several comments. Sands notes that N.J.A.C. 19:45-1.32(d) requires a visual signal at the count room door, the Commission booth, and "such other locations as the Commission may require." Sands suggests the third requirement is not practical or necessary, and should be deleted.

RESPONSE: Rejected. The Commission should have the flexibility and the discretion to require the signal to be located in such additional locations as it may deem necessary, given the very different physical configurations of the casinos that are now in operation. The phrase in question is needed to accomplish that and should be retained.

COMMENT: The Sands suggests that N.J.A.C. 19:45-1.32(d) does not clearly indicate that the visual signal should be operational only while the count is in progress, and should be amended to clarify that the signal is not needed when the count is not being conducted.

RESPONSE: Rejected. N.J.A.C. 19:45-1.32(d) states that the signal must light whenever the count room door is opened "while the system is activated." N.J.A.C. 19:45-1.43(i)8ii provides that the light device is activated only when the inspector leaves the count room during the count. If no count is taking place, the device would not be activated and would not light if the count room door is opened in that situation.

COMMENT: N.J.A.C. 19:45-1.43(a) requires Commission inspectors to present their identification credentials in order to gain admission to the count room. Sands suggests that this provision is unnecessary and should be deleted, since all Commission inspectors assigned to a casino are purportedly known to the count room personnel, wear distinctive identifying blazers, and have the second key needed to open the count room door from the outside.

RESPONSE: Rejected. The Commission has reviewed the requirement, which predates this proposal, and has determined that it should

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be retained in order to continue to ensure that unauthorized personnel do not gain access to the hard count room.

COMMENT: Sands notes that N.J.A.C. 19:45-1.43(e) and (g) presently require wandering and videotaping of all persons entering and exiting the count room during the hard count. Sands also notes that a count room is often accessed when a count is not in progress (when cage personnel count and wrap redeemed coin and currency, for example). Sands contends that such wandering and videotaping is necessary only when a count is being conducted, and that these sections should be amended to provide expressly that wandering and videotaping is not required when no count is being conducted.

RESPONSE: Rejected. The regulations in question and the proposed amendments thereto deal only with the procedures to be followed in the count room during the hard count. The use of the hard count room for other purposes at other times and the procedures to be used for such situations are matters that are beyond the scope of this proposal. They will be addressed in a subsequent proposal, which will likely codify the present long-standing practice, for security and other reasons, of wandering and videotaping all persons who enter or exit a count room, whether or not a count is in progress.

COMMENT: Sands as well as Harrah's suggests that N.J.A.C. 19:45-1.43(h) be amended to provide that coins and tokens can be recounted and accepted by a master coin bank cashier as well as a cage cashier, since N.J.A.C. 19:45-1.43(j)4 also permits master coin bank cashiers to accept a coin drop.

RESPONSE: Accepted. N.J.A.C. 19:45-1.43(h) is amended upon adoption to bring both subsections into conformity.

COMMENT: Sands and Caesars note that N.J.A.C. 19:45-1.43(i)2 requires the Commission inspector in the count room to record the total amount of each slot token in denominations of \$25.00 or more on a countdown sheet. Sands suggests that the tally on the inspector's countdown sheet should also be required to agree with the licensee's tally before the inspector leaves the count room, rather than waiting until the conclusion of the count to do so. Sands believes that such a requirement would reduce, if not eliminate, the potential for discrepancies.

RESPONSE: Accepted. N.J.A.C. 19:45-1.43(i)2 is being changed upon adoption.

COMMENT: Sands suggests that the reference to "wrapped" slot tokens in N.J.A.C. 19:45-1.43(i)8 be eliminated, since slot tokens in denominations of \$25.00 or more usually are not wrapped, but are stored in racks, much like gaming chips.

RESPONSE: Accepted in part. Rather than eliminate the option for wrapped tokens, N.J.A.C. 19:45-1.43(i)8 will provide that the slot tokens may be wrapped or placed in racks.

COMMENT: Sands notes that N.J.A.C. 19:45-1.43(i)12 requires slugs found during a hard count to be delivered to the Division of Gaming Enforcement at the conclusion of the count. Sands claims that this arrangement is not always feasible, and requests that more flexibility be built into the slug procedures.

RESPONSE: Rejected. The present proposal does not modify existing slug procedures, and the Sands suggestions concerning slugs are beyond the scope of this proposal. The question of slug disposal is in fact being addressed in another proposal concerning slot hoppers, which is expected to be published for comment in the near future.

COMMENT: The Division of Gaming Enforcement (Division) supports the proposal, but suggests that N.J.A.C. 19:45-1.32(d) be amended to require that the visual alarm system indicate whenever any access door to the hard count room is opened, including doors between the hard count room and the master coin bank.

RESPONSE: Accepted. The change in language is made upon adoption.

COMMENT: The Division also suggests that the alarm system be tested before each count begins.

RESPONSE: Accepted. N.J.A.C. 19:45-1.43(i)8ii is changed upon adoption.

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

19:45-1.32 Count rooms; characteristics

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

(d) The count room designated for counting the contents of slot drop buckets and slot drop boxes, if a different room from that used for counting the contents of drop boxes and slot cash storage boxes,

shall meet all requirements contained in (a) through (c) above except for the requirements concerning audio capabilities. In addition, the room shall contain:

1. A fixed-door type or hand-held metal detector to inspect all persons exiting the count room; and

2. A light system or other device approved by the Commission which shall provide a continuous visual signal at the count room door, the Commission booth and such other locations as the Commission may require whenever ***[the] *any access door to the* count room *{door}* is opened while the system is activated. The light system or device shall:**

i. Maintain the visual signal until the system is reset or deactivated; and

ii. Be designed so as to permit its activation, deactivation or resetting only by a Commission inspector.

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

(a) The counting and recording of the contents of slot drop buckets (the "hard count") shall be performed in the count room required pursuant to N.J.A.C. 19:45-1.32 by at least three employees of the casino licensee (the "count team"). Except as otherwise provided in (i) below, the hard count shall be performed in the presence of a Commission inspector. To gain entrance to the count room, a Commission inspector shall present an official identification card issued by the Commission which contains his or her photograph.

(b) The contents of slot drop buckets shall be counted and recorded immediately after the buckets and boxes are removed from their slot machine compartments. Each casino licensee shall file with the Commission and the Division the specific times during which the contents of slot drop buckets shall be counted and recorded.

(c) All members of the count team present in the count room during the counting process shall be required to wear a full-length, one-piece, pocketless outer garment with no openings other than for the arms, legs, feet, and neck.

(d) No person shall carry a pocketbook or other container into the count room at any time unless it is transparent.

(e) No person other than a Commission inspector or Division representative shall be permitted to enter or leave the count room during the hard count, except in an emergency or for a normal work break, until the hard count is completed. All persons exiting the count room shall be inspected with a metal detector by a casino security department employee in the presence of a Commission inspector. The counting and recording process shall be discontinued and all coin and slot tokens shall be secured during any work break or emergency where the minimum number of count room personnel required by (a) above are not present or are not capable of performing their responsibilities.

(f) Immediately prior to counting the contents of the slot drop buckets, the doors to the count room shall be securely locked and a count team member shall notify the surveillance department employee assigned to the closed circuit television monitoring room required by N.J.A.C. 19:45-1.10 that the count is about to begin. The surveillance department shall also be notified prior to any person entering or exiting the count room after the hard count has begun.

(g) The surveillance department shall monitor and make a video recording, with the time and date inserted thereon, of the entire hard count, including any entrance to or exit from the count room by any person during the hard count and all metal detector inspections performed by casino security. The video recording shall be retained by the surveillance department for at least five days from the date of recordation unless otherwise directed by the Commission or the Division.

(h) No coins or slot tokens shall be removed from the slot count room after commencement of the hard count until the coins or slot tokens have been recounted and accepted by a cage cashier ***or main coin bank cashier***. The recount procedures shall include the re-counting of any bagged coins or slot tokens on a random sample basis.

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

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

i. Provide the name and the employee license number of each person present in the count room at the inception of the hard count to the Commission inspector observing the hard count;

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

iii. Complete and sign a calibration report.

2. All slot tokens in denominations of \$25.00 or more shall be counted or weighed ***at the beginning of the hard count,*** in the presence of the Commission inspector ***[prior to any other slot tokens or coins being counted or weighed]*.** ***The casino licensee may count or weigh other denominations of coins or slot tokens at the same time, provided that the high denomination slot token count proceeds to completion without interruption, except as otherwise provided herein.*** The Commission inspector shall, independently of the casino licensee, record on a countdown sheet the total amount of each slot token in a denomination of \$25.00 or more which is counted or weighed. The inspector shall compare the totals on his or her countdown sheet ***[to]*** ***with the amounts of those tokens recorded by the hard count team on the Slot Win Sheet, and verify that the amounts are in agreement and are correct, and if not, shall either satisfactorily account for any discrepancies, if possible, or document the incident and promptly report it to the Division. At the conclusion of the hard count, the inspector shall recompare the totals on the countdown sheet with*** the final totals determined by the casino licensee ***[at the conclusion of the hard count]*.**

3. Before each slot drop bucket is emptied, one count team member shall hold it up in full view of the closed circuit television camera and the count team member recording the count so as to permit proper recording of the number contained thereon.

4. The contents of each slot drop bucket shall be emptied, counted and recorded separately and such procedures shall at all times be conducted in full view of the closed circuit television cameras located in the count room.

5. The contents of each slot drop bucket shall be emptied separately into either a machine that automatically counts the coins or a scale that automatically weighs the coins.

6. Immediately after the contents of each slot drop bucket are emptied into either the counting machine or scale, the inside of the slot drop bucket shall be held up to the full view of the closed circuit television camera and shall be shown to at least one other count team member and the Commission inspector, if present, to assure that all contents of the slot drop bucket or slot drop box have been removed.

7. As the contents of each slot drop bucket are counted by the counting machine or weighed by the scale, one member of the count team shall record on the Slot Win Sheet or a supporting document, the asset number of the slot machine to which the slot drop bucket contents corresponds, if not preprinted thereon, and the number of coins or slot tokens, or the weight of the coins or slot tokens contained in the slot drop bucket. If the value of the coins or slot tokens is not converted into dollars and cents until after the counting process is completed, the conversion shall be calculated and the dollar value of the drop shall be entered by denomination on the Slot Win Sheet.

8. After all slot tokens in denominations of \$25.00 or more have been counted, wrapped ***or placed in racks,*** and then secured in a manner approved by the Commission, the Commission inspector may leave the count room to perform other functions as required by the Commission. Upon leaving the count room, the inspector shall:

i. Notify the surveillance department of his or her departure; and

ii. ***[Activate]*** ***Test and activate*** the light system or other approved device at the count room door required by N.J.A.C. 19:45-1.32(d).

9. No person shall enter or leave the count room during the hard count when a Commission inspector is not present except in an emergency.

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10. After the contents of all the slot drop buckets are counted or weighed and recorded, each count team member shall sign the Slot Win Sheet or other document as approved by the Commission attesting to their involvement in the hard count.

11. After the contents of all the slot drop buckets are counted or weighed and recorded, any count team member not required to remain pursuant to (i)11ii below may be permitted to exit the count room if the following requirements are satisfied:

i. The Slot Win Sheet or other approved document must be signed by each count team member exiting the count room, in accordance with (i)10 above;

ii. At least three count team members must remain in the count room until the verification process is completed;

iii. The surveillance department must be notified prior to any count team members exiting the count room;

iv. All activity in the count room shall be discontinued during any period when a count team member is exiting the count room; and

v. A casino security department employee shall check all count team members leaving the count room with a metal detector, in the presence of a Commission inspector, at a location approved by the Commission and Division.

12. At the conclusion of the hard count, any slugs that have been found shall be delivered to a representative of the Division together with a copy of the Slug Report. The Slug Report shall be a three-part form, at a minimum, which shall include the date, the total number of slugs received and the signature of the preparer, and shall be distributed as follows:

i.-iii. (No change.)

(j) Procedures and requirements at the conclusion of the hard count shall be as follows:

1. Approximately 15 minutes prior to the end of the hard count, if a Commission inspector is not present, an inspector shall be notified that the hard count is about to be completed.

2. Upon reentering the count room, the Commission inspector shall:

i. Examine the light system or other approved device to ascertain whether any person has entered or exited the count room during the period of his or her absence, and if so, either satisfactorily account for those events, if possible, or document the incident and promptly report it to the Division; and

ii. Compare the original list of count team members with the persons present at the conclusion of the hard count, ascertain whether the identities of the persons in the count room remained unchanged during the hard count, and if not, either satisfactorily account for any changes in personnel, if possible, or document the incident and promptly report it to the Division.

3. (No change in text.)

4. The wrapped coin and slot tokens removed from the slot drop buckets shall be recounted in the count room by a cage cashier or master coin bank cashier, in the presence of a count team member and the Commission inspector, prior to the cashier having access to the information recorded on the Slot Win Sheet.

5. The inspector shall then compare the amounts of the slot tokens listed on his or her countdown sheet with the amounts of those tokens shown on the Slot Win Sheet, and verify that the amounts are in agreement and are correct, and if not, either satisfactorily account for any discrepancies, if possible, or document the incident and promptly report it to the Division.

6. The cage cashier or master coin bank cashier shall then attest by signature on the Slot Win Sheet to the accuracy of the amount of coin and slot tokens received from the slot machines. The inspector shall then sign the Slot Win Sheet evidencing the inspector's presence and the fact that the inspector, the cashier and count team have agreed on the total amount of coin and slot tokens counted. The coin and slot tokens thereafter shall remain in the custody of cage cashiers or master coin bank cashiers.

7. A casino security department employee, in the presence of the Commission inspector, shall:

i. Inspect all persons with a metal detector upon their exiting the count room; and

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- ii. Conduct a thorough inspection of the entire count room and all equipment located therein, for unsecured coins and slot tokens.
8. (No change in text.)
9. The preparation of the Slot Win Sheet shall be completed by accounting department employees who shall:
 - i. Compare for agreement, for each slot machine, the number of coins or slot tokens counted and recorded by the count team to the drop meter reading recorded on the Slot Meter Sheet;
 - ii.-vi. (No change.)
10. (No change in text.)

(a)

CASINO CONTROL COMMISSION

Persons Doing Business with Casino Licensees License Requirements

Duration of Licenses; Renewal

Adopted Amendments: N.J.A.C. 19:51-1.2 and 1.8

Proposed: June 21, 1993 at 25 N.J.R. 2662(a).

Adopted: September 10, 1993 by the Casino Control

Commission, Steven P. Perskie, Chairman.

Filed: September 13, 1993 as R.1993 d.495, **without change.**

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

Effective Date: October 4, 1993.

Expiration Date: April 27, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division), Caesar's Atlantic City (Caesar's), and Sands Hotel and Casino (Sands).

COMMENT: Both the Division and Caesar's stated their support of the proposal. Sands also stated that it did not object to the adoption of the proposed amendments. The Division and Caesar's commented that the proposal would simplify the regulatory process by reducing the number of petition determinations for the renewal of non-gaming related service industry licensees. The Division further stated that this benefit would not cause "any serious disruption of the historical ratio of licensees to vendor registrations."

RESPONSE: The Commission agrees, as evidenced by this adoption.

COMMENT: Caesar's expressed concern that setting the monetary threshold at a lower dollar value would result in a significant increase in the number of initial applications. Caesar's states that this "would be counterproductive to the process, given the regulatory costs associated with the CSI licensing process which are borne by the casino industry."

RESPONSE: As noted in the Economic Impact statement, the new monetary thresholds may result in only "a slight increase in the number of initial applications for nongaming-related casino service industry licensure." Thus, although there would be a minor increase in initial applications, the Commission does not anticipate that the new threshold would have a negative impact on the casino industry.

COMMENT: Caesar's inquired as to whether the regulation would be prospective in effect. Specifically, Caesar's asked whether the Commission would require an entity to file for CSI licensure only after the third year of transacting business, subsequent to the adoption of the amendments to the regulation.

RESPONSE: As drafted, the regulation is to be applied retroactively. This is in full accordance with New Jersey case law which supports retroactive application where, as it is in this case, there is express or implied intent to do so and there is no manifest injustice.

Full text of the adoption follows:

19:51-1.2 License requirements

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

(f) Notwithstanding the provisions of (e) above, persons and enterprises which conduct business as a junket enterprise or provide, or imminently will provide, goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino licensees or applicants, their employees or agents shall, unless otherwise determined by the Commission, be deemed to be transacting such business on a regular or continuing basis if:

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1. The total dollar amount of such transactions with a single casino licensee or applicant, its employees or agents, is or will be equal to or greater than \$75,000 within any 12-month period;

2. The total dollar amount of such transactions with all casino licensees or applicants, their employees or agents, is or will be equal to or greater than \$225,000 within any 12-month period;

3. The total dollar amount of such transactions with any single casino licensee or applicant, its employees or agents, is or will be equal to or greater than \$30,000 within each of three consecutive 12-month periods;

4. The total dollar amount of such transactions with all casino licensees or applicants, their employees or agents, is or will be equal to or greater than \$100,000 within each of three consecutive 12-month periods; or

5. The enterprise transacts business which satisfies either (f)3 or 4 above within each of three consecutive 12-month periods.

(g)-(j) (No change.)

19:51-1.8 Duration of licenses; renewal

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

(c) The Commission shall notify each casino service industry enterprise licensed pursuant to the provisions of N.J.S.A. 5:12-92c, at least 120 days prior to the expiration of the current license term, whether that enterprise licensee is conducting business on a regular or continuing basis in accordance with the criteria set forth in N.J.A.C. 19:51-1.2(e) and (f).

1. If the Commission determines that an enterprise licensee is conducting business on a regular or continuing basis, the enterprise shall be required to file an application for the renewal of its license in accordance with the provisions of (a) above.

2. If the Commission determines that an enterprise licensee is not conducting business on a regular or continuing basis, the enterprise shall not be required to renew its casino service industry enterprise license. Any enterprise licensee notified that it is not required to renew its license shall:

i. Have the option to renew its enterprise license voluntarily by complying with the requirements of (a) above; and

ii. Be required, until the expiration of its current license, to notify the Commission immediately of any agreements, whether contemplated or in effect, which would result in cumulative transactions which would meet the regular or continuing business criteria set forth in N.J.A.C. 19:51-1.2(f).

(d) Upon receipt of a notice required to be filed by an enterprise licensee pursuant to the provisions of (c)2ii above, the Commission shall redetermine whether the enterprise licensee shall be required to renew its casino service industry license. The Commission shall notify the enterprise licensee of its determination as soon as is practicable and, if renewal is required, direct that an application for renewal be filed within 30 days; provided, however, that the Commission may, upon written request by the enterprise licensee and for good cause shown, grant the enterprise licensee an additional 30 days within which to file its renewal application.

(e) Any enterprise which is not required to, and chooses not to, renew its casino service industry enterprise license pursuant to (c) above shall not transact business with any casino licensee or applicant or any employee or agent thereof upon the expiration of such license unless a completed vendor registration form is filed on its behalf by a casino licensee or applicant in accordance with N.J.A.C. 19:41-11.1(c).

(f) Notwithstanding (c) above, any shopkeeper or lessee of space on the premises of an approved casino hotel which is licensed as a casino service industry pursuant to N.J.S.A. 5:12-92c shall be required to file an application for renewal of such license in accordance with (a) above.

HEALTH

(a)

**DIVISION OF HEALTH CARE PLANNING, FINANCING
AND INFORMATION SERVICES****Certificate of Need: Surgical Facilities****Adopted New Rules: N.J.A.C. 8:33S**

Proposed: June 21, 1993 at 25 N.J.R. 2790(a).

Adopted: September 10, 1993 by Bruce Siegel, M.D., M.P.H.,
State Commissioner of Health, (with approval of the Health
Care Administration Board).Filed: September 13, 1993 as R.1993 d.498, **with substantive and
technical changes** not requiring additional public notice (see
N.J.A.C. 1:30-4.3).Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and
2H-7.

Effective Date: October 4, 1993.

Expiration Date: October 4, 1998.

Summary of Public Comments and Agency Responses:A total of 25 commenters provided comments on the proposed surgical
facility rules. Comments were received from:

The Alexander Group; Edmund A. Abramovitz, FACHE, Principal,
American Society of Outpatient Surgeons; John Kingsley, M.D., Presi-
dent, Bergen-Passaic Cataract Surgery and Laser Center; Essex Eye
Surgery and Laser Center; Health Care Planning and Marketing Society
of New Jersey (HPMSNJ); John H. Hajjar, M.D.; Hunterdon Medical
Center; Interstate Health Planning Corporation; Jersey City Medical
Center; Jersey Shore Medical Center; Kennedy Memorial Hospitals;
Charles E. Kordula, M.D.; Medical Society of New Jersey; Mid Atlantic
Eye Center; Monmouth Medical Center; New Jersey Hospital Associa-
tion; Northern New Jersey Eye Institute; Princeton Executive and
Management Associates, Inc.; Rancocas Hospital; Steven J. Rodis, M.D.,
N.J. Outpatient Ophthalmic Association; St. Barnabas Medical Center;
Summit Surgical Center; Surgicare; University of Medicine and Dentistry
of New Jersey (UMDNJ); and West Jersey Health System.

N.J.A.C. 8:33S-1.1 Scope and purpose

COMMENT: Several commenters took issue with the "tone and
thrust" of the proposal, characterizing it as contrary to current develop-
ments in the health care industry. In their view, the proposal does not
provide sufficient incentive to establish lower cost free-standing surgical
facilities and instead attempts to unnecessarily restrict their development.
It was recommended by four of these commenters that the certificate
of need process should distinguish between inpatient and ambulatory
surgery operating room resources.

RESPONSE: The Department views this regulatory initiative as consis-
tent with the legislative intent of the Health Care Reform Act (P.L. 1992,
c.160) and the Health Care Cost Reduction Act (P.L. 1991, c.187) in
establishing a standardized Statewide policy for surgical "facilities," re-
gardless of the type of ownership of such a facility. Physicians seeking
to provide surgical services to their private practice patients are permitted
to do so through the private practice exemption contained at N.J.A.C.
8:33S-1.5.

The suggestion that the policy of surgical facility resource allocation
should distinguish between inpatient and ambulatory surgery operating
rooms ignores the fact that the vast majority of ambulatory surgery
currently being performed in regulated surgical facilities throughout the
State are being performed in so-called "mixed" operating rooms in
hospitals. These mixed operating rooms are the setting for both inpatient
and outpatient or ambulatory surgical patients. The majority of all
surgery performed in hospitals is now done on an ambulatory basis, and
this trend toward increasing ambulatory surgery is expected to continue
in the future. The separation of inpatient and ambulatory surgical re-
sources and need determination processes cannot be readily ac-
complished since in many cases the surgical cases are being performed
in the same operating room. "Mixed" operating rooms, which are present
in a considerable number of New Jersey's acute care hospitals, by
definition, accommodate both hospital inpatient and ambulatory or same
day patients. By requiring separate need calculations, the process of need

determination, rather than being simplified, would become far more
complex and would require unnecessary data collection and "tracking"
of each surgical patient by OR location.

N.J.A.C. 8:33S-1.2 Definitions

COMMENT: Jersey Shore Medical Center (JSMC), together with
many other commenters, questioned the inclusion of cystoscopy and
endoscopy rooms in the definition of "operating room" because of the
unique requirements of such rooms and the fact that the addition of
these rooms does not contribute to the simplification of need determina-
tion that is being sought by the Department. This sentiment was shared
by Kennedy Memorial Hospitals (KMH), which emphasized the differing
construction requirements and use rates for these rooms. Many com-
menters, including KMH and Summit Surgical Center (SSC), also noted
that a "clean" rather than a sterile environment is the typical endoscopic
environment and that these cases are often performed by "medical" as
opposed to "surgical" specialists. JSMC also noted that these cases
represent a relatively small portion of the surgical caseload (perhaps five
percent), so that the exclusion of these cases will not significantly alter
the need determination process. All of these commenters called for the
deletion of cystoscopic and endoscopic cases and settings from the
definition section. West Jersey Health System (WJHS) agreed with the
above commenters, stating that the inclusion of these cases (that is,
cystoscopy, endoscopy) in CON review would "drive these procedures
toward single room practices."

RESPONSE: The Department is well aware of the difficulties
represented by the inclusion of endoscopic and cystoscopic cases in the
proposal, although it questions the assertion that these cases represent
a relatively small percentage of cases Statewide. The Statewide inventory,
for example, indicates that cystoscopy rooms represent approximately 13
percent of the State's operating rooms (that is, 92 cystoscopy rooms
located in hospitals throughout the State, as compared to approximately
600 operating rooms). The Department is deleting, on adoption, these
types of procedure rooms from the definition section at N.J.A.C.
8:33S-1.2, largely because:

1. Many of these cases are captured in the need methodology through
a subsequent surgical procedure, often during the same hospitalization;
2. Patient throughput measures (that is, capacity) and Statewide re-
source inventories (particularly for endoscopic rooms) are incomplete;
and
3. Physical space requirements for both of these types of procedures
differ from general operating rooms.

COMMENT: West Jersey Health System and Summit Surgical Center
stated that the rule should allow overnight recovery in free-standing
facilities, where applicants can demonstrate that such care can be
provided in a safe and cost effective manner.

RESPONSE: The rules require licensed free-standing ambulatory care
facilities to meet the State's licensing requirements designed specifically
for that type of health care facility. Current licensing rules, as of
September 7, 1993, do permit overnight recovery of surgical patients in
these facilities, provided proper patient safety requirements are im-
plemented to the satisfaction of the Department. The Department does
not believe that this rule is the proper forum to amend licensure require-
ments for ambulatory care facilities performing surgery.

**N.J.A.C. 8:33S-1.3 Dates of submission of certificate of need
applications**

No comments were received on this proposed new rule.

**N.J.A.C. 8:33S-1.4 Information to be submitted in the certificate of
need application**

COMMENT: Several commenters objected to the need methodology
proposed in this section of the rules. Jersey City Medical Center (JCMC)
objected to the methodology because it requires hospitals to designate
its operating rooms (that is, mixed, dedicated, SDS). Such a designation
was viewed as potentially too restrictive on the management and schedul-
ing of cases that may result in reduced OR efficiency and scheduling
problems. The University of Medicine and Dentistry (UMDNJ) and
JCMC also objected to the capacity levels assigned to each type of
operating room because such capacity levels are not achievable in some
operating rooms which are configured for specific subspecialty cases (for
example, laser eye surgery) or are dedicated for a restrictive use (for
example, trauma). JCMC questioned the origin of the capacity figures,
whether they were based on actual studies of OR activity, and whether
they accounted for differences in facility utilization (for example, teach-
ing hospitals vs. community hospitals). UMDNJ expressed similar

reservations regarding the achievability of the proposed capacity levels, particularly for teaching institutions. UMDNJ suggested that these capacity levels needed to be "reality tested" and that average case time should be carefully studied through a sampling of hospitals in order to incorporate variations in surgical case time into the capacity estimates. JCMC viewed the need methodology as still requiring "significant input and revision to ensure it is both realistic and usable."

RESPONSE: The designation of OR type has been the subject of considerable licensure activity over the course of the past year. The process of licensure reconciliation has resulted in Statewide agreement, negotiated between the Department and hospital providers, for all acute care licensing categories, including operating rooms. It is this Statewide reconciled licensing inventory that will provide the operating room inventory for future surgical need determination. The categorization of ORs is designed to determine the extent that surgical resources are being devoted to ambulatory patients, which is a key factor in determining OR capacity.

In proposing the rule for publication and public comment, the Department stated that the proposed need methodology was intended to greatly simplify the need determination process by relying on readily available data that eliminated the lengthy calculations that were required in the previous rule. While it is true that the proposed need methodology does not include case time as a variable, the Department has sought to address the issue by eliminating from consideration several categories of lengthy surgical procedures as well as the operating rooms that are dedicated to these cases. These operating room resources (that is, cardiac surgery, trauma) are the subject of separate rules that include their own need determination provisions and have been excluded from the inventory and need calculation process. The issue of case times was discussed in the State Health Plan chapter on Surgery and Renal Disease. Studies in other states have indicated that case times for ambulatory surgery cases are lengthening, but not significantly. The experience of a study of case time undertaken in the State of Maryland was specifically referenced in the surgery chapter.

An examination of the most recent hospital inpatient surgical data, as well as the surgical survey responses reported by the State's licensed ambulatory surgical facilities, reveal the ability of many providers to approach and exceed the number of cases specified as capacity in the proposed methodology. While it is true that there are many other factors that affect surgical patient throughput (for example, case-mix severity, teaching versus non-teaching settings), the elimination of resources devoted to regionalized surgical services (that is, cardiac, trauma) will serve to minimize the negative impact that this proposed methodology would have on university-affiliated institutions. As elaborated below, there are also waiver provisions in the rules that, if quantified by an applicant and considered compelling by the State Health Planning Board, will permit consideration of any applicant that may be adversely affected by the severity of its case-mix or by its teaching mission.

The precision of the proposed surgical need methodology could be increased by the inclusion of additional factors. The Department intends to examine the feasibility of incorporating some form of time consumption factor, such as the American Hospital Association's methodology suggested by UMDNJ, in the future. At present, however, the inclusion of several waiver and exception provisions contained in the rules are sufficient to deal with individual circumstances which may not be adequately addressed by the proposed need methodology. Hospitals, for example, are permitted to convert their mixed or inpatient ORs to dedicated SDS ORs under a waiver provision at N.J.A.C. 8:33S-1.6(c)1. A similar provision permits hospitals or surgical facilities which are functioning above capacity levels to expand regardless of the results of the need methodology. In addition, the State Health Planning Board is permitted to consider a waiver from the need methodology where it can identify specific and quantifiable evidence that application of the methodology to a specific certificate of need application is inappropriate because of unique circumstances. There is sufficient flexibility permitted under these rules to provide a rational basis for surgical resource decision-making at this time. The Department also intends to continue to examine the need for subsequent modifications to these rules as the need arises.

COMMENT: The Health Care Planning and Marketing Society of New Jersey and Kennedy Memorial Hospital suggested that the surgical data provided by the Department should not only be the most recent available, but language should be added to state that this data should be "at least within two years old".

RESPONSE: This proposed amendment is too restrictive, because it does not allow for unforeseen circumstances that could delay the collection or analysis of population or surgical data. The Department intends to use 1991 population estimates in the upcoming review of surgical resources, largely because of unforeseen delays experienced by the State Department of Labor in generating 1992 county-specific population estimates for New Jersey. Requiring the use of data within a certain time period may delay a call for applications to address current need purely because of delays in generating more timely data. The existing language permits the consideration of replacement or additional surgical resources based on the most timely information available, which in all likelihood will result in the use of data that is within the two year timeframe recommended by those who commented on this section of the methodology. The entire purpose of simplifying the need methodology and relying on fewer data elements than the previous surgical need methodology is to avoid the use of five year old information that was experienced in the past.

COMMENT: The University of Medicine and Dentistry of New Jersey (UMDNJ) recommended that special purpose dedicated operating rooms (that is, cardiac surgery, trauma) should not be included in the need methodology.

RESPONSE: The Department is in agreement with this commenter and has in fact stated at N.J.A.C. 8:33S-1.1 that "these rules do not apply to the provision of cardiac surgical services or any other special surgical service that is the subject of separate Department of Health planning rules". This statement would eliminate both cardiac and trauma operating rooms from the need calculation contained in this rule. Additional language is being added at N.J.A.C. 8:33S-1.4 stating that these ORs are to be deleted from the existing inventory in determining need.

COMMENT: UMDNJ also recommended adding the word "additional" to the labeling of proposed operating rooms in the need methodology to clarify the fact that these resources were being proposed as additions to the OR inventory.

RESPONSE: This added language is included in the amendments being adopted by the Department at N.J.A.C. 8:33S-1.4.

COMMENT: The Health Care Planning and Marketing Society of New Jersey (HPMSNJ) recommends several modifications to the need methodology, beginning with a limitation of the application of the methodology to "general operating rooms" as opposed to "special use operating rooms." Examples of the latter include open heart, trauma, "or even cystoscopic rooms" because they have different construction requirements and use rates. HPMSNJ also suggests that OR capacity levels be changed to reflect current and anticipated future trends (for example, technological change, reimbursement reform). HPMSNJ also recommends the use of facility primary service area rather than county boundaries in the need methodology, as well as the development of separate use rates for inpatient and outpatient use.

RESPONSE: "Special use" operating rooms, as defined as dedicated cardiac surgery operating rooms and dedicated multiple trauma operating rooms at designated cardiac surgery centers and Level I and II trauma centers, are excluded from the resource inventory portion of the proposed surgical methodology. Language to this effect appears in the scope and purpose section at N.J.A.C. 8:33A-1.1 and has been specifically stated on adoption as an amendment to the section dealing with the methodology at N.J.A.C. 8:33A-1.4.

The methodology relies on a surgical use rate that is county-specific, but recognizes the fact that proposed service areas may be multiple-county or just a portion of a county. The methodology permits each applicant to derive a "proposed service area" and to document the reasonableness of that service area. The use of "primary service area" as proposed by the HPMSNJ or any other geographic area can be used by an applicant, provided the documentation regarding its reasonableness is persuasive.

COMMENT: The Health Care Planning and Marketing Society of New Jersey (HPMSNJ) also suggested that the need formula reflect any conversions from inpatient or mixed ORs to same day ORs.

RESPONSE: The conversion of ORs from inpatient or mixed use to SDS does not require the use of the need methodology under the exception provision at N.J.A.C. 8:33S-1.6(c). Such conversions would be accounted for following the CON approval for such a conversion and would be reflected in the Statewide inventory for subsequent calls for surgical resources. Amended language is being added, however, to clarify the fact that both inpatient and mixed ORs may be the subject of this conversion exception.

COMMENT: Interstate Health Planning Corporation (IHPC) stated its objection to the absence of age-specificity in the need formula. Counties with large percentages of aged residents (for example, Ocean, Cape May) will not indicate the greater need for surgical services associated with their resident population. IHPC also recommends that "single use operatories" and "freestanding" centers be considered as exceptions to the need formula and suggests separate criteria (for example, compliance with licensing standards, 1350 procedures per OR, minimum five percent free or no-pay reimbursement) for these single use providers. IHPC cautions, however, that the adoption process for these rules should not be impeded, since it has been three years since the State has considered the acceptance of CONs for surgical services.

RESPONSE: The methodology utilizes a county-wide surgical use rate that is intended to reflect the surgical demand generated by the population residing in that geographic region. The surgical use rate is specifically designed to take into account those factors which contribute to surgical demand within a population, including the percentage of the aged within that population. In the past, for example, the surgical use rate for Ocean County has been consistently well above the Statewide surgical use rate. It is for this reason that a Statewide surgical use rate was considered inappropriate at the time that the methodology was developed.

As far as single use surgical services are concerned, many of these limited surgical practices are already excluded from the regulatory process in accordance with the exemption provision contained at N.J.A.C. 8:33S-1.5. As far as free-standing ambulatory surgical centers are concerned, the surgical services being performed at such facilities are identical to the ambulatory procedures that are available at existing hospital-based mixed and same day operating rooms. These competing resources must not only be included in the evaluation of need, but they should also be permitted to compete for any additional need for these services on an equal footing with potential free-standing providers. In the Department's view, such a policy is consistent with the provisions of the Health Care Reform Act.

COMMENT: The Alexander Group and Surgicare commented that the 90 percent threshold that establishes areawide need in the methodology being proposed was excessively high and that an 80 percent utilization level was more realistic, given the changes taking place in surgical care.

RESPONSE: Hospital UB-82 data and surveys of licensed ambulatory surgery providers provide ample evidence that the 90 percent capacity level for each category of operating room is achievable. The 90 percent threshold level is consistent with the previous surgical methodology contained in the previous surgical rules, which permitted the expansion of both hospital-based and freestanding surgical resources since 1985.

COMMENT: The University of Medicine and Dentistry pointed out an inconsistency in the need formula in terms of the definition of surgical use rate. It was suggested that the discrepancies should be clarified.

RESPONSE: The existing language is being amended on adoption to indicate, at N.J.A.C. 8:33S-1.4(a)l(iii), that the surgical use rate is defined as the number of surgical cases and not "patients" that originate from each county. The definition of variable "S" in the formula is also being amended to indicate that it refers to surgical cases performed on patients residing in the proposed service area. This amended language should resolve the inconsistencies in language that were commented upon by UMDNJ.

N.J.A.C. 8:33S-1.5 Exemption

COMMENT: The Board of Directors of the Medical Society of New Jersey submitted comments stating that there is no reason to prohibit private physicians and professional associations from leasing space in a single operating room to another physician. The Board recommended that "multiple physician use of single operating rooms should be allowed to continue" and stated further that at the very least, "the proposed regulation should be relaxed to allow existing arrangements to continue." Similar views were expressed by other commenters, principally representatives of existing surgical facilities (for example, Mid-Atlantic Eye Center) and the New Jersey Outpatient Ophthalmic Surgery Association (NJOOSA), regarding the status of existing Medicare certified, State inspected surgical facilities that offer cost-effective, high quality care that at the very least should be exempted or "grandfathered" from this requirement.

RESPONSE: The rules permit the exclusion of single operating room surgical services from these requirements, based on the recognition that physicians with credentials to perform surgery as part of their practice of medicine should be provided the opportunity to practice their special-

ty. The rules permit multiple physicians to be included under this private practice exemption, provided that those physicians are included in a professional association. The Health Care Cost Reduction Act contemplated the creation of a "level playing field" for health care providers by the immediate inclusion in the planning process of health care providers of services that are the subject of Department of Health planning rules. Such regulatory activity is vital to address the quality, access and cost issues which may be at greater risk in an unregulated environment. However, facilities that are currently licensed by the Department of Health as an ambulatory surgical center or certified by Medicare as an ambulatory surgical center will not be required to apply for a certificate of need for the continuation of their existing services.

COMMENT: The New Jersey Hospital Association, the Health Care Planning and Marketing Society of New Jersey, and several hospital commenters (for example, Kennedy Memorial Hospitals, Monmouth Medical Center, Rancocas Hospital) stated their objection to the inclusion of this exemption section of the rule. These commenters cited the need to provide a "level playing field" for all surgical providers, regardless of the type of provider and the scope of surgical service provision. Other commenters expressed their support for this exemption provision, stating that, in their view, it was consistent with the intention of the Health Care Reform Act in that it reduced unnecessary regulation and fostered a more responsive and less costly system of surgical care. Any elimination of this exemption provision was viewed by these latter commenters as a disincentive for the creation of lower cost ambulatory surgery providers.

RESPONSE: The Department views the inclusion of the exemption language as a continuation of a policy that has permitted physicians to provide a cost-effective surgical alternative to facility-based services under specific limited conditions. The 1971 Health Care Facilities Planning Act had contained statutory language that excluded those services provided by a physician in his or her private practice from the definition of a "health care service." The Health Care Cost Reduction Act (HCCRA), P.L.1991, c.187, amended the 1971 Act to extend the requirement to obtain a certificate of need to any person, including a physician, for the initiation of a health care service which is the subject of a health planning regulation adopted by the Department of Health, N.J.S.A. 26:2H-7(b), and for the purchase by any person of major moveable equipment whose total cost is over \$1 million, N.J.S.A. 26:2H-7(c).

The purpose of the amendment was to improve health planning in our State and to level the playing field among traditional health care facilities and physicians, who today often provide the services that are regulated by the Department of Health. In proposing the surgical facilities rules, N.J.A.C. 8:33S, the Department has determined that it favors the continuation of the exemption to the certificate of need requirement where a physician or a physician group seeks to establish a single operating room for the exclusive use of the physician or the physicians comprising a professional association or corporation in their private practice of medicine. While the Department has been willing to allow this type of flexibility to accommodate private practice physicians, it has recommended that in no case shall a physician or a physician group with more than a single operating room be permitted this physician practice exemption. Where a physician or a group of physicians proposes to go beyond his/her/their private practice and establish a "facility" with two or more operating rooms, a certificate of need must be secured. In the case of a non-physician, a certificate of need must be obtained independent of the number of operating rooms that are planned.

The chapter is intended to ensure a "level playing field" for the full range of surgical "facilities," while at the same time maintaining a physician's ability to perform minor surgical procedures in his or her private office.

COMMENT: West Jersey Health System (WJHS) commented that the absence of a provision regarding the clustering of single operating room surgical practices will permit large cluster units to bypass the regulations, compromising quality assurance and placing the regulated providers at a distinct competitive disadvantage.

RESPONSE: The Department's policy regarding single operating room practice exceptions to this rule considers each request on a case-by-case basis. The intent of the Department, historically, has never been to permit groups of physicians to join their individual operating rooms into a multiple operating room "facility." Exception for single OR physician practice has been conducted by the Department since 1985 and there is no indication that this has been a problem to date.

N.J.A.C. 8:33S-1.6 Criteria for review

COMMENT: West Jersey Health System (WJHS) observed that the waiver section at N.J.A.C. 8:33S-1.6(b) contains wording that incorrectly places the initiative for a waiver on the State Health Planning Board rather than the applicant. WJHS recommends a wording change to clarify the waiver policy.

RESPONSE: The Department agrees with the commenter that the suggested language clarifies the intent of this section, and has amended the requirement on adoption. The burden of documenting the inappropriateness of the methodology rests with the applicant and not the State Health Planning Board. The SHPB, if persuaded by the quantifiable evidence provided by the applicant, may then consider a waiver to the methodology.

N.J.A.C. 8:33S-1.7 Statistical data to be maintained and reported

No comments were received on this proposed new rule.

Summary of Agency-Initiated Change:

The text at N.J.A.C. 8:33S-1.7(a)2 has been amended on adoption to delete the reference to local anesthesia and to add the types of local anesthesia, conforming to recent changes in the ambulatory care licensing standards.

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 33S

CERTIFICATE OF NEED: SURGICAL FACILITIES

SUBCHAPTER 1. REQUIREMENTS

8:33S-1.1 Scope and Purpose

This chapter encompasses both hospital-based and free-standing surgical facilities and services and identifies standards and criteria for the planning and certificate of need review for surgical resources. These rules do not apply to the provision of cardiac surgical services or any other special surgical service which is the subject of separate Department of Health Planning rules. The chapter is intended to support a standard of quality in the performance of surgery in the State of New Jersey, through the provision of state-of-the-art surgical facilities which are accessible to all who are in need of these services. The purpose of the rules is to minimize the costly duplication of surgical services and to promote needed services that maintain and improve the health status of the population.

8:33S-1.2 Definitions

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

"Ambulatory surgical cases" and "same day surgical cases" are synonymous terms for surgical procedures performed on patients who have these procedures performed in a licensed health care facility without the requirement of an overnight stay and generally requiring some form of anesthesia and a facility-based post surgery period of at least one hour.

"Ambulatory surgery facilities" means a surgical facility that is licensed as an ambulatory ***[surgery]*** ***care*** facility ***-surgery***, separate and apart from any other facility license. It may be physically connected to another licensed facility, such as a hospital, but must be corporately and administratively distinct. The ambulatory surgical facilities shall comply with Chapter 9, Sections 9.1 and 9.2, and with Chapter 9, Section 9.5, Outpatient Surgical Facility, of the Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1987 edition, as amended, incorporated herein by reference, which is available from the U.S. Government Printing Office, Washington, D.C., or from the Department.

"Operating room" means a room specifically dedicated to the performance of surgical cases. It must meet the requirements established by the U.S. Department of Health and Human Services as cited in the Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities, U.S. Department of Health and Human Services 1987, Sections 7.7 Surgical Facilities and 9.5 Outpatient Surgical facilities, as amended, incorporated herein by reference and available from the U.S. Government Printing Office, Washington, D.C. and the Department. ***[For purposes of this defini-**

tion, rooms specifically dedicated to endoscopic and cystoscopic procedures are considered operating rooms.]*

"Outpatient surgery" means a very minor surgery appropriately performed in private settings, or in hospital outpatient departments, on patients who do not require a licensed free-standing ambulatory surgery facility or same-day surgery (SDS) status in a hospital. In a hospital setting, outpatient surgery is counted as an outpatient visit.

"Postanesthesia care unit" means a room, or area, used for postanesthesia recovery of patients. It must meet the minimum requirements established by the U.S. Department of Health and Human Services as cited in the Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities, U.S. Department of Health and Human Services 1987, Sections 7.0 and 9.5 as amended, incorporated herein by reference and available from the U.S. Government Printing Office, Washington, D.C., and the Department.

"Surgical facility" means a structure or suite of rooms which has the following characteristics:

1. At least one room dedicated for use as an operating room which is specifically equipped to perform surgery. These rooms are designed and constructed to accommodate invasive diagnostic and surgical procedures; and

2. One or more postanesthesia care units as defined below and in hospital licensure standards (N.J.A.C. 8:35) or a dedicated recovery area where the patient may be closely monitored and observed until discharged; and

3. A surgical facility may be either a surgical suite within a hospital or a licensed ambulatory surgical facility as described below.

8:33S-1.3 Dates of submission of certificate of need applications

(a) A certificate of need shall be required for any new surgical facility as well as for additional operating rooms to be added to an existing surgical facility. A certificate of need shall also be required for the deletion of one or more operating rooms from an existing licensed facility or the replacement of existing operating rooms.

(b) Applications for additions, deletions, or alteration of surgical facilities will be accepted for processing in accordance with policies and procedures set forth in N.J.A.C. 8:33.

8:33S-1.4 Information to be submitted in the certificate of need application

(a) Information that must be provided by all applicants includes, but is not limited to, the following: (Note: The Department will determine prior to the initiation of each call for surgical applications the most recent Statewide and county-specific surgical data from licensed surgical facilities to be used in implementing the surgical need methodology outlined in this section, as well as identifying the population data and operating room inventory that are to be used to satisfy the surgical need methodology in this section. Non-licensed surgical facilities are not included in this surgical need methodology. ***Dedicated cardiac surgery and multiple trauma operating rooms shall be excluded from the Statewide inventory.*** Copies of this information can be obtained by contacting the Certificate of Need Program.)

1. The potential need or demand for the proposed surgical facility or proposed change in the number of operating rooms (OR), based on the surgical need methodology specified in this section.

i. The total capacity of the surgical OR's located within the county(ies) proposed to be served by the surgical facility. The capacity of each type of licensed OR shall be calculated as follows:

- (1) Inpatient OR = 1,000 surgical cases annually;
- (2) Mixed (inpatient/outpatient) OR = 1,090 surgical cases;
- (3) Dedicated SDS OR = 1,500 surgical cases annually;

ii. The number of surgical cases performed within licensed OR's located in the county to be served by the proposed additional OR capacity for the most recent year of data available to the Department;

iii. The surgical use rate, both Statewide and countywide, shall be calculated for the most recent annual surgical data reported to the Department (derived from the Uniform Billing Patient Summary form) and using the most recent annual State and county population estimates available from the State Department of Labor. The surgical

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use rate is determined by dividing the number of surgical *patients* *cases* originating from each county by the estimated population of that county;

iv. The projected surgical caseload is calculated for five years in the future, using the latest available population projection for the county(ies) to be served by the proposed surgical applicant (and assuming the surgical use rate derived in (a)1iii above). The surgical rate is multiplied by the five year population projection to derive projected surgical caseload for the proposed service area;

v. Projected surgical demand for a service area is calculated by dividing the projected surgical caseload (see (a)1iv above) by the target surgical utilization level of 90 percent (.90). The projected utilization rate in the service area is calculated by dividing the projected surgical demand by the projected operating room capacity of the service area; and

vi. If the projected service area OR utilization rate is equal to or greater than 90 percent, then the proposed OR capacity can be expected to be sufficiently utilized to meet projected surgical demand in the proposed service area. If the projected utilization rate is less than 90 percent, then the number of proposed operating room(s) is/are in excess of service area need.

NEED METHODOLOGY FORMULA (as example):

Where: Total licensed service area surgical capacity = C
and:

Total Number of Existing Service Area Mixed ORs = M
Total Number of Existing Service Area Ambulatory/SDS
ORs = A

Total Number of Existing Service Area Inpatient ORs = I

Total Number of Proposed *Additional* Service Area Mixed
ORs = M'

Total Number of Proposed *Additional* Service Area
Ambulatory/SDS ORs = A'

Total Number of Proposed *Additional* Service Area Inpatient
ORs = I'

Existing Inpatient OR Surgical Capacity = $I \times 1,000$

Existing Mixed OR Surgical Capacity = $M \times 1,090$

Existing Ambulatory/SDS OR Capacity = $A \times 1,500$

Proposed Inpatient OR Surgical Capacity = $I' \times 1,000$

Proposed Mixed OR Surgical Capacity = $M' \times 1,090$

Proposed Ambulatory/SDS OR Capacity = $A' \times 1,500$

(i) Existing Service Area Surgical Capacity (C) = $(I \times 1,000) + (M \times 1,090) + (A \times 1,500)$

Proposed Additional Service Area Surgical Capacity (C') = $(I' \times 1,000) + (M' \times 1,090) + (A' \times 1,500)$

Projected Service Area Surgical Capacity = $(C + C')$

(ii) Number of Surgical Cases Performed *on patients residing* in the Proposed Service Area = S

(iii) Proposed Service Area Surgical Use Rate = S/P ; where P = Latest Available Labor Department Population Estimate.

(iv) Projected Surgical Caseload = $L = (S/P) \times (P+5)$; where, $P+5$ = Service Area Population Five Years in Advance (Latest Department of Labor Estimate)

(v) Projected Surgical Demand = $D = L/ (.90)$; Projected Utilization Rate = $U = D/(C + C')$

(vi) If U is $>$ or $=$ (.90); Then Need Exists; If U is $<$ (.90); Then Excess OR Capacity Exists;

2. The proposed number and type (that is, inpatient, mixed, ambulatory/SDS) of operating rooms;

3. Pro forma showing all capital and operating costs and revenues to one year beyond break even; and

4. Information to indicate that licensure standards will be met.

(b) Additional information to be provided by applicants for surgical facilities shall include:

1. The expected number of recovery beds and/or recliners;

2. The total expected number of surgical cases, by each type of surgery, as determined by the surgical need methodology described in this section.

3. The expected payor percentages;

4. The procedures performed and the change per procedure, where applicable;

5. Documentation as to whether the physician(s) associated with the surgical facility accepts Medicare and Medicaid assignment; and

6. The proposed service area is to be described in detail and accompanied by a legible map which includes a distance scale and physical relationship to other existing surgical facilities within the proposed service area and immediately bordering the area. The methodology/rationale justifying the delineation of the service area chosen by the applicant will be included with supporting quantifiable evidence. The Department of Health shall determine the reasonableness of the defined service area, in accordance with N.J.A.C. 8:33 and this chapter.

8:33S-1.5 Exemption

A physician or professional association seeking to establish a single operating room surgical practice limited to his or her or their private practice is exempted from certificate of need requirements. However, in no case shall a surgical practice with more than a single operating room be permitted this physician practice exemption.

8:33S-1.6 Criteria for review

(a) No application for a new surgical facility, or increase in the number of operating rooms in an existing surgical facility, will be approved unless all of the following conditions are met:

1. The number of operating rooms proposed is needed when assessed according to the surgical need methodology described in N.J.A.C. 8:33S-1.4;

2. The utilization of the existing and proposed operating rooms (defined in the surgical need methodology as "projected OR utilization rate") available in the applicant's service area is expected to be in excess of 90 percent of service area OR capacity according to the surgical need methodology;

3. The applicant provides sufficient assurance that both licensure standards and Medicare certification standards will be met;

4. The applicant shall document in its application the proportion of Medicaid-eligible and medically indigent persons residing in the proposed service area. In addition, the applicant shall, in delivering the proposed service, provide care on a free or partial-pay basis to Medicaid-eligible and medically indigent persons at least in proportion to their representation in the approved service area;

5. The applicant indicates a willingness to seek contracts with health maintenance organizations and other managed care providers;

6. The proposal minimizes increases in systemic health care costs;

7. The applicant indicates and documents that contacts with community organizations which serve low income populations have been initiated; and

8. The applicant documents compliance with State and Federal requirements regarding self-referral.

(b) Waivers of (a)1 and 2, above, may be considered where the *[State Health Planning Board (SHPB)]* *applicant* has petitioned for a waiver identifying specific and quantifiable evidence that the methodology is inappropriate because of circumstances unique to a given application. The waiver, if approved, would apply only to the application for which the waiver is petitioned and the waiver request must give substantial evidence that in the absence of a waiver serious problems of access to a needed service would result.

(c) Exceptions to (a)1 and 2 above may be made as follows:

1. Where an applicant or a facility which is a subsidiary of an organization which has control over the applicant:

i. Has agreed, as part of the application, to close at least one existing inpatient *or mixed* operating room for each dedicated ambulatory surgical operating room proposed; and

ii. Has agreed, as part of the application, to reduce a sufficient number of its inpatient *or mixed* operating rooms to ensure a minimum utilization rate of 80 percent of its operating room capacity at the conclusion of the project; or

2. Where an applicant or a facility which is a subsidiary of an organization which has control over the applicant:

i. Has documented that its existing surgical caseload exceeds the capacity of its licensed operating rooms (in accordance with N.J.A.C.

8:33S-1.4(a) for the past 12 months prior to the submission of this certificate of need application;

ii. Has agreed, as part of the application, to limit the proposed addition of operating room capacity to that number of operating rooms necessary to reduce its surgical case utilization level to 80 percent of its operating room capacity at the time that the application is submitted;

iii. Has documented that sufficient access to alternative surgical providers that share the service area is not readily available; and

iv. Has documented that the addition of operating room capacity in a service area where there is existing capacity will not add significant capital or operating costs to the system.

8:33S-1.7 Statistical data to be maintained and reported

(a) At a minimum, the following information shall be reported by the applicant on an annual basis to the Department of Health:

1. Characteristics of patients: age, sex, residence (county/municipality), insurance coverage, diagnosis and procedures (including primary procedure and all secondary procedures). The applicant shall also request information regarding race and ethnicity which shall also be reported to the Department of Health. This information, however, is voluntary on the part of the patient;

2. Whether anesthesia was used; if so, what type, that is, general or *[local]* ***regional conduction blocks, conscious sedation, and minor conduction blocks***;

3. The duration (in minutes) per case in which the operating room(s) was/were in use; and

4. The number of cases performed per operating room using the following categorization:

- i. Dedicated inpatient operating room;
- ii. Mixed same day surgery and inpatient operating room;
- iii. Dedicated same day surgery operating room;
- iv. Endoscopy rooms; and
- v. Cystoscopy rooms.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION Standards for Licensure of Residential Health Care Facilities

Adopted Repeal and New Rules: N.J.A.C. 8:43

Proposed: January 4, 1993 at 25 N.J.R. 25(a).

Adopted: August 26, 1993 by Bruce Siegel, M.D., M.P.H.,

Commissioner of Health (with approval of the Health Care Administration Board).

Filed: August 27, 1993 as R.1993 d.473, **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: October 4, 1993.

Operative Date: February 12, 1994.

Expiration Date: October 4, 1998.

Summary of Public Comments and Agency Responses:

The proposed new rules were published on January 4, 1993. Seventeen letters of comment were received during the comment period, which closed on 1993. Comment letters were received from the New Jersey Association of Health Care Facilities (NJAHCF); the New Jersey Association of Non-Profit Homes for the Aging (NJANPHA); the New Jersey Recreation and Park Association; the New Jersey Department of the Public Advocate, Division of Mental Health Advocacy; the New Jersey Department of Community Affairs, Division of Codes and Standards; the New Jersey Boarding Home Advisory Council; the New Jersey Pharmaceutical Association; New Jersey Psychological Association; the New Jersey Academy of Consultant Pharmacists, Affiliate of New Jersey Pharmaceutical Association; Medication Delivery Systems, Inc.; R.Ph. Consulting, Inc.; Witman Associates; PRN Consulting; Town and Country Institutional Pharmacy; Pharm RX Consultants, Inc.; Mr. Carl Tepper, RP, CCP, FASCP; Dr. Solomon Goldberg; and Cherry Hill Pharmacy.

COMMENT: Both the New Jersey Association of Health Care Facilities and the New Jersey Association of Non-Profit Homes for the Aging suggested that the implementation date of the new rules should be delayed for six months, or, alternatively, that facilities should not be cited or penalized during the first year following adoption for violations of the new rules.

RESPONSE: The Department will delay full implementation of the rules for a period of six months following their adoption in order to allow facilities sufficient time to become familiar with the revised rules, develop any needed new policies and procedures, and receive training and orientation concerning the rules. An operative date of February 12, 1994 has been assigned to these rules.

N.J.A.C. 8:43-1.2

COMMENT: The New Jersey Boarding Home Advisory Council commented on proposed N.J.A.C. 8:43-1.2, Purpose. The Council suggests that DOH's regulatory process should be guided by "principles designed to create a framework within which regulations can be amended, modified, and interpreted." Regulation should reflect concern for residents' safety and comfort, and enforcement should be designed to help facilities achieve compliance. The Council believes that smaller facilities often need more technical assistance than the licensing agency usually provides, and suggests that inspectors facilitate compliance through education and interpretation to promote understanding of the new rules.

RESPONSE: The Department agrees with the intent of this comment. Extensive training will be offered to RHCf providers prior to implementation of the new rules, amendments to the current rules have been promulgated as required, interpretations to the rules are provided as requested, and Department staff frequently provide consultation and/or technical assistance to facilities. It is necessary, however, to separate the Department's mandated role as enforcement agency from the role of consultant to RHCf's. The Department believes that the enforcement and monitoring aspects of the regulatory process are indeed reflections of our concern for residents' safety and comfort through ensuring each facility's compliance with minimum quality of care rules. No changes have been made to the purpose statement at N.J.A.C. 8:43-1.2.

N.J.A.C. 8:43-1.3

COMMENT: The New Jersey Association of Health Care Facilities requested that the definition of "employee" at proposed N.J.A.C. 8:43-1.3 be amended to clarify that a member of the facility administrator's family could serve as an employee, since many RHCf's in the State are family-run operations and rely, financially, on family member employees rather than non-family, hired personnel.

RESPONSE: Although the Department did not intend that the rule, as proposed, would prohibit family members from serving as employees, a sentence has been added to the rule clarifying that employees may be members of the administrator's family, if they meet the other requirements specified in the definition, and also to clarify the conditions upon which residents may serve as employees. Residents may not provide direct services or resident supervision as required by these rules.

COMMENT: The New Jersey Psychological Association expressed concern that proposed N.J.A.C. 8:43-1, Definitions and Qualifications, specifies qualifications for staff such as dietitians, physicians, and nurses, but does not specify qualifications for psychologists.

RESPONSE: N.J.A.C. 8:43-1.3 contains definitions of many key words which are used in the chapter. Since the word "psychologist" is not used in the text of the rules, the word is not defined. Qualifications of personnel who are required to provide services in each RHCf are specified in N.J.A.C. 8:43-1.4 through 1.11. Since there is no requirement for RHCf's to provide services from a psychologist for each resident, qualifications are not included in the rules. Each RHCf, however, is responsible for referral of residents to health care providers, including psychologists, if such services are needed. The rule at N.J.A.C. 8:43-4.4(b) specifies that all personnel who require licensure, certification or authorization to provide resident care shall be licensed, certified or authorized under the appropriate laws of the State of New Jersey. Therefore, any psychologist who provides care to a resident of a RHCf must have a current New Jersey license. No changes are made in the proposed definitions and qualifications.

N.J.A.C. 8:43-1.6(a)2

COMMENT: The New Jersey Boarding Home Advisory Council's comment letter supports "background checks," to verify that direct care staff have not been convicted of a crime relating adversely to the person's ability to provide resident care, as required at proposed N.J.A.C.

8:43-1.6(a)2. The Council feels, however, that cost of these background checks should not be passed on to the facility.

RESPONSE: The Department is aware that legislation mandating background checks has been introduced and is supportive of the concept. The safety that this system would promote must be balanced against the cost impact to the system and the administrative burden created without statutory authority. However, the Department believes it cannot mandate criminal background checks in RHCfs or other health care facilities. The rule has not been changed.

N.J.A.C. 8:43-1.7 and 9.1(a)

COMMENT: A letter of comment from Dr. Solomon Goldberg points out that both proposed N.J.A.C. 8:43-1.7 and 9.1(a) specify that the director of Health Maintenance and Monitoring Services must be a registered professional nurse (RN). Dr. Goldberg states that a licensed physician who might be willing to serve as director would be precluded from doing so unless granted a waiver, and suggests that the rule be amended to allow either a physician or a registered professional nurse to fill this position.

RESPONSE: While this theoretically may be possible, the Department does not believe, in practice, that a RHCf would retain a physician as an employee to serve as director of health maintenance and monitoring services. A facility choosing to do this may petition the Department for a waiver under the requirements of N.J.A.C. 8:43-2.7. No changes have been made to these rules.

N.J.A.C. 8:43-2.3(c)

COMMENT: The New Jersey Boarding Home Advisory Council commented that the proposed rule at N.J.A.C. 8:43-2.3(c), which requires an on-site inspection of the construction of the physical plant by Health Facilities Construction Services to verify that the building has been constructed according to Department approved plans, is "a duplication of the inspection required of the municipal building inspector." The Council suggests "that this duplication should be addressed" and that "the potential cost savings should be directed to homeowners or technical assistance programs to facilitate regulatory compliance."

RESPONSE: The Department disagrees that the inspection made by representatives of Health Facilities Construction Services is a duplication of any inspection which may be done by a municipal inspector to determine compliance with local and State building codes and requirements. In addition to ensuring that the building has been constructed or modified according to approved plans, the on-site inspection made by Department Construction Services staff is focused on functional and operational aspects of the building, such as placement of furniture, space between beds, location of windows, which are directly related to the health and safety of residents. The Department does not impose a charge to facilities for inspections, and believes that use of staff time to carry out these inspections is a cost effective expenditure of State funds. The rule is not changed.

N.J.A.C. 8:43-2.8(b)

COMMENT: The New Jersey Boarding Home Advisory Council commented on proposed N.J.A.C. 8:43-2.8(b), which allows the Commissioner to order immediate removal of residents from a RHCf whenever he or she determines imminent danger to any person's health or safety. Because of "past problems associated with resident relocations," the Council feels it is critical that the Department of Health "delineate how relocations in RHCfs will take place."

RESPONSE: The Department has guidelines which are to be followed to ensure the appropriateness of relocations which take place because of the Commissioner's determination that residents' health or safety would be jeopardized if they were to remain in the RHCf. The guidelines, entitled *Department of Health Procedures for Voluntary and/or Involuntary Termination of Services in Residential Health Care Facilities*, list, for example, agencies which must be notified at the time the residents are to be removed, including the county welfare agency, the Office of the Ombudsman, and the Department of Human Services. In accordance with delineated procedures, the Department requests county participation in coordination with appropriate service agencies, and makes monitoring visits to ensure appropriate care and services to residents during the interim period until relocation takes place. The procedures also require that the Department notify the SSI program, Region II office, if residents are SSI recipients. The Department must also cooperate with all agencies and providers of services to relocate residents in the same area if possible. The Department believes that these written procedures delineate important steps which are to be followed and which

help to ensure orderly and timely relocations of residents who have been deemed to be at risk. However, the Department agrees with the intent of the Advisory Council's comment requesting delineation of how relocations will take place. Therefore, a list of agencies which are to be notified of any intent to terminate services or to relocate residents has been added to the rule at N.J.A.C. 8:43-2.6, Surrender of license, and a summary of guidelines for relocation has been added at N.J.A.C. 8:43-2.8(b).

N.J.A.C. 8:43-2.10

COMMENT: The New Jersey Association of Health Care Facilities, the New Jersey Department of the Public Advocate, Division of Mental Health Advocacy, and the New Jersey Boarding Home Advisory Council commented on proposed rules at N.J.A.C. 8:43-2.10, Special residential health services. The Department of the Public Advocate requested that a public hearing be conducted to address concerns about the proposed rules. The New Jersey Boarding Home Advisory Council suggested that the Department of Health should distinguish "between a facility proposing to establish a specialized program, and a facility (already) serving clients with special needs as part of its normal admissions and retention policies." The New Jersey Association of Health Care Facilities also requested clarification concerning RHCfs proposing to establish a specialized program and those who are already serving clients with special needs. The Association suggested amended language to the rule to clarify this issue.

RESPONSE: The Department has made the changes recommended, N.J.A.C. 8:43-2.10(a), in order to clarify that the rule does not apply to those facilities already serving residents with special needs.

N.J.A.C. 8:43-3.1(a) and 3B.1

COMMENT: The New Jersey Association of Health Care Facilities pointed out two technical errors in citations which resulted from recodifying of N.J.A.C. 8:43-3, Physical Plant.

RESPONSE: Corrections have been made to proposed N.J.A.C. 8:43-3.1(a) and 3B.1 to conform with coding changes which were made by the Office of Administrative Law (OAL).

N.J.A.C. 8:43-3.1(d)

COMMENT: The New Jersey Association of Health Care Facilities (NJAHCF) commented on proposed N.J.A.C. 8:43-3.1(d), which addresses transfers of ownership. The NJAHCF requested that the subsection be amended to give the DOH "discretion to conduct a physical plant inspection," which would "assess a facility for compliance with codes and standards in effect at the time of initial licensure" as well as N.J.A.C. 8:43-3B.1 through 3B.6 of the proposed rules and current codes and standards. In addition, the DOH would "issue a report of the inspection to the prospective buyers and sellers, and would require the parties to submit a plan of correction to the DOH for all physical plant deficiencies in violation of codes and standards in effect at the time of initial licensure, exclusive of waivers, sections 3B.1-3B.6 of the Manual and all other standards required by law applicable to existing facilities." NJAHCF believes that amendments are "critical to the longevity of the RHCf industry," and that compliance with the proposed standards for new construction would make it impossible for a current owner to sell a facility if substantial capital outlay were to be required before the prospective owners could commence operations. Amendatory language is suggested in the comment letter.

RESPONSE: After further review of this rule, the Department has made the recommended changes at N.J.A.C. 8:43-3.1(d). The Department notes that it is providing an inspection report to a new owner of the facilities compliance with the codes and standards in effect at the time of construction, as this is mandated by proposed N.J.A.C. 8:43-3.1(c), above.

N.J.A.C. 8:43-3, 3A, 3B and 15.3(b)5

COMMENT: The New Jersey Department of Community Affairs, Division of Codes and Standards (DCA), commented on proposed N.J.A.C. 8:43-3, Physical Plant. According to the commenter, DOH has "proposed rules concerning alterations that are within the scope of the State Uniform Construction Code, N.J.A.C. 5:23." The comment letter cited a Deputy Attorney General's opinion of April 5, 1990, which, according to DCA, states that "the Department of Health is without authority to promulgate construction code regulations." The DCA suggested that all of subchapter 3, with the exception of N.J.A.C. 8:43-3.1(a), (c), (d) and (e), "be deleted because they purport to establish construc-

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tion standards." The commenter also suggested that N.J.A.C. 8:43-3.2 should be revised to delete references to the Uniform Construction Code, and Use Group I-1 of the Sub-Code.

RESPONSE: Although the Department concurs with the DCA that the Uniform Construction Code governs with respect to construction standards, it does not agree that all of subchapter 3 constitutes a construction requirement. Those standards affecting the design of a facility as it affects patient care and quality of life are considered properly within the licensing standards.

The following proposed standards have been amended or deleted on adoption in concurrence with DCA comments, in order to conform with BOCA National Building Code as it has been promulgated by the Department of Community Affairs at N.J.A.C. 5:23, to avoid duplication, or to clarify the intent: N.J.A.C. 8:43-3.2, 3.4, 3.6, 3.7, 3.8, 3.9, 3A.6(c), 3A.7, 3A.11, 3B.1, 3B.2, 3B.3, 3B.4, 3B.5, 3B.6, and 15.3(b)5.

Reference to the Americans with Disabilities Act has been deleted at N.J.A.C. 8:43-3.2, since the ADA is not enforced at the State or local level, and is not included in any survey. The applicable barrier-free requirements at N.J.A.C. 5:23-7 have been incorporated where appropriate.

Separation of kitchens is no longer required by the BOCA or NFPA or associated New Jersey Administrative Codes, therefore references have been corrected to conform to the controlling requirements. As all I-1 uses must be sprinklered, separation requirements were deleted, except for those at existing facilities.

N.J.A.C. 8:43-3.5 and 4.12(g)

COMMENT: Dr. Solomon Goldberg commented on proposed N.J.A.C. 8:43-3.5 and 4.12(g)3, which require a minimum corridor width of 44 inches, and allow the use of a wheelchair if the resident's living unit is at grade level. Dr. Goldberg expresses concerns that the 44 inch corridor width would be insufficient in an emergency if more than one resident were using a wheelchair. A corridor width of 60 inches is suggested in those instances where more than one resident requires a wheelchair, in order to ensure safety in an emergency.

RESPONSE: The Department must conform to Uniform Construction Code requirements at N.J.A.C. 5:23 and this rule has been developed in accordance with the UCC. The Department believes that the rule as written, in conjunction with the development and implementation of emergency plans and procedures, provides for resident safety. No change has been made to the rule.

N.J.A.C. 8:43-4.5(a)6

COMMENT: The New Jersey Association of Non-Profit Homes for the Aging (NJANPHA) requested clarification of proposed N.J.A.C. 8:43-4.5(a)6, which requires policies and procedures for personnel records to include verification of credentials and prior criminal records. If the word "verification" is intended to apply to prior criminal records as well as credentials, the NJANPHA requests an explanation of how the DOH expects RHCF's to determine whether or not an employee has a prior criminal record.

RESPONSE: The Department intends that each RHCF will develop policies and procedures required in this rule after the facility has identified its own special needs. Since the rule requires only that policies and procedures be developed to address individual facility's methods for verification of credentials and prior criminal records, no changes have been made. A reasonable inquiry through an employment application and reference checks would satisfy the intent of the rule, but is not required in all cases.

N.J.A.C. 8:43-4.5(a)7

COMMENT: Both NJAHCF and NJANPHA requested a change to proposed N.J.A.C. 8:43-4.5(a)7, which requires that each RHCF develop policies and procedures for physical examinations for employees and persons providing direct resident care services through contractual arrangements or written agreements. The Associations request a change in the rule so that it would apply only to employees hired by and working in the facility.

RESPONSE: No change has been made to the rule. The rule requires that each facility develop policies and procedures regarding physical examinations for those persons who provide direct resident care services. The rule assumes that contractual employees affected are in direct contact with residents, and is intended, therefore, to protect the health and safety of residents receiving such direct services. The need for a physical examination could, of course, be eliminated where provision of

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services results only in incidental contact with residents. Documentation of a physical examination performed by a physician outside of the facility would also be acceptable.

N.J.A.C. 8:43-4.6(a)

COMMENT: Three letters of comments were received on proposed N.J.A.C. 8:43-4.6(a), requiring resident transportation to health care services outside the facility. Both NJAHCF and NJANPHA requested that development of policies and procedures addressing reasonable plans for security for the resident and his or her possessions during transportation be deleted from the rule, since such policies and procedures would be "impossible to enforce," and "would heighten a facility's legal responsibility." The New Jersey Board Home Advisory Council requested that the rule should not be implemented until funding is made available.

RESPONSE: The issue of resident transportation responsibilities has been carefully considered by the Department prior to publication. The Department believes that the rule, as proposed, requires only the development of policies and procedures addressing "reasonable plans for security and accountability" for residents and their possessions, affords minimum security for residents during transportation, and should not expose facilities to undue legal risks or increased costs. No changes have been made to the rule.

N.J.A.C. 8:43-4.12(c)

COMMENT: The New Jersey Psychological Association commented on proposed N.J.A.C. 8:43-4.12(c), which specifies that a physician must see each resident within 30 days prior to admission and certify that the resident does not have needs which exceed the level of care provided in the facility. The Association believes that residents should also receive preadmission evaluation by a psychologist, to identify psychological and mental health needs. The commenter states that such a requirement for a psychologist and mental health screening would decrease the risk for potential abuse and neglect of residents and provide for early treatment of residents who might otherwise pose a danger to themselves or others. The Association strongly recommends "including psychologists as required members of the RHCF team of health service professionals."

RESPONSE: Although a psychological screening may be of value in some instances, the potential fiscal impact of the suggested change precludes the Department from accepting the recommended change. The physician must provide a clinical assessment of each resident. The facility would be required to refer residents who need mental health services to appropriate providers.

N.J.A.C. 8:43-4.12(e)

COMMENT: Three letters of comment were received regarding proposed N.J.A.C. 8:43-4.12(e), which requires evaluation by a physician of any resident believed to pose a danger to himself or others, in order to determine whether the resident is appropriately placed, and, if necessary, to initiate mental health screening. NJAHCF and NJANPHA believed that the list of persons eligible to make such assessment to initiate the mental health screening process should be expanded to include the health maintenance and monitoring nurse and the administrator or the administrator's designee. This change would allow for immediate referral decisions to be made by an on-site person, and would protect the welfare and safety of the resident experiencing psychiatric crisis as well as other residents. The commenters point out that it is not necessary for a physician to initiate mental health screening. The New Jersey Boarding Home Advisory Council suggests that reference to the attending physician or physician on call should be deleted from the rule.

RESPONSE: The rule has been changed to indicate that the mental health screening process may be initiated by the health maintenance and monitoring nurse, or by the administrator after consultation with the physician or nurse.

N.J.A.C. 8:43-4.13(c)

COMMENT: The commenter from the Boarding Home Advisory Council notes that reference at proposed N.J.A.C. 8:43-4.13(c) to an emergency situation was incorrectly cited and should refer to the rule at N.J.A.C. 8:43-4.12(e).

RESPONSE: The citation has been corrected.

N.J.A.C. 8:43-4.14(a)

COMMENT: The Boarding Home Advisory Council requested that proposed N.J.A.C. 8:43-4.14(a), specifying that resident's family, guardian, and/or responsible person or community agency be notified of

certain events, be expanded to include notification of "the county welfare agency and any other agency in which the client is a participating program member or under treatment." The change is proposed in order to ensure that county welfare and other agencies providing case management services are informed of changes in the residents' status.

RESPONSE: The Department agrees with the comment, and has changed the rule to include county welfare and other agencies to the list of persons to be notified, as suggested.

N.J.A.C. 8:43-4.17(a)

COMMENT: Commenters from NJAHCF and NJANPHA requested that proposed N.J.A.C. 8:43-4.17(a) be revised to better clarify the rule's intent.

RESPONSE: The Department agrees with the commenters and has changed the wording of the rule, as follows: "A facility licensed as a residential health care facility shall not be used for any other purpose, with the following exception: the facility may be used for housing quarters of the owner, the administrator, or other staff members, if approved by the Department."

N.J.A.C. 8:43-6.1(a)5

COMMENT: NJAHCF and NJANPHA commenters request deletion of the rule at proposed N.J.A.C. 8:43-6.1(a)5, requiring written informed consent for any medical procedures performed at the facility which require such consent.

RESPONSE: Although such medical procedures are, in fact, rarely performed in RHCF's, the Department prefers to retain the rule as written so that policies and procedures are in place regarding informed consent, if required by law, and specifying the circumstances under which informed consent shall be obtained.

N.J.A.C. 8:43-6.1(a)8 and 15.3(b)7

COMMENT: Dr. Solomon Goldberg commented on two rules regarding pet therapy: proposed N.J.A.C. 8:43-6.1(a)8 requires the RHCF to develop and implement policies and procedures for the care and control of pets, if pets are permitted in the facility. N.J.A.C. 8:43-15.3(b)7 refers to pet facilitated therapy guidelines issued by the Department. Dr. Goldberg suggests that policies and procedures should give consideration to the number of pets housed in the facility and locations where they will be permitted. In addition, Dr. Goldberg indicates that the DOH "guidelines are not widely known and may not be enforceable unless incorporated into the body of the regulations."

RESPONSE: The Department agrees, and pet therapy guidelines, which facilities should conform to when writing the policies and procedures required by N.J.A.C. 8:43-6.1(a), will be incorporated into the rules, as Appendix E, on adoption.

N.J.A.C. 8:43-6.1(a)9

COMMENT: NJAHCF and NJANPHA commenters requested that language at proposed N.J.A.C. 8:43-6.1(a)9 be changed. The rule requires that each RHCF develop and implement policies and procedures regarding residents leaving the facility, their expected time of return, and the use of a sign-in sheet to document the resident's time of leaving, destination and time of return. The Associations' letters question the need to document every instance where the resident leaves the facility, and state that such a system would be "ineffective." The Boarding Home Advisory Council also commented on this rule, and suggested that "a less obtrusive way of maintaining some responsibility" might be developed, such as a negotiated agreement with residents to establish a mutually agreeable system for monitoring absences.

RESPONSE: After further review of the rule, the Department has agreed to change to language which does not require a sign-in sheet and which would allow facilities to develop monitoring systems based on their individual needs.

N.J.A.C. 8:43-6.2(a)3

COMMENT: Commenters from NJAHCF and NJANPHA requested changes at proposed N.J.A.C. 8:43-6.2(a)3, which states that the RHCF shall assess no additional charges to residents in excess of the daily, weekly, or monthly rate included in the admission agreement, except upon written approval of the resident, upon written orders of the resident's physician, or upon 30 days' prior written notice to the resident of charges that are in addition to the agreed rate. The associations are concerned that a facility might have to wait at least 30 days following written notice to the resident before the facility would be able to obtain from the resident a price increase over which it has no control. Examples

given include purchase of grocery store or pharmacy items that the facility has agreed to purchase for the convenience of the resident. Commenters state that such delays would be "unfair," and "discourage facilities from offering to perform services or errands for residents." The NJANPHA commenter also pointed out that the word "or" had been omitted from the list of exceptions in the rule, and suggested deletion of the "and" at the end of the list of exceptions.

RESPONSE: The Department has not amended the rule as requested. The rule is not intended to apply to small purchases made by the facility, for the convenience of the resident. The facility and resident should be able to negotiate an agreement concerning any unexpected increases in such regular purchases, or the facility could collect the money from the resident before the purchases are made if a problem should arise. An "or" was added to the rule, but the "and" is grammatically necessary so it was retained.

N.J.A.C. 8:43-7.1(a)

COMMENT: The NJAHCF commenter and the Boarding Home Advisory Council requested that alternate language be used at proposed N.J.A.C. 8:43-7.1(a), which specifies personal care services which are to be provided to residents who need them. Previous draft language included numerous details concerning the provision of these personal services and was shortened following further review by Department staff. The NJANPHA commenter supports the abbreviated version of the rule which was proposed, while the NJAHCF commenter believes that the proposed language is "vague."

RESPONSE: The Department does not agree that including specific details regarding exactly how to bathe, shave, and provide oral hygiene will result in improved care to residents and believes that such listing of details is too prescriptive. No change has been made to the proposed rule.

N.J.A.C. 8:43-8.2(b) and (c)

COMMENT: Both NJAHCF and NJANPHA commenters express concern that the language at N.J.A.C. 8:43-8.2(b) and (c), as published, after being modified pursuant to discussions with the Office of Administrative Law (OAL), differs substantially from the language approved by the Health Care Administration Board (HCAB) for initial publication of the proposal. As stated in these comment letters, the requirement in these sections for a consultant dietitian, as originally written and approved by the HCAB, would be deferred until the Commissioner of Health determined that adequate funds were available to implement the requirement. After changes were made per discussion with the OAL, commenters feel that the language now requires the opposite. The published proposed rule specifies that a facility must have a consultant dietitian as of January 1, 1994, unless the Commissioner determines, pursuant to a notice published in the New Jersey Register, that adequate funds are **not** available based upon a financial analysis conducted **subsequent** to an increase in funding. The NJAHCF commenter suggests amendatory language to the sections to restore the original intent; the NJANPHA commenter requests a return to the exact language that was approved by the HCAB.

RESPONSE: The Department concurs with the commenters that the intent of the rule as approved by the HCAB was to implement the requirement only upon a condition precedent of a finding by the Commissioner that sufficient funding has become available through one of three tests being met. The Department believes that the rule permits the public and the industry adequate notice and criteria for the Commissioner's finding, while an opportunity to comment on the conditional staffing level has been afforded. Following further review and discussion of the intent with OAL staff, the rules have been amended to reflect the version approved by the HCAB, as suggested by commenters.

N.J.A.C. 8:43-8.2(f)2

COMMENT: The NJAHCF commenters objects to "new language" at proposed N.J.A.C. 8:43-8.2(f)2, which the Association interprets "as requiring a facility to use the food guide set forth in Appendix A."

RESPONSE: It was always the intent of the Department to require RHCF's to plan meals using A Daily Food Guide, contained in Appendix A. Most of the information in A Daily Food Guide is already a part of the current licensure manual, N.J.A.C. 8:43, and the guide has been an effective and easy to use tool for RHCF employees who must prepare meals to meet the nutritional requirements of residents. Department staff dietitians expanded and up-dated the section upon proposal of the new rules by adding present recommendations for a varied diet which is low in fat and cholesterol, includes plenty of fruits, vegetables, and grains,

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and only moderate amounts of salt, sodium and sugar. Upon printing, the title of the guide was erroneously deleted, and the rule referred only to "Appendix A." In order to clarify the intent, the title A Daily Food Guide has been returned to the rule.

N.J.A.C. 8:43-8.2(i)

COMMENT: The NJAHCF commenter also noted that proposed N.J.A.C. 8:43-8.2(i) refers to Appendix C, Chapter XII of the New Jersey State Sanitary Code, N.J.A.C. 8:24, but Appendix C was not contained in the proposal. The Association hopes that the final publication of the licensure manual will contain an Appendix C.

RESPONSE: Since Chapter XII, Appendix C, is already part of the New Jersey Administrative Code, it was not reproduced in the New Jersey Register as part of the proposal. It will, however, be bound into the licensure manual which is distributed to RHCf's following adoption of the rules.

N.J.A.C. 8:43-9.1(e)1

COMMENT: The Boarding Home Advisory Council commented on proposed N.J.A.C. 8:43-9.1(e)1. The council supports the increase in health maintenance and monitoring services which, as proposed, would require a minimum of 0.25 hours of nursing care from a registered professional nurse per resident per week. The proposed rule would exempt facilities having an average resident census, over a 12 month period, of greater than 75 percent or more of residents whose source of income is SSI, Municipal Assistance, or Interim Assistance. The commenter indicates that available studies do document the need for increased nursing service. The comment letter states, however, that "the Council cannot support this regulation unless there are funds identified to support its implementation, nor can the Council support the proposed double standard, which institutionalizes a lower standard for many SSI recipients."

RESPONSE: The Department believes that an increase in available nursing coverage is essential to maintain the health and safety of residents, based upon increasing acuity/complexity of health care needs as well as survey findings. Historically, the Department had intended to increase nursing hours to at least 30 minutes per week. The requiring for nursing hours in long-term care is now 2.5 hours per resident per day; increasing RHCf nursing requirement to 30 minutes per week would help to reduce this gap. The proposed rule which exempts facilities having 75 percent of residents whose source of income was SSI or other assistance is intended to mitigate the cost impact to RHCf's with marginal financial resources. The Department acknowledges that a dual level of care may be created by the exemption. However, the Department feels strongly that an across-the-board return to the 12 minute nursing care requirement would not be appropriate, given the current population in RHCf's. In addition, data from the cost study indicate that 55 percent of all facilities already provide 20 minutes of nursing care per resident per week. Of those facilities with a majority of residents who receive SSI or other assistance, 25 percent now provide 20 minutes of nursing care per resident per week. The Department must balance RHCf financial needs with increased nursing needs of residents. Therefore, the 75 percent exemption is retained in the rule, as proposed.

N.J.A.C. 8:43-9.1(e)2

COMMENT: NJAHCF and NJANPHA commenters expressed concern that the language at proposed N.J.A.C. 8:43-9.1(e)2 is different from the language set forth in the proposal approved by the H.C.A.B. Amended language is suggested "to make absolutely clear that the requirement of .33 hours of nursing care per resident per week shall not take effect until the Commissioner determines that there is sufficient funding to support the requirement." As printed in the proposal in the New Jersey Register, the 0.33 nursing hours would begin on January 1, 1994, "if the Commissioner determines that adequate funds are available to implement these requirements."

RESPONSE: After further review and discussion of the intent with the OAL, the rule has been amended to reflect the version approved by the HCAB, as suggested by commenters.

N.J.A.C. 8:43-9.2(c)

COMMENT: According to the comment from NJANPHA, the proposed rule at N.J.A.C. 9.2(c), as published, "departs substantially and significantly from the language approved by the HCAB. The rule, as printed, requires that each resident receive an initial nursing assessment, and, beginning January 1, 1994, a quarterly nursing assessment from the registered professional nurse. As approved by the HCAB, the rule

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referred to 9.1(e)2, which deferred certain requirements until "such time as the Commissioner determines that adequate funds are available to implement these requirements." According to the NJANPHA comment, the rule as proposed would allow the Commissioner to "impose the more stringent requirements without first determining that adequate funds are available." The NJAHCF commenter, on the other hand, notes that "the language in section 9.2(c), pertaining to monthly screenings, is acceptable." NJAHCF "interprets this language as deferring the monthly screening requirement to 60 days until there exists sufficient funding in accordance with the Commissioner's finding under section 9.1(e)2."

RESPONSE: After further review and discussion of the intent with OAL staff, the rule has been amended to reflect the version approved by the HCAB, as suggested by commenters.

N.J.A.C. 8:43-9.2(e)

COMMENT: The NJAHCF commenter found that the language at proposed N.J.A.C. 8:43-9.2(e) to be substantively different from the proposal approved by the HCAB. As approved by the HCAB, the proposal provided that until funding is available to increase nursing care to 0.33 hours per resident per week, quarterly nursing assessments shall be performed semiannually. NJAHCF requests that the rule be amended.

RESPONSE: The Department agrees with the commenter. Following further review and discussion of the intent with OAL, the rule has been amended to reflect the version approved by the HCAB.

N.J.A.C. 8:43-9.2(f)

COMMENT: Both NJANPHA and NJAHCF commenters requested that proposed N.J.A.C. 8:43-9.2(f) be amended to require that "the notice to be published in the New Jersey Register be a notice of the operative date of sections 9.2(c) and (e), rather than the postponement or suspension of operative dates." Amended language is suggested in the NJAHCF letter.

RESPONSE: The Department agrees, and has made the requested change.

N.J.A.C. 8:43-9.2(g)

COMMENT: The Boarding Home Advisory Council commented that the MDS form, referred to at proposed N.J.A.C. 8:43-9.2(g) for documentation of resident assessments, "is too detailed for residents of RHCf's and many of the terms used on the form refer to conditions requiring a higher level of care." According to the Council, many RHCf operators do not have the resources to develop an alternate means of assessment, and the Council suggests that the DOH should create an ad hoc committee to develop a model assessment tool specifically oriented to the RHCf population.

RESPONSE: The proposed rule allows for the use of an alternate assessment tool approved by the Department. All facilities, including those facilities who do not have the resources to develop an alternate tool, should find the MDS to be a valid, extensively tested, and useful tool to screen residents and provide data needed for assessment of each resident's care needs. The Department will continue to work with the Council and provider representatives to develop an acceptable alternative to the MDS should its use prove to be inapplicable or burdensome.

N.J.A.C. 8:43-10.1(a)

COMMENT: Mr. Carl Tepper, RP, suggested that the rule at proposed N.J.A.C. 8:43-10.1(a) should state that "supervision and/or assistance in administering medications is not required for residents who are qualified to self-administer their own medications and also qualify to store their medications at the bedside."

RESPONSE: The rule at proposed N.J.A.C. 8:43-10.2(a) provides for resident supervision and/or assistance during self-administration of medications in accordance with physician's orders. If the physician's order specifies that supervision and/or assistance is not required, then self-administration without supervision or assistance would be permitted in accordance with written authorization to self-medicate without direct supervision. Although assistance may not be needed for residents who store their medications in their rooms, the health maintenance and monitoring nurse is still responsible for monitoring medication therapy on a regular basis, in order to ensure that residents are using medications in accordance with physician's orders. The rule has not been changed from the proposal.

N.J.A.C. 8:43-10.2

COMMENT: NJANPHA commented on proposed N.J.A.C. 8:43-10.2, Designation of a consultant pharmacist. The Association believes that

the extensive requirements of the subsection would require the pharmacist to be responsible for many tasks, although the pharmacist would actually spend little time onsite. Many pharmacists would, therefore, be unwilling to perform these services "except at great expense or unless the facility does a volume of business that makes it worth the pharmacist's while to do the work" and to accept the resultant responsibility and liability. The Association further believes that the proposal may infringe on the rights of those residents who have a direct relationship with a pharmacist who fills their prescriptions and monitors them. The Association suggests that the adoption of the rule will cause additional expense to facilities, without an improvement in care. The letter included a recommendation to use the requirements listed in paragraphs (a)1, 2, 3 and 5 only for remediation or enforcement measures for those facilities which do not comply with the requirements of the pharmacy section. Suggestions for amended language are included in the comment letter.

RESPONSE: The Department believes that the specified functions are essential, given the current RHCF population and history of problems related to medications. A consultant pharmacist could be retained, in lieu of the provider pharmacist. Pharmacist consultants have made a great impact on the quality of life in long-term care facilities by reviewing medication therapy, alerting facilities to drug interactions, reviewing dosages and duplicate therapies, and monitoring the use of unnecessary drugs, especially psychoactive substances. Consultants have learned to focus their allotted time in the most efficient and effective way. Consultant services are not expensive when measured against the positive resident outcomes that these services provide. Pharmacist consultants are especially useful when pharmaceutical services are not centralized. Legal liability for a consultant in an RHCF is no greater than that in a LTC setting, where there is considerably more exposure. Pharmacy consultants have performed in long-term care settings without infringing upon any resident rights, and their practice in RHCF's will be no different. Off-site drug regimen reviews are not conducive to quality resident care. The Department may consider a waiver for financial hardship resulting from this requirement, if an alternative proposal is developed which does not endanger the health and safety of residents, in accordance with N.J.A.C. 8:43-2.7. No change has been made to the proposed section.

COMMENT: Ten letters of comment were received, including letters from the New Jersey Pharmaceutical Association and The New Jersey Academy of Consultant Pharmacists as well as individual pharmacists, regarding proposed N.J.A.C. 8:43-10.2(a), which requires the RHCF to designate a consultant pharmacist to be responsible for the direction, provision and quality of pharmaceutical services. The proposed rule allows that the consultant pharmacist may be the director of pharmaceutical services or pharmacist provider.

Nine commenters disagreed with the portion of the rule which would allow the consultant pharmacist to be the director of pharmaceutical services or the pharmacist provider. Commenters believed that it would not be in the best interests of residents to allow the provider or director of pharmacy services to also serve as consultant pharmacist. The letters indicated that this practice would be a conflict of interest for the pharmacist involved and would not result in cost savings to facilities. Also, pharmacists could not be objective in checking proper dispensing practices by the pharmacy if they served in such a dual role. Concern was also expressed because current licensure rules for long-term care facilities require separation of the roles of consultant and provider pharmacist. Commenters did not believe that a practice which is considered to be "inappropriate and indeed, illegal" in long-term care facilities could then be considered appropriate or legal in a RHCF.

Two of the commenters on this rule asked not only for the separation of functions of the pharmacy consultant and provider, but also requested that the rule be changed to require certification of the consultant pharmacist by the New Jersey Academy of Consultant Pharmacists. One commenter suggested that the "inclusion of Certified Consultant Pharmacist is the only criteria which is necessary for consulting in residential health care facilities;" and that the "real issue is not separation but certification."

RESPONSE: The Department permits and encourages separation of the roles of the pharmacy consultant and provider. However, no change has been made to the proposed rule permitting that the consultant pharmacist may be the director of pharmacy services or pharmacist provider. Separation of these functions would create a financial burden for many RHCFs at present. The proposed rule has not been changed as requested to require certification of the consultant pharmacist. The Department believes that **who** is pharmacy director or consultant is not as critical as having the required functions performed.

N.J.A.C. 8:43-10.2(a)1

COMMENT: NJAHCF suggested that proposed N.J.A.C. 8:43-10.2(a)1 be amended to clarify that the consultant pharmacist will not be required to train employees to provide supervision or assistance to residents during self-administration of medication if the health maintenance and monitoring nurse or provider pharmacist has already provided this service.

RESPONSE: Rules at N.J.A.C. 8:43-10.1(a) and 10.2(a) are not in conflict. The rule at N.J.A.C. 8:43-10.1(a) requires that a health maintenance and monitoring nurse or a pharmacist shall train employees who supervise resident medication administration, while N.J.A.C. 8:43-10.2(a) requires that a pharmacist is responsible for educating employees and residents regarding the proper administration of medications. The Department believes that training of employees and residents is an important responsibility of the pharmacist. With the increasing complexity of medication regimens, leading to lack of compliance due to adverse drug reactions and drug interactions, the pharmacist consultant would play a pivotal role in the training of employees who provide supervision or assistance to residents who self-medicate. No change has been made to the proposal.

N.J.A.C. 8:43-10.2(a)4

COMMENT: Mr. Carl Tepper commented on proposed N.J.A.C. 8:43-10.2(a)4. This commenter believes that the term "medication record review" should be clearly defined so as not to confuse it with the long-term care requirement of drug regimen review.

RESPONSE: "Medication record review" is terminology which has been previously used to designate a process whereby the pharmacist conducts a drug regimen review. This review consists of an individual resident record review done by the consultant pharmacist, including, but not limited to, review of laboratory tests, dietary requirements, physician's and nurse's clinical notes, physician's orders and progress notes, in order to monitor for potentially significant adverse drug reactions, drug-drug and drug-food interactions, allergies, contraindications, rationality of therapy, drug use evaluation, and laboratory test results. The pharmacist must review and sign the drug regimen review at least every 90 days. "Drug regimen review" is the current terminology used in the pharmaceutical field and encompasses the above mentioned responsibilities, without substantively changing the intended requirement. Therefore, in order to clarify the requirement and to use current terminology, "medication record review" has been deleted from the listing of the consultant pharmacist's responsibilities at N.J.A.C. 8:43-10.2(a)4, and has been replaced with the following: "4. A drug regimen review, signed by the consultant pharmacist at least every 90 days, in accordance." In addition, a definition of "drug regimen review" has been added at N.J.A.C. 8:43-1.3.

N.J.A.C. 8:43-10.2(b)

COMMENT: Proposed N.J.A.C. 8:43-10.2(b) requires that the consultant pharmacist be present in the facility at least quarterly, and that the consultant provide written reports to the administrator and to the health maintenance and monitoring nurse. The New Jersey Academy of Consultant Pharmacists recommends a change to the rule so that the consultant pharmacist visits the facility monthly to "counsel residents and assess their drug profiles, assuring that all residents are reviewed within each quarter."

RESPONSE: Although the Department agrees that more frequent visits by the pharmacist would be beneficial to many RHCF's, sufficient funding is not available at this time to require monthly visits. While the Department agrees that a monthly pharmacist visit would be ideal, regulations are in place that would allow the Department to require monthly visits if the facility fails to substantially comply with requirements of the medications subchapter, as stated at N.J.A.C. 8:43-10.2(c). No change has been made to the proposed rule.

N.J.A.C. 8:43-10.3(e)

COMMENT: Mr. Carl Tepper commented on proposed N.J.A.C. 8:43-10.3(e), which states that all medications shall be kept in their original containers and shall be properly labeled and identified. The commenter suggests that pharmacy labels "should include directions for use unless a unit dose system is employed, in which case a medication record for the resident is provided and updated appropriately."

RESPONSE: The Department agrees with the commenter; directions for use are required on all pharmacy labels. "Directions for use" has

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been added to the list of required information to be included on each resident's prescription medication container which is specified at N.J.A.C. 8:43-10.3(e)1 and 3.

N.J.A.C. 8:43-11

COMMENT: The New Jersey Recreation and Park Association commented favorably, in general, on proposed N.J.A.C. 8:43-11, Recreational Services. The commenter stated that the Association "applauds the department's recognition of recreation as an integral part of the life of residents," and noted that the proposed subchapter will greatly assist in meeting DOH goals of "maintaining personal interests and dignity." The commenter notes, however, that no educational or experiential qualifications are listed for personnel who are to provide recreational services. The Association recommends that qualifications similar to those required for patient activity directors of adult day health care facilities, at N.J.A.C. 8:43F-1.13. These qualifications include either certification or eligibility as an activity director certified (ADC), certification or eligibility as a certified therapeutic recreation specialist (CTRS), a baccalaureate degree approved by a state department of education with a major in recreation or other specified areas, or a high school diploma and at least two years of experience in a licensed health care facility as well as completion of an activities education program approved by the New Jersey Department of Health. The Association believes that incorporation of these qualifications will ensure that "those professionals hired are capable of providing the residents with diversity of program opportunities which challenge and inspire."

RESPONSE: The Department agrees that the addition of a requirement that each RHCF hire recreational personnel who are qualified by certification and education, as specified in the comment letter. However, most RHCFs do not yet have sufficient funding to meet such a requirement. Therefore, no change has been made to the proposed rule.

N.J.A.C. 8:43-12.2(a), 12.3(a) and 12.3(b)

COMMENT: NJAHCF and NJANPHA commented on proposed N.J.A.C. 8:43-12, Emergency Services and Procedures. The Associations requested that N.J.A.C. 8:43-12.2(a) be amended to delete the requirement that each RHCF's written emergency plans, policies and procedures be filed with the DOH and that the Department be notified of any changes to the plan. The commenters believe that filing plans with the Department serves no purpose. Filing plans with local officials, however, is important, according to the commenters, since local emergency management officials are primarily responsible for ensuring that a facility's emergency plans are adequate to serve the needs of residents and the community, as evidenced by recent storms which hit New Jersey. Amendatory language is offered by the Associations.

The Associations further requested that proposed N.J.A.C. 8:43-12.3(b) be changed from the present requirement that at least one joint fire drill be conducted annually which would involve the local fire department. The Associations have asked that this rule be changed to provide that the RHCF be required to request of the local fire department that one joint fire drill be conducted annually. The change was requested because the local fire department "may not cooperate," and the facility might, therefore, be unfairly penalized. Suggested language for the change is included.

RESPONSE: The Department disagrees that filing of written emergency plans with the Department serves no purpose. Written plans are reviewed by the Department along with other documents forwarded by RHCFs, and are an important element in the Department's evaluation of the facility's ability to protect the residents' health and safety as well as the need for on-site building inspections by Department surveyors. The proposed rule at N.J.A.C. 8:43-12.2(a) has not been changed.

The Department has made the suggested change at proposed N.J.A.C. 8:43-12.3(b), requiring RHCFs to request local fire departments to participate in joint fire drills.

N.J.A.C. 8:43-14

COMMENT: A comment from the Boarding Home Advisory Council regarding proposed N.J.A.C. 8:43-14, Resident Rights, suggests that the DOH should develop and distribute "an explanation of these rights to all residents in an easy to understand format."

RESPONSE: The Department agrees with the commenter and believes that resident rights need to be standardized and simplified. The Department will work with the industry to improve the development, distribution and explanation of rights to residents. No change is needed to the proposed rules.

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COMMENT: NJAHCF commented on proposed N.J.A.C. 8:43-14.2(a)2, requiring each resident to be informed and given a written statement prior to or at the time of admission of services available and of all charges, and to receive at least 30 days written prior notification prior to any change in charges. The NJAHCF commenter expresses concerns, with which NJANPHA agrees, that the 30 day notification requirement is unreasonable for those charges over which the facility has no control. The Associations suggest that the rule be amended to remove the 30 day prior notice requirement from all price increases over which the facility has no control. Amended language is offered in the comment letter.

RESPONSE: Refer to response to comment on N.J.A.C. 8:43-6.2(a)3, regarding unexpected increases in regular purchases made for residents. Increases in charges over which the facility has no control should be negotiated with the resident in the same manner. No change has been made to the proposed rule.

N.J.A.C. 8:43-14.2(a)7

COMMENT: NJAHCF commented on proposed N.J.A.C. 8:43-14.2(a)7, which states that each resident has the right to keep and use his or her personal property and that the RHCF must provide reasonable protection of the resident's personal possessions from theft, loss, and misplacement. The Association objects to the requirement to provide reasonable protection against loss or misplacement of residents' possessions, because the facility has no control over what the resident does with his or her property. The commenter requests deletion of these requirements to provide reasonable protection against loss or misplacement of a resident's possessions "because such a requirement is unreasonable and could violate resident rights."

RESPONSE: The Department believes that requiring each RHCF to provide reasonable protection for resident's possessions is appropriate and does not violate resident rights. This resident rights rule is consistent with licensure requirements in other health care facilities. No change has been made to the proposal.

N.J.A.C. 8:43-14.2(a)10

COMMENT: NJAHCF requested that N.J.A.C. 8:43-14.2(a)10 be amended. The proposed rule states that a resident is not required to perform services for the facility, but if the resident volunteers to perform services for the facility, the resident shall receive direct supervision. The Association believes that many of the services for which residents volunteer are "very basic," and after the resident has received instruction and training in the services, constant direct supervision is not generally needed. The commenter requests deletion of the word "direct" from the rule.

RESPONSE: The Department agrees with the Association's comment and has made the requested change.

N.J.A.C. 8:43-14.2(a)23

COMMENT: The Boarding Home Advisory Council questions the proposed rule at N.J.A.C. 8:43-14.2(a)23, which states that each resident is allowed to discharge himself or herself from the facility upon presentation of a written release. The Council is "not sure why this is needed, or if it can or should be required."

RESPONSE: This requirement is intended only to provide the administrator of a written notice of a resident's intention to discontinue living at the facility. The resident does have the right to leave voluntarily at any time, with such notice. In order to clarify this intent, the word "release" has been deleted from the rule, and replaced with "notice to the administrator."

N.J.A.C. 8:43-15.3(a)8

COMMENT: A comment written by NJAHCF and concurred with by NJANPHA indicates that language at proposed N.J.A.C. 8:43-15.3(a)8 differs from language which was used in an earlier draft. The proposed rule requires that articles in storage shall be elevated from the floor and away from walls. The words "if moisture is present" were inadvertently omitted, and the omission would result in less efficient use of storage space in those facilities where moisture is not present, according to the comment.

RESPONSE: The Department agrees with the comment and has amended the proposed rule accordingly.

N.J.A.C. 8:43-15.3(a)13

COMMENT: In a comment letter addressing proposed N.J.A.C. 8:43-15.3(a)13, NJAHCF requested modification of the requirement in this rule for air dryers or paper towels to be available in each bathroom. According to the commenter, the provision of air dryers would involve substantial initial cost for facilities, while the provision of paper towels would lead to constant costs of plumbing repairs "because residents plug the toilets with the paper towels." The Association requested that the rule be modified to require air dryers or paper towels only in close proximity to where resident personal care services are provided, rather than in each bathroom. The Association also requested the addition of language to the rule which would allow for the use of resident's personal cloth towels in private or semi-private rooms.

RESPONSE: During the pre-publication comment process, numerous discussions of whether paper towels are cost effective or necessary took place. The Department is convinced that both resident dignity and facility infection control would be compromised by not providing a means for residents and staff to dry their hands in every bathroom. This requirement has not been changed. Language permitting residents who have private or semi-private bathrooms to use personal cloth towels has been added to the rule.

N.J.A.C. 8:43-15.3(b)1

COMMENT: The NJAHCF commenter pointed out that language from an earlier draft allowed the use of scatter rugs with a non-skid backing in individual resident bedrooms, with the facility assuring that such rugs are only used in a manner that does not jeopardize resident safety, at proposed N.J.A.C. 8:43-15.3(b)1. The Association requests that the rule be modified to insert such language, in order to accommodate residents' individual choices.

RESPONSE: The Department agrees, and the proposed rule has been modified as suggested.

N.J.A.C. 8:43-15.3(b)3

COMMENT: The NJAHCF comment letter points out that proposed N.J.A.C. 8:43-15.3(b)3, concerning storage of household, cleaning, and personal care products, contains a phrase not addressed during the pre-publication review of the rules. As proposed, the rule would require that a locked room or cabinet be provided for storage of these products and be used for no other purpose.

RESPONSE: The Department agrees that the rule may be unduly restrictive, and has deleted the phrase and has amended the rule to the wording suggested by the commenter.

N.J.A.C. 8:43-15.3(b)8

COMMENT: The NJAHCF letter indicates that the proposed rule as published at N.J.A.C. 8:43-15.3(b)8 limits the use of open fireplaces to the first floor of RHCFS. During discussions of the rule before publication, it was suggested that there was no reason to prohibit use of a properly supervised open fireplace in a living or recreation room located on a floor other than the first floor, and the Association requested that the rule be changed to allow such use.

RESPONSE: The Department agrees, and the words "on the first floor of the building" has been deleted from the rule.

N.J.A.C. 8:43-15.5(a), (b)2

COMMENT: The NJAHCF and NJANPHA letters had two comments on N.J.A.C. 8:43-15.5, Heating and air conditioning. The first comment concerned the omission of the words "when the heating system is used" from N.J.A.C. 8:43-15.5(a). Without these words, the rule appears to apply both to heating and air conditioning systems, conflicts with State law, and conflicts with other sections of the subchapter.

An additional comment from NJAHCF, agreed with by NJANPHA, requested a change to proposed N.J.A.C. 8:43-15.5(b)2. This section refers to the operative date of the air conditioning statute, and requires a notice of postponement or suspension of the operative date to be published in the New Jersey Register by the Commissioner. The Associations believe that the notice requirement is "misleading and unnecessary," and requests that the rule be changed to require that the Commissioner file a notice of the operative date of the statute.

RESPONSE: The Department agrees and has amended the proposed rules as requested.

N.J.A.C. 8:43-15.8(f)

COMMENT: Both NJAHCF and NJANPHA commented on N.J.A.C. 8:43-15.8(f), which specifies that residents who choose to launder

personal items be provided with in-house assistance and resident supervision, as required. The commenters request that the rule be changed to allow each facility to develop a schedule when such services will be available, and, thus, minimize additional staffing which might be required. Amendatory language is suggested.

RESPONSE: The rule has been changed by adding the recommended language to allow residents access to laundry services at a reasonable hour, in accordance with the facility schedule.

N.J.A.C. 8:43-16.3(a)1

COMMENT: The NJAHCF commenter notes that N.J.A.C. 8:43-16.3(a)1 refers to Appendix D, Chapter II, New Jersey State Sanitary Code, N.J.A.C. 8:57, but Appendix D is not included in the proposal. The Association hopes that the final publication will include this information.

RESPONSE: This listing of infections or diseases is a part of the New Jersey Administrative Code N.J.A.C. 8:57, so is not reproduced in the proposal notice. The Department intends to bind this appendix into the licensure manual which will be distributed to RHCFS following its adoption.

N.J.A.C. 8:43-16.3(a)7

COMMENT: Commenters from NJAHCF and NJANPHA requested that N.J.A.C. 8:43-16.3(a)7 be changed to require that the facility develop written policies and procedures for cleaning practices "only where applicable." The rule as proposed would require policies and procedures for disinfection and sterilization practices and techniques only where applicable, but does not include cleaning practices in this category. The Associations believe that policies and procedures for cleaning practices also should be developed as needed, only if the RHCFS has residents who require such services.

RESPONSE: The Department agrees with the comment and has reworded the rule as requested.

N.J.A.C. 8:43-16.4

COMMENT: NJAHCF and NJANPHA commenters requested a change in N.J.A.C. 8:43-16.4, which specifies requirements for Mantoux tuberculin testing of employees who have not yet received the test. According to the proposal such employees must receive the Mantoux test within three months of the effective date of this rule. The Associations request that the subsection be amended to allow current employees to receive the Mantoux test at the employee's next physical examination, in accordance with facility policy.

RESPONSE: Department staff has reviewed the proposed rule and believe it should remain as written in order to ensure uniform and timely testing of all RHCFS employees and, thus, help to protect the health of employees and vulnerable residents.

Summary of Public Hearing Testimony, Hearing Officer Recommendations and Agency Response:

The New Jersey Department of the Public Advocate, Division of Mental Health Advocacy, requested that a public hearing be conducted to address concerns about the proposed repeal and new rule, N.J.A.C. 8:43, and, in particular, N.J.A.C. 8:43-2.7 and 2.10. Notice of a public hearing to accept testimony on the proposed repeal and new rule was published in the New Jersey Register on Monday, March 1, 1993, (25 N.J.R. 757(a)), the hearing was conducted on March 17, 1993. Robert J. Fogg, Esq., Director of Licensing, Certification and Standards, Health Facilities Evaluation, served as hearing officer. Eleven individuals testified at the public hearing. Oral comments were submitted by the following:

Eileen Toughill, representing MCOSS Foundation
 Andrea Aughenbaugh, representing the New Jersey Nurses Association
 Susan Zolanz, representing the Mental Health Association of Somerset County
 Susan Gray, registered nurse and psychiatric clinical specialist
 Heidi Gabbert, former client at Earth House
 Mr. Joseph Suozzo, Assistant Director of Litigations, Department of the Public Advocate
 David Keiserman, Commission on Aging, Department of Community Affairs
 Steve Levy, Community Law Project, Mercer County Office
 Jay Solomon, Vice President of Senior Services, Bayshore Community Hospital

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Rich Abrams, representing New Jersey Association of Health Care Facilities

Sy Larson, Legislative Committee, Division of Aging

Patricia Freeman, Older Women's League, was unable to attend the hearing, but requested that her written testimony be entered as part of the record.

After reviewing the testimony presented at the public hearing, Mr. Fogg, hearing officer, recommended that the Department make several changes to the proposed rules. Mr. Paul Langevin, Assistant Commissioner, Health Facilities Evaluation, has reviewed the hearing officer's report and concurs with these recommendations. Testimonial comments and agency responses are summarized below. A copy of the full transcript of the public hearing is available upon request and payment of the Department's normal charges for copying. Persons requesting copies should write to:

Robert J. Fogg, Esq.
Director
Licensing, Certification and Standards
CN 367
Trenton, NJ 08625

N.J.A.C. 8:43-9.2(g) and (j), and 10.1(a)

COMMENT: Eileen Toughill, a licensed professional nurse who represented MCOSS Foundation, spoke in support of the proposed increase in minimum nursing time per resident per week in N.J.A.C. 8:43-9, Health Services. The MCOSS commenter believes, however, "that there should be no difference in the requirement of minimum nursing care for facilities with more than 75 percent S.S.I. recipients." The foundation recognizes the financial impact of the rule, and "urges the Commissioner to seek funding resources to make it possible to require equal service for all residential facilities regardless of the resident's financial profile."

One of the additional concerns expressed by this commenter was in regard to the use of the minimum data set (MDS) for documentation of the nursing assessment (N.J.A.C. 8:43-9.2(g)). Ms. Toughill suggested that the MDS is specifically geared toward assessment of nursing home residents, and recommended the "implementation of a tool that is more wellness oriented and less age specific, more an assessment tool and less a statistical gathering mechanism."

MCOSS also suggested the inclusion of a nurse practitioner as an approved health practitioner to perform the required physical examination. Proposed N.J.A.C. 8:43-9.2(j) specifies that a physician shall perform this examination, but the commenter states that "nurse practitioners have been recognized as having the advanced skills necessary to perform a complete history and physical and would serve as a cost effective alternative."

The commenter supported the concept of required training for employees who supervise residents who self-administer medications, and requests that no waivers or exceptions be granted to this rule which is found at N.J.A.C. 8:43-10.1(a). According to the commenter, the health maintenance and monitoring nurse "must be held responsible for ensuring a safe and accurate system in each facility."

Finally, the commenter applauded the inclusion of N.J.A.C. 8:43-16, Infection Prevention and Control Services. Designation of the health maintenance and monitoring nurse, in coordination with the administrator, as responsible for infection control is "appropriate," and the requirement for Mantoux testing is "long overdue." The commenter urged that Mantoux testing be extended to all residents as well as employees, and that the current CDC standards for the "two-step" testing should be included.

RESPONSE: Upon review of these comments and staff comments related to N.J.A.C. 8:43-9.1(e), exempting facilities with greater than 75 percent or more residents whose income is from SSI or Municipal or Interim Assistance from the nurse staffing requirement, the Department does not concur with the commenters. In developing the proposed rule, the Department attempted to balance fiscal impact with the need for increased registered nurse presence. As explained in the response to the Boarding Home Advisory Council's letter, the 75 percent exemption has been retained in the rule, as proposed.

The rules permit the use of an alternate to the MDS, if the facility develops an equivalent assessment instrument which is approved by the Department prior to its use.

The Department agrees with the recommendation to include the nurse practitioner as an alternate to the physician. The optional delegation of

permitted duties to the nurse practitioner, in accordance with current laws and practice acts and with facility policies, has been incorporated into the rules.

The Department believes that it is essential for any employee who provides resident supervision and/or assistance to residents to be appropriately trained, and would not consider waiver of this requirement. Either the health maintenance and monitoring nurse, the provider pharmacist, or the consultant pharmacist may provide such training to these employees. Although the training of staff who supervise self-administration may be done by the nurse or the pharmacist, the pharmacist has additional responsibilities for training employees in medication administration, educating staff and residents regarding medications, and is responsible for establishing policies and procedures which assure safe and appropriate self-administration of medications.

The Department does not agree that Mantoux testing should be required for each resident. The cost impact of such a requirement would be burdensome for RHCs. However, the health maintenance and monitoring nurse would recommend testing of those residents for whom it is appropriate, based on the nursing assessment. The required tuberculin testing for employees has been changed to the two-step Mantoux test, in accordance with CDC guidelines as well as current recommendations from the Department of Health Tuberculosis Control Program, and is consistent with requirements for other DOH licensed health care facilities.

N.J.A.C. 8:43-1.12, 4.12, 9.1, 9.2, 10.1, 10.3, 13.1 and 14.2

COMMENT: The next speaker was Andrea Aughenbaugh, representing the New Jersey Nurses Association. Ms. Aughenbaugh addressed new law and a regulation of the Board of Nursing. According to the law, and changes being completed to the Board of Nursing rules, the nurse practitioner and clinical nurse specialist are recognized and qualified to do some of the things that the proposed N.J.A.C. 8:43 specifies as duties of the physician.

The Nurses Association recommends that qualifications of a nurse practitioner/clinical nurse specialist (NP/CNS) be added as N.J.A.C. 8:43-1.12. Additional changes recommended include the following: N.J.A.C. 8:43-4.12, change to "a physician and/or NP/CNS;" 8:43-9.1, recommend that the registered professional nurse be given discretion about weekly or biweekly visits as long as the total time requirements are met; 8:43-9.2, change to annual physical exam by a physician or NP/CNS; 8:43-10.1, change to "medication in accordance with physician orders or NP/CNS orders;" 8:43-10.3, change to "if a resident is authorized through a written physician or NP/CNS order;" 8:43-13.1, change to "a statement by a physician or NP/CNS;" and 8:43-14.2, change to "upon written order of the resident's physician or NP/CNS."

RESPONSE: N.J.A.C. 8:43-9.1(d)1 specifies that the facility shall provide a minimum of 0.25 hours of nursing care from a registered professional nurse per week. So long as the total hourly requirement for nursing care is met, the Department agrees that the registered professional nurse has discretion about the timing of visits to an individual resident. Visits may be weekly, biweekly, or according to a schedule based on the individual residents needs, as determined by the nurse's assessment. The rule has been amended to clarify this intent.

The Department agrees with the recommendation to include the nurse practitioner as an alternate to a collaborating physician. The optional delegation of permitted duties to the nurse practitioner, in accordance with current laws and practice acts and with facility policies, has been incorporated into the rules at N.J.A.C. 8:43-9.2, 10.1, 10.3, 13.1, and the definition of NP/CNS has been added as N.J.A.C. 8:43-1.9. Requested changes have not been made at N.J.A.C. 8:43-4.12(c) or 14.2(a)4, since the Department does not believe that these responsibilities for initial certification or transfer should be delegated.

COMMENT: Susan Zolandz, the commenter from the Mental Health Association of Somerset County, expressed the serious concerns of this Association regarding provision of care at RHCs by persons who are not appropriately trained and qualified. According to the commenter, "75 percent of residents are elderly, 25 percent are over 80, 20 percent are handicapped, and 50 percent are mentally ill." The commenter stated that mandatory exercise and daily activities "leaves residents with disabilities, whether emotional or physical, at great risk," if provided by inexperienced or untrained staff. Medical clearance for residents to participate in "mandatory programs" is suggested. The commenter also expressed concern that waivers of certain resident rights requirements could lead to "dangerous conditions," and violation of resident's rights.

RESPONSE: The Department disagrees that care will be provided at licensed RHCs by untrained persons. Each facility must ensure that

personnel are assigned duties based upon their education, training and competencies and in accordance with written job descriptions, as specified at N.J.A.C. 8:43-4.4. In addition, N.J.A.C. 8:43-4.4 states that all personnel who require licensure, certification or authorization to provide resident care must be so qualified under laws of the State of New Jersey. Although the proposed rules require each facility to offer a planned, diversified program of activities to residents, there is no requirement for mandatory participation in activities or exercise by any resident. Facilities need not offer any category of activity programs if such programs are impractical, inappropriate, or lacking in interest for the resident population.

The rules enhance resident health and safety by increasing hours of health maintenance and monitoring services, under the direction of a registered professional nurse. The rules in subchapter 9 require that each resident be screened, including a review of their physical and mental status, and receive periodic assessment and monitored by the nurse. Any changes in the residents' condition must be noted and addressed by the nurse. The administrator must assure that appropriate referrals to physicians or other health care professionals are made as needed. The facility has the responsibility to ensure that direct care staff who assist with and supervise personal care are competent, in good physical and mental health, and concerned for the safety of residents.

Surveys and monitoring of facilities are carried out as needed by Department staff to ensure that each resident receives an appropriate level of care. The Department believes that the rules, along with the survey process, will be effective in safeguarding the health and safety of residents and insuring that they are provided with or referred for necessary care.

Waivers of rules are considered only if they would not endanger the life, safety, or health of residents or the public. In order for a waiver to be considered, an alternate proposal which would ensure resident safety is required, in accordance with proposed N.J.A.C. 8:43-2.7. Resident rights based in statute are not subject to waiver and, in fact, such waivers have never been requested. No recommendation for change to the proposed rules was made by the hearing officer.

COMMENT: Heidi Gabbert, a former client of Earth House (a facility previously licensed by the Department of Community Affairs as a Class C Boarding House), traveled from Minnesota to testify that "to license any type of program for Earth House is jeopardizing people with mental health conditions." Ms. Gabbert stated that her "human rights and dignity were totally taken away" during her placement at Earth House in June, 1991. Additionally, Ms. Gabbert testified that she was "at risk" in the facility, and did not receive physical therapy which she required.

RESPONSE: The hearing officer stated that he appreciated the length Ms. Gabbert had traveled to testify, and assured her that the Department does monitor every facility that we license, and whenever a complaint concerning care or rights violations is received, the Department does follow up. He informed the commenter that the Department has assumed jurisdiction over Earth House as of April, 1992, and has been monitoring the quality of care since then. There have been no reports of such violations since that time, and any action for deficiencies occurring prior to that date would be the responsibility of the Department of Community Affairs. An individual would have a right to a private action against a facility as well. The Department appreciates the concerns of the commenter, and will continue to monitor services at such facilities.

N.J.A.C. 8:43-1.2; 1.3; 1.5; 2.7; 2.10; 4.2(c), (d) and (g); 4.9; 4.12; 4.13; 4.14; 4.16; 6.1(a); 6.2(a)3; 9.2; 10.1; 11.1; and 14.2(a)11, 17 and 23;

On January 19, 1993, the Department of the Public Advocate, Division of Mental Health Advocacy, forwarded a letter to the DOH requesting public hearing on the proposed repeal and new rule, N.J.A.C. 8:43, stating that they were "concerned about proposed regulation N.J.A.C. 8:43-2.7 and N.J.A.C. 8:43-2.10."

Mr. Joseph Suozzo testified orally at the public hearing for the Department of the Public Advocate, and stated his concerns for clients of the Division of Mental Health Advocacy who might be affected by RHCF regulations. Mr. Suozzo indicated that his agency believed that RHCF's seemed to "be a changing kind of entity from basically a residential facility to a facility which will engage in active treatment of patients." The commenter also questioned the waiver requirement as written, and suggested a public hearing be conducted prior to a decision on any proposed waivers. Also, the commenter expressed concerns about the licensing of facilities serving specialized populations. A notification process for potential residents and other affected persons in the community, such as people who are mentally handicapped, physically dis-

abled, or elderly, was suggested as well as a notice published in the New Jersey Register concerning how the programs are going to be formed, and how they are going to serve the special populations. The commenter stated further concerns about discharge provisions in the proposed regulations. He indicated that more protections are needed to prevent residents, especially mental health residents, from being summarily discharged from their residence for refusal to participate in a particular program, without having an opportunity to contest the discharge. Additionally, the commenter expressed concerns about the quality of care, specifically exercise programs, given to senior, disabled, or mentally ill persons by "unqualified people."

RESPONSE: Responses to the general concerns expressed by the Public Advocate are addressed below in relation to specific rules. In regard to employment of unqualified staff, the Department disagrees with the commenter. As discussed above in the response to the Mental Health Association of Somerset County, each facility must ensure that personnel are assigned duties based upon their education, training and competencies and in accordance with written job descriptions (N.J.A.C. 8:43-4.4). In addition, N.J.A.C. 8:43-4.4 also states that all personnel who require licensure, certification or authorization to provide resident care must be so qualified under laws of the State of New Jersey. In addition to being 18 years of age or older, the Department intends that each RHCF ensure that those staff who provide direct personal care and resident supervision are in good physical and mental health, of good moral character, concerned for the safety and well-being of residents, and have not been convicted of a crime relating adversely to the employee's ability to provide resident care, as specified at N.J.A.C. 8:43-1.6. Each RHCF administrator is responsible for the provision of staff orientation and staff education. For health care services and treatments, residents are referred to qualified health care providers, in accordance with requirements at N.J.A.C. 8:43-6.1(a)3.

Mr. Suozzo's oral comments were supplemented by a written letter of comment addressing rules at N.J.A.C. 8:43-1.2; 1.3; 1.5; 2.7; 2.8; 2.9; 2.10; 4.2(c), (d) & (g); 4.9; 4.12; 4.13; 4.14; 4.16; 6.1(a); 6.2(a)3; 9.2; 10.1; 11.1; and 14.2(a)11, 17 and 23.

COMMENT: In general, according to the written comments, the Department of the Public Advocate believes that the proposed regulations "may permit an RHCF to provide treatment that exceeds that specified by statute." The inclusion of a waiver provision allowing the Department to waive any one section or numbers of sections concerns the commenters since it may lead to "potential removal of standards necessary for protection of the basic health and well-being of residents, as well as basic constitutional and civil rights." The commenters believe that the waiver provisions, combined with provisions to "allow regulations to be adopted from any other type of licensed health care facility," undermines the standards and definitions of an RHCF, and raises a danger that "its structure and functions may become entirely discretionary with the DOH."

RESPONSE: It is evident from all objective data that the population served by the residential health care system is increasingly in need of supportive services. For example, a large number of residential health care facilities house individuals who have been discharged from a state or county psychiatric hospital, as the Department of Human Services has utilized all available community placements in its efforts to reduce institutional populations. In implementing this program, most recently through the legislatively approved "450 Program," psychiatric patients have been placed in a variety of settings, including long term care and residential health care facilities as well as Class C Boarding Homes under the jurisdiction of the Department of Community Affairs. Other residential health care facilities have received placements of individuals who are HIV-positive, terminally ill, or suffering from substance abuse problems.

Where the primary need of a resident is personal care and assistance with health-related services, then an RHCF is an appropriate placement. If a resident requires additional services, it is the duty of the facility to arrange for or provide directly such services. The Department does not view the enabling statute (N.J.S.A. 30:11A-3) to represent a limit on residential health care facilities admitting individuals with special needs, as long as a physician and the facility can adequately meet those needs and they do not rise to the level of requiring nursing home care or hospitalization. Furthermore, the statute does not establish an intermediate category of facility providing health care services at a level above residential health care and below nursing home care, although it is authorized to establish these. At section 26 of P.L. 1979, c.500, the Department of Health is authorized "to determine that the various establishments covered by this act are appropriately and reasonably

classified into two or more classes, and may establish separate rules, regulations, and standards for each such class". The Department has not so determined that another class is required for specialized facilities, but is addressing the needs of residents in facilities that are not within the mainstream of the class originally established.

Thus, requiring specialized plans of care from facilities serving a specialized population constituting a preponderance of its census is a reasonable and defensible approach to assuring the "higher quality of health care" will be provided in accordance with the statute. A conditional license utilizing either the facility's proposed standards or those requirements found already in the Administrative Code for other facilities servicing the special population is intended as a means to protect the health, safety, and welfare of all residents. The use of existing rules is essentially a means to expedite the process of identifying appropriate standards of care for the special population. More importantly, it provides increased protection to both the residents and the provider that the specified rules have already been proposed, commented on by the affected public, and adopted through rulemaking procedures of the Administrative Procedures Act.

The Public Advocate's suggestion that the Department is exceeding statutory authority by permitting facilities to deliver services above the minimum standards of care inaccurately considers the purpose of licensing rules, which is to establish a floor below which violations may endanger the health and safety of residents. The statute further recognizes that a "resident" of a residential health care facility is an individual who has been "certified by a licensed physician to be free from communicable disease and not in need of skilled nursing services, and who, except in the case of a person 65 years of age and over, is in need of dietary services, supervision of self-administration of medications, supervision of and assistance in activities of daily living, or assistance in obtaining health care services, but shall not be given skilled nursing care while a resident except as hereafter provided." The foregoing definition shall not be construed to prevent care of residents in emergencies or during temporary illness for a period of one week or less and shall not be construed to prevent a licensed physician from ordering nursing or other health services".

Literally applied, the Public Advocate's position would yield a class of residential health care facilities limited to serving residents whose total needs can be met by facilities only meeting the minimum standards could require the discharge of potentially hundreds or thousands of RHCf residents. The Department believes that by establishing conditions on licenses for facilities serving populations with unique health care needs is the responsible approach to assuring resident safety in accordance with its statutory mandate.

N.J.A.C. 8:43-2.7

COMMENT: The Public Advocate commenter is concerned that the rules at N.J.A.C. 8:43-2.7, Waiver, allow that standards in "such vital areas as staffing or equipment may be waived even if they substantially diminish the quality of care, as long as they do not present a hazard to life or health." The Public Advocate is also concerned that rules protecting the rights of residents may be waived.

RESPONSE: The Public Advocate has offered an interpretation that substantially misinterprets the standards for issuance of waivers of licensing standards as contained at N.J.A.C. 8:43-2.7. The standard requires that the waiver cannot be issued where it would endanger the life, safety, or health of residents or the public, and the grant of a waiver must be "in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq." The statute, as pointed out by the Public Advocate, requires the Commissioner to assure the highest quality of health care to be delivered, which is "efficiently provided and properly utilized at reasonable cost" N.J.S.A. 26:2H-1. It is incongruous to suggest that the quality of care could be "substantially diminished" under this standard of review. In addition, the facility applying for a waiver must also submit an "alternative proposal which would ensure resident safety," thus further providing a procedural aspect to the waiver provision that assures that the facility will offer an alternative means to meet the level of safety and quality intended by the rule. Statutory provisions setting resident or patient rights are not subject to waiver by the Department, an executive agency.

The Department believes the standard articulated in N.J.A.C. 8:43-2.7 meets the guidance set forth by the courts in the decisions cited by the Public Advocate, including *Lower Main v. N.J. Housing and Mortg.*, 114 N.J. 226, 235 (1989) and *In the Matter of the Appeal from the Adoption of Screening Center Regulations by the Department of Human Services*, unreported Dkt. No. A5857-88T1, (App. Div. June 27, 1990). The rule

specifically identifies the statutory and regulatory standards and the procedural requirements for review of waiver requests. It cannot obviously set forth a separate standard of review for each and every regulation incorporated into the Chapter.

A similar waiver provision is identified in each chapter of licensure regulations governing health care facilities adopted by the Department. The significant majority of such requests concern matters such as the minimum educational or experience requirements for personnel, where alternative and equivalent credentials are generally submitted. Another principal type of waiver are those submitted by facilities providing services to a discrete population, where particular licensure standards become inapplicable. The Department must promptly respond to the significant majority of waiver requests, especially where these concern personnel qualifications. Based upon these concerns, as well as the potentially considerable administrative burden that would be created for both facilities and the state agency, the Department cannot create a public notice and comment provision for waivers. Similarly, the Department declines to create such a public notice and comment procedure for special population waivers. However, it is Department policy to secure recommendations concerning waiver requests from survey teams and those State agencies having expertise in services for a particular population. It should also be noted that N.J.A.C. 8:43-4.9(a)¹ requires that the facility post a notice that all waivers granted to it by the Department are available for inspection.

N.J.A.C. 8:43-2.10

COMMENT: N.J.A.C. 8:43-2.10 is the subject of the Public Advocate's "greatest concern." The commenters believe that the proposal at N.J.A.C. 8:43-2.10(a), requiring that RHCf's proposing to serve a specialized population must submit a plan to the DOH for the provision of services appropriate to the needs of these clients, "is intended to authorize licensure of facilities which would provide active treatment to residents." The Public Advocate is further concerned with N.J.A.C. 8:43-2.10(b), which states that the DOH "may impose operational standards derived from other adopted licensure regulations appropriate to this population." According to the commenters, the Department of Health lacks the authority to incorporate licensure regulations for other types of facilities and apply them to RHCf's on "an *ad hoc* basis." The Public Advocate states under current statutory and regulatory schemes, only community mental health facilities and hospitals may provide certain services for the mentally ill. The commenter also requests addition of language from the Americans with Disabilities Act (ADA), in order to ensure that there is no discrimination against certain groups of individuals, particularly younger, mentally handicapped populations.

RESPONSE: As discussed above in the Department's responses, the need to assure the health and safety of residents having specialized care needs is the primary concern of the Department in promulgating N.J.A.C. 8:43G-2.10. As there are an unlimited number of special care populations that may be served within a health care facility, it is an administrative impossibility to develop licensing standards that adequately address the needs of such populations before they are even known to the agency. As explained above, it is the Department's position that the statute specifically permits "active treatment" as long as skilled nursing care is not offered and the facility does not hold itself out as offering nursing home or hospital level care. For example, there are individuals in RHCf's who require "active treatments" such as psychoactive medications, urinary or intravenous catheters, infusion therapy, daily insulin injections for diabetes, or intermittent respiratory therapy. These treatments may also be rendered in a person's private home without it becoming subject to licensure as a health care facility. To the extent the resident can independently function in an RHCf with personal care and arrangement for or supervision of such services, "active treatment," whether directly or indirectly provided, is permissible except where the facility routinely renders what is properly the subject of a separate and higher regulatory or statutory classification of licensure.

With respect to the use of conditions on a license, the Commissioner is afforded wide authority to assure the health, safety, and welfare of residents of a health care facility. Issuance of a license is at the Commissioner's discretion, subject to review and appeal when an application is denied. The granting of a license with additional requirements designed to assure the safety of patients or residents with identifiable and different needs due to specialized conditions is not arbitrary and capricious but is clearly consistent with the underlying statutory intent of the Health Care Facilities Planning Act and the Commissioner's mandates.

The Department believes that the Public Advocate has clearly misinterpreted both the statutes and the overwhelming evidence to the contrary that only community mental health centers and hospitals may service mentally ill populations. Literally construed, this policy would result in the prohibition on psychiatric treatment being rendered to any individual who is a patient in any health care facility subject to licensure. Nursing homes, home health agencies and medical day care centers all must offer mental health services to their populations when the need arises. It is necessary and proper for the Department of Health to mandate minimum standards of care for these programs when required to protect the health and safety of patients. No change is made to the rule.

In regard to the enforceability of the Americans with Disabilities Act (ADA), the rules address this protection adequately. According to proposed N.J.A.C. 8:43-14.1(c), RHCs must comply with all applicable State and Federal statutes, rules, and regulations concerning resident rights. Facilities would therefore be subject to all applicable provisions of the ADA concerning discrimination against certain groups of individuals. The Department believes the Federal law serves adequately as a basis for an action by any individual who believes his or her needs are not being accommodated and that specific mention of it in the licensing regulations adds no further weight to its enforceability.

N.J.A.C. 8:43-4.14

COMMENT: The Public Advocate believes that the language of the proposed N.J.A.C. 8:43-4.14, Notification requirements, may, as written, violate a resident's right of privacy and confidentiality. The commenters suggest language to be added which states that a resident must consent before a family or other individual may be notified of changes in the resident's physical or mental status, serious accidents or incidents, or transfer from the facility.

RESPONSE: The rule is intended to promote the health and safety of residents by informing those individuals or agencies of significant events that affect individuals while residing in a residential health care facility. The outcome intended is that a family, personal, or official advocate of the resident's interests will become aware of the significant change or even death of the resident and will act in the resident's best interest.

The proposed rule is not intended to violate a resident's right of privacy and confidentiality. Each resident is to be provided with a statement of his or her rights prior to admission, as specified at proposed N.J.A.C. 8:43-4.12(a) and 14.2(a). These rights, as specified at N.J.A.C. 8:43-14.2(b), include the right to confidential treatment of personal, health, and social records, and the right to be treated with consideration, respect, and full recognition of his or her dignity, individuality, and right to privacy (N.J.A.C. 8:43-14.2(b)8 and 9). The proposed rule is intended to notify interested persons or agencies, who have been previously designated by the resident in accordance with N.J.A.C. 8:43-12(b), of significant changes in the resident's physical or mental status, serious accidents, transfer, or death of the resident. The resident has the right to designate those persons or agencies he or she wishes to be notified, and also has the right to designate those who should not be notified. By offering the facility the name of a contact person for this person, implied consent is given which may be rescinded and altered at any time. No change has been made to the rule.

N.J.A.C. 8:43-4.9(a)5

COMMENT: The Public Advocate requests that the telephone numbers of the Public Advocate's Divisions of Mental Health Advocacy and Advocacy for the Developmentally Disabled be added to the required list of telephone numbers of agencies that must be posted in the facility.

RESPONSE: Although the Department agrees that providing residents information to facilitate access to the services of the Public Advocate would potentially benefit certain individuals with such disabilities, there is no statutory requirement in New Jersey law to have the telephone number of the Public Advocate posted in the facility. The Department of the Public Advocate is included among the visitors listed at N.J.A.C. 8:43-14.2(b)11i who may with the consent of the resident visited be permitted full and free access to the facility at a reasonable hour. Therefore, the addition is not made but will be considered as a condition on licensure of facilities serving a specialized psychiatric or developmentally disabled population under N.J.A.C. 8:43-2.10.

N.J.A.C. 8:43-4.12(a)

COMMENT: The Public Advocate requests that the requirement for the administrator to conduct an interview with the resident's family, guardian, or interested agency prior to admission be made "subject to the resident's consent," for reasons of resident confidentiality.

RESPONSE: As proposed, this rule contains a phrase which was omitted from the comment letter: "the administrator or the administrator's designee shall conduct an interview with the resident and, if available, the resident's family, guardian, or interested agency, prior to or at the time of the resident's admission." As stated in the proposed rule, this interview is intended as an orientation to the "facility's policies, business hours, fee schedule, services provided, resident rights, and criteria for admission and discharge." The interview is to be entered into the resident's record to ensure documentation of the provision of this information to the resident and to any other attendees at the interview. The resident, of course, has the right to designate any family member or agency he or she wishes to attend the interview. Interested agencies are included in the rule, since many referrals of potential residents come from these sources and residents may choose to designate an agency rather than or in addition to a family member. The resident always has the right, and is to be informed of this and all other rights at the initial interview, to confidential treatment of his or her personal and health and social records. In addition, residents have the right to be treated with consideration, respect, and full recognition of their dignity, individuality and right to privacy. These rights are specified at proposed N.J.A.C. 8:43-14.2(a)8 and 9. The Department does not believe that the rule, as proposed, will result in any breach of resident's confidentiality, and, therefore, no change has been made to the rules.

N.J.A.C. 8:43-9.2(b)

COMMENT: The commenters believe that proposed N.J.A.C. 8:43-9.2(b), which requires that arrangements be made at the time of admission regarding the physician, dentist, or other person to be called in case of illness, may violate the resident's right of consent, if arrangements are made with other individuals without the consent of the residents themselves.

RESPONSE: As stated above, each resident may designate the physician, dentist, or other person the resident wishes to be called in case of illness. This designation facilitates choice by the resident at the time of admission. The rule is intended to protect the health and safety of the resident by indicating these preferences prior to illness, but does not mandate that any physician, dentist or other person be called without the consent of the resident. No change has been made to the rule.

N.J.A.C. 8:43-9.2(m)

COMMENT: The Public Advocate believes that N.J.A.C. 8:43-9.2(m), which requires the prompt transfer of a resident if the physician determines that the RHC cannot meet the resident's needs, violates the right of residents to refuse treatment and to make their own decisions regarding the need for care.

RESPONSE: The intent of the proposed rule is to facilitate transfers which are necessary because the RHC cannot meet the resident's needs. The rule specifies that the registered professional nurse be notified to ensure that the resident receives care during the transfer period. Assistance from the Department must be requested if the resident is not transferred within seven days. As stated at N.J.A.C. 8:43-9.2(a) the RHC has the responsibility to arrange for health services to be provided to residents as needed. However, the proposed rule is not intended to violate any resident's statutory rights to refuse any medication or treatment after being informed of the effects of such actions. No change has been made to the rules.

N.J.A.C. 8:43-10.1

COMMENT: The Public Advocate opposes the practice which "permits an unlicensed employee to assist during self-administration of medication to residents," because it is not consistent with their understanding of "the Board of Nursing's regulation allowing only a registered nurse to designate who may assist in self-medication." Additionally, the commenters suggest that language be added to the rule so that a resident shall not be coerced or forced to take medication.

RESPONSE: The Department believes that the proposed rule does not conflict with the scope of practice as delineated in the Nursing Practice Act. The rule requires each employee to be trained, but the registered professional nurse is ultimately responsible for delegating responsibility for supervision or assistance to those employees she believes to be competent and appropriately trained, in accordance with

N.J.A.C. 13:37-6.2, Delegation of selected nursing tasks. The Department also believes that the resident's rights to refuse medication and to be free of coercion are appropriately addressed at N.J.A.C. 8:43-14, Resident rights. Furthermore, the enabling statute requires that a facility be able to render "supervision of self-administration of medications." No change has been made to the rule.

N.J.A.C. 8:43-11.1

COMMENT: The Public Advocate states that N.J.A.C. 8:43-11.1, Provision of recreational services, "mandates that RHCs now provide a full program of social, recreational, exercise and cultural programs to its residents," and that according to N.J.A.C. 8:43-11.1(b)2, "the RHC is required to offer programs which are physical, such as exercise, sports, dancing and swimming." The commenters recommend that the RHC have a medical evaluation of residents to ascertain what physical exercises and sports they may safely engage in, and that the rule be amended to reflect that residents may freely refuse the proffered activity. The recommended evaluation could be made as part of the initial physician certification required at N.J.A.C. 8:43-4.12(c).

The Public Advocate also commented on proposed N.J.A.C. 8:43-11.1(b)4, which "mandates that one of the categories of recreational services provided by a RHC shall be spiritual, such as religious services." The commenters believe that "this provision violates the Establishment Clause of the First Amendment to the United States Constitution, which provides that there shall be no law respecting an establishment of religion." The commenters support the offering of these services on a voluntary basis, and suggest the addition of language that no resident shall be coerced, forced or intimidated into participating in such activity.

RESPONSE: Although the proposed rules require each facility to offer a planned, diversified program of activities to residents, there is no requirement for mandatory participation in activities or exercise by any resident. As specified at N.J.A.C. 8:43-11.1(a), a program of recreational activities must be offered "to meet the needs of residents." Residents may refuse to participate in any activity which is unsuitable because of physical limitations, or is not of interest to the resident. Residents who do not choose to participate in sports or exercise, or whose participation in such activities is medically contraindicated, have the opportunity to choose from scheduled activities in other categories, for example, social, creative, or community based. Facilities need not offer any category of activity programs which is impractical, inappropriate, or lacking in interest for the resident population.

The rules in subchapter 9 require that each resident be screened, including a review of their physical and mental status, and receive periodic assessment and monitoring by the nurse. Any changes in the residents' condition must be noted and addressed by the nurse. The administrator must assure that appropriate referrals to physicians or other health care professionals are made as needed. Based on such assessments and reports from health care professionals, recommendations concerning a resident's participation in sports or physical activities would be made by the nurse to the resident and administrator. The facility has the responsibility to ensure that direct care staff who assist with and supervise personal care are competent, in good physical and mental health, and concerned for the safety of residents.

As stated above, there is no requirement for any resident to participate in an activity which is unsuitable or is not of interest to the resident. This would, of course, apply also to spiritual activities such as religious services. According to N.J.A.C. 8:43-14.2(a)12, each resident "may participate in facility activities, and meet with, and participate in activities of social, religious, and community groups at his or her discretion." Furthermore, N.J.A.C. 8:43-14.2(a) states that each resident "is assured of exercising civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any resident or facility."

The Department believes that the residents' rights to choose from among a diversified program of recreational activities, free from coercion to participate in any particular activity, are protected by the proposed rules, do not violate the constitutional rights of residents, and has therefore not changed these sections.

N.J.A.C. 8:43-14.2(a)11

COMMENT: The Public Advocate commented that it viewed the Federal Protection and Advocacy Act as providing it with jurisdiction to investigate incidents of abuse and neglect of individuals. It expressed

concern that N.J.A.C. 8:43-14.2(a)11, requiring the consent of a resident for visitation by legal representatives or employees of the Department of the Public Advocate, contravenes this right.

RESPONSE: The Rooming and Boarding House Act of 1979 directed that all suspected cases of abuse and neglect should be reported to the Commissioner of Human Services or his or her designee. It is not within the Department of Health's purview to determine the scope of the Public Advocate's jurisdiction in abuse and neglect cases in this apparent conflict between State and Federal law. As such, the Department declines to further specify the Public Advocate's rights in these rules without direction from the Attorney General. The consent of a resident to receiving visitation from their legal representative or governmental advocate would appear fundamental and not in conflict with a statutory right of a government agency to enter a premise for investigatory purposes. No change has been made to the rule.

N.J.A.C. 8:43-14.2(a)17

COMMENT: The proposed rule states that each resident has the right to unaccompanied access to telephones, in the facility, at a reasonable hour, both to make and to receive confidential calls." The Public Advocate recommends that the term "reasonable hour" be defined so as to ensure liberal access to make and receive calls. The commenters are concerned that a facility could limit or turn off the telephone during business hours, and thus deprive the resident of the opportunity to contact an agency or family member to report a complaint of abuse or neglect, and/or to receive a return telephone call.

RESPONSE: The resident rights enumerated in the Rooming and Boarding Home Act of 1979 do not provide for a definition of the meaning of "reasonable hour." In the context of personal visitation, a minimum of 12 hours a day is required in N.J.A.C. 8:43-14.2(a)15, and the Department will use this as a guideline in interpreting the term "reasonable." No change is made to the proposal.

N.J.A.C. 8:43-14.2(a)23

COMMENT: The proposed rule states that "each resident is allowed to discharge himself or herself from the facility upon presentation of a written release." The Public Advocate believes that the intent of this rule is unclear and requests clarification of the word "release."

RESPONSE: The Department agrees with the commenter, and, as explained in the response to the letter from the Boarding Home Advisory Council, the word "release" has been deleted from the rule and replaced with "notice to the administrator." This change was made in order to clarify that the requirement is intended only to provide the administrator with a written notice of a resident's intention to discontinue living at the RHC.

N.J.A.C. 8:43-4.12(e), 4:13(a); 4:16(g); 6; 6.1(a)7; and 14.2(a)1, 4 and 5

COMMENT: All of the above sections, according to the Public Advocate, "affect the discretion of RHCs in discharging residents involuntarily; while some of these sections limit this discretion, they do not protect residents from arbitrary and unreasonable discharges and also fail to provide meaningful procedures for appeal of such actions." The commenters suggest that the Department "should amend its proposed regulation to incorporate adequate protections."

RESPONSE: The sections enumerated above are intended to prevent residents from arbitrary and unreasonable discharges. N.J.A.C. 8:43-14.2(a)4 in specific provides the substantive criteria for non-emergency discharge, and as such, adequately protect the rights of residents in this regard. The Department will investigate any complaints by residents or their representatives of inappropriate discharge to determine whether compliance with these standards has been met. There have in fact been only a limited number of instances of such discharges in which any complaints have been received by the Department.

COMMENT: The Public Advocate also commented on the proposal repeal of current regulations, as follows:

N.J.A.C. 8:43-1.5, Denial of application

N.J.A.C. 8:43-4.2(c), concerning the hours at which residents rise in the morning or retire

N.J.A.C. 8:43-4.2(d), residents shall be permitted to rest in their rooms as needed

N.J.A.C. 8:43-4.2(g), visiting by children shall not be prohibited

The Public Advocate requests that these sections not be repealed.

RESPONSE: The Department thanks the Public Advocate for comments on the proposed repeal of the above sections, and will further review each section. If it decides that any changes or additions to the

new rules are appropriate, based on this review, the Department will need to repropose them, as they would constitute substantive changes and could not be added upon adoption.

COMMENT: The final pages of the Public Advocate's letter of comment consists of a summary of the Public Advocate's investigation of a licensed Class C Boarding Home Facility providing treatment to mentally ill populations.

The Public Advocate recommends that proposed N.J.A.C. 8:43 be republished with amendments placing them in conformity with statutory authority, laws and regulations, as set forth above.

RESPONSE: The Department believes the rules fully comport with its statutory authority as explained in the responses above and therefore declines to republish the rules in their entirety.

COMMENT: David Keiserman, New Jersey Commission on Aging, testified that he was concerned by the fact that RHCF staff members "can be unlicensed and with very dubious training and knowledge" and they will take care of senior residents who are "a very vulnerable group." The commenter was also concerned that RHCF's would become licensed after one year of compliance with the regulations, automatically and without further examination.

RESPONSE: The Department refers the commenter to the response to the Somerset County Mental Health Association above, for the Department's position on quality of care and staffing at RHCF's. Licenses are issued to residential health care facilities only after surveys by the Health Facilities Inspection Program indicate that the facility substantially complies with all licensure requirements. The license may be issued for one year or less, as determined by the Department. Survey visits are made as often as needed to determine continuing compliance with licensure rules. The license is renewed annually only if surveys and monitoring indicate that licensure and local rules, regulations and requirements are met.

N.J.A.C. 8:43-2.7, 2.10(b), 4.13 and 4.14(a)4

COMMENT: Mr. Steven Levy testifying for the Community Health Law project, addressed proposed rules at N.J.A.C. 8:43-2.10(b). Mr. Levy indicated that the Law Project believes the rule is "not well crafted," and "might violate some of the protections that were set forth in other standards." The proposed N.J.A.C. 8:43-2.10(b) allows the Department to impose operational standards derived from a plan submitted by a facility intending to serve a specialized client population as well as operational standards from other adopted licensure regulations appropriate to this population as a condition on the issuance of a license. The commenter stated that "if a specialized population is to be entertained in RHCF, then both regulatory schemes should be fully complied with, and that if there is a necessity for waiver, it should be done through a very stringent and very rigorous waiver process." The commenter is concerned about the waiver process as specified at proposed N.J.A.C. 8:43-2.7. The main area of concern of the Law Project, according to the commenter, is the rule at N.J.A.C. 8:43-4.13, Involuntary discharge, and 8:43-14.2(a)4, Resident rights. The rule at N.J.A.C. 8:43-4.13 requires written notification of the intent to involuntarily discharge the resident from the facility, while N.J.A.C. 8:43-14.2(a)4 specifies that no resident shall be discharged except in the case of an emergency, or transferred or discharged except for medical reasons or his or her welfare or that of other residents upon the order of the resident's physician. The commenter believes that there is a possibility that residents may be discharged for trivial or discriminatory reasons, and that N.J.A.C. 8:43-14.2 may not create a "valid due process protection on behalf of the residents." It was suggested that the vulnerable residents of RHCF's should be afforded an opportunity to resolve a dispute or problem while remaining in the facility. The commenter also addressed the rules at N.J.A.C. 8:43-6.2(a)3, which allows facilities to raise fees upon 30 days written notice to the resident, which he believes may lead to loss of some of the resident's Personal Needs Account (PNA) funds, or homelessness. Finally, the commenter questioned the meaning of N.J.A.C. 8:43-14.2(a)23, which delineates the resident's right to discharge himself or herself upon presentation of a written release. The commenter asked about the meaning and contents of the written release.

RESPONSE: The Department will investigate any instance where a resident believes that he or she is being unfairly discharged. Where appropriate, the Department will refer the resident to the Office of the Ombudsman, county welfare agency, or other community agency, for assistance in resolving disputes regarding discharges.

The rules at N.J.A.C. 8:43-6.2(a)23 are not intended to result in the loss of residents' PNA funds or homelessness of any resident. Again,

the Department would investigate any resident complaint concerning unreasonable increases in agreed upon charges and appropriate referrals would be made to advocacy agencies. The rules at N.J.A.C. 8:43-6.3(a)1 state that no resident shall be required to provide the owner or administrator with any portion of the PNA.

As stated above, in the response to the Boarding Home Advisory Council, the rule at N.J.A.C. 8:43-14.2(a)23 is intended to provide the administrator with a written notice of a resident's intention to discontinue living at the facility. In order to clarify this intent, the word "release" has been deleted from the rule, and replaced with "notice to the administrator."

COMMENT: Jay Solomon, testified that he was representing Len Fishman, legal counsel for NJANPHA. Mr. Solomon thanked the Department for including representatives from NJANPHA in discussions of the proposed rules prior to publication. Mr. Solomon further testified that many RHCF's have been treating "direct psychiatric admissions under the CN law, that the Department of Health and the Division of Mental Health and Hospitals have kept a very close tab on those residents as far as their care plan development, continuation of psychiatric services, and in the event of decompensation, all of which have worked very well to this point." The commenter does not feel that additional regulations are needed at this time, since facilities are functioning well, and residents are making great strides and have progressed in their treatment. The commenter commended the increases in nursing requirements in the proposed rules, and also supported the inclusion of nurse specialists as they are now included in the long-term care draft standards.

RESPONSE: The Department acknowledges NJANPHA support for the revised rules, and thanks the Association for its assistance during the process. Insofar as the rules on specialized populations (N.J.A.C. 8:43-2.10), the requirement addresses only those facilities which are initiating a new service in which a substantial portion of the facility's population will be in this classification, and will not be retroactively applied.

Changes have been made to allow the appropriate delegation of duties to nurse practitioners/clinical nurse specialists. (Refer to response above to New Jersey Board of Nursing comments.)

COMMENT: Rick Abrams testified on behalf of the NJAHCF, and applauded the Department for the development of the proposed rules. The commenter spoke in support of the waiver process at N.J.A.C. 8:43-2.7, urged the Department to "leave that process as it is," as it did, in fact, "ensure that the health, safety and welfare of residents, if indeed a waiver is granted by the Department, will not be jeopardized." The commenter believes that N.J.A.C. 8:43-2.10 should be more specific, and should not require additional regulation of those facilities already appropriately caring for their current residents. Finally, the commenter testified that the discharge provisions at N.J.A.C. 8:43-4.13 could benefit from the inclusion of time frames, a neutral auditor, and a system that will insure due process for the resident while also protecting the rights of other residents at the facility.

RESPONSE: The Department appreciates the supportive comments from NJAHCF concerning the waiver process, and thanks the Association for its assistance during the development of the revised rules.

As explained in responses to letters of comment received from the N.J.A.N.P.H.A. and N.J.A.H.C.F., the requirement at N.J.A.C. 8:43-2.10 has been changed to indicate that the rules on specialized populations apply only to those facilities which are initiating a new service, and will not be retroactively applied.

COMMENT: Sy Larson testified that he was speaking for senior citizens on "the overall thrust of the regulations," and was concerned with quality of care. According to the commenter, senior citizens "do not feel that any treatment, without any kind of direction, should be given by individuals who are not licensed and professional in the field." The commenter stated that senior citizens feel that the proposed rules "in effect, weaken the quality of care that the individuals will get in these kinds of facilities, since approximately three-quarters of them are the elderly."

RESPONSE: The Department believes that the new rules substantially improve the quality of care provided to residents, and that the health maintenance monitoring nurse and physician will provide adequate direction for any health care services delivered in the facility.

COMMENT: Patricia Freeman testified for the Older Women's League. Ms. Freeman indicated that she agreed with concerns expressed by the Department of the Public Advocate regarding proposed regulations for residential health care facilities, "which could jeopardize the

rights of residents to necessary medical and psychiatric care by allowing untrained staff to provide treatment." The commenter stated that requiring a boarding home to be in compliance with regulations for one year before being licensed "should not be waived." The commenter believes that there are too many violations and too little supervision in board and care facilities now, and that good homes are closing because of a lack of community support services, and stated that "we do not need new regulations which could lead to further abuse and neglect of these vulnerable people."

RESPONSE: The Department believes that the proposed rules will help to protect vulnerable residents by providing referrals to medical and psychiatric care when needed, as well as continuing assessment and monitoring of residents' health care needs.

Summary of Agency-Initiated Change:

A change was made to N.J.A.C. 8:43-16.4(a)1, regarding administration of the Mantoux tuberculin skin test, based on clarification forwarded by the Tuberculosis Program of the Department following initial publication of the proposed rule. The Program indicated that a one-sentence clarification would be helpful, and recommended adding language indicating that, if the first step of the initial Mantoux test is less than 10 millimeters of induration, the second step of the two-step Mantoux test should be administered one to three weeks later. The rule has been revised on adoption, in accordance with these recommendations. Additionally, a reference to requirements at N.J.A.C. 8:57 has been added at (d).

N.J.A.C. 8:43-16.4(a)3 has been added to require the exclusion from work of any employee with positive Mantoux results, until the employee's physician provides approval to return to work, in accordance with rules in effect since 1969, at N.J.A.C. 8:43-4.6(c), and with current rules regarding Long-Term Care Facilities.

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 43

STANDARDS FOR LICENSURE OF RESIDENTIAL HEALTH CARE FACILITIES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:43-1.1 Scope

The rules in this chapter pertain to all facilities which provide residential health care services. These rules constitute the basis for the licensure of residential health care facilities by the New Jersey State Department of Health.

8:43-1.2 Purpose

Residential health care facilities provide sheltered care and services to residents who do not require skilled nursing care, in order to assist residents to maintain personal interests and dignity as well as to protect their health and safety. The aim of this chapter is to establish minimum rules with which a residential health care facility must comply in order to be licensed to operate in New Jersey.

8:43-1.3 Definitions

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

"Assistive device" means a leg brace, splint, cane, crutch, special shoe, back brace, walker, wheelchair, or prosthesis.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Basic physical plant services" means heat, power, lighting, water, food and staff.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, or vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by residents and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970, N.J.S.A. 24:21-1 et seq.

"Current" means up-to-date, extending to the present time.

"Department" means the New Jersey State Department of Health.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

1. "High-level disinfection" means that disinfection which kills vegetative bacteria, tubercle bacillus, some spores, fungi, lipid and non-lipid viruses.

2. "Intermediate-level disinfection" means that disinfection which kills vegetative bacteria, tubercle bacillus, fungi, lipid and non-lipid viruses and does not kill resistant bacterial spores.

3. "Low-level disinfection" means that disinfection which kills most vegetative bacteria, fungi, and lipid viruses and does not kill spores and non-lipid viruses. Low-level disinfection is sometimes less active against some of the gram-negative rods (*Pseudomonas*) and *Mycobacterium* (TB).

"Documented" means written, signed, and dated.

"Drug regimen review" means an individual resident record review conducted by the consultant pharmacist, including, but not limited to, laboratory tests, dietary requirements, physician's and nurse's clinical notes, physician's orders and progress notes, in order to monitor for potentially significant adverse drug reactions, drug-drug and drug-food interactions, allergies, contraindications, rationality of therapy, drug use evaluation, and laboratory test results.*

"Employee" means *a member of the administrator's family or* a person who is gainfully employed in the residential health care facility on a full or part-time basis and for whom a record of hours worked and wages paid are maintained and who meets the health, age and other requirements of this chapter. Reimbursement for such employment may include salaries, wages, room and board, or any combination thereof. A *[person placed in]* *resident of* the residential health care facility *[under a purchase of care or service agreement will]* *may* not be considered an employee*, except where this is voluntary and where no direct services or resident supervision is provided*.

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

"Full-time" means relating to a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Guardian" means a person appointed by a court of competent jurisdiction to handle the affairs and protect the rights of any resident of the facility.

"Health care facility" means a facility so defined in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties and responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Monitor" means to observe, watch, or check.

"Residential health care facility" means a facility which provides food, shelter, supervised health care and related services to four or more persons 18 years of age or older who are unrelated to the owner or administrator.

"Resident" means a person who is 18 years of age or over, mobile under his or her own power with or without assistive devices and able to effectuate his or her own evacuation from the building. A licensed physician must certify that the resident does not have medical or personal care needs which exceed the level of services provided in a residential health care facility, is free from communicable diseases (that is, does not have a reportable, communicable disease which is not controlled through prophylaxis or medication), and does not require skilled nursing care.

"Resident supervision" means the provision of direct services required by this manual to residents.

"Responsible person" means a person who has been designated by the resident and who has agreed to assist the resident, as needed, in arranging for health, social and financial services or making decisions regarding such services.

"Self administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a resident to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed (in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39), labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

"Shift" means a time period defined as a full working day by the facility in its policy manual.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O.) of a person, legibly written with his or her own hand. A controlled electronic signature system may be used.

"Staff education plan" means a written plan which describes a coordinated program for staff education for each service, including in-service programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity. "Direct supervision" means supervision on the premises within view of the supervisor.

8:43-1.4 Qualifications of the administrator of a residential health care facility

(a) The administrator of a residential health care facility shall be in good physical and mental health, be of good moral character, exhibit concern for the safety and well-being of residents, and shall:

1. Complete a training course approved by the Department of Human Services, or other equivalent training as approved by the Department of Health, within one year of his or her employment as administrator; or

2. Hold a current New Jersey license as a nursing home administrator, or be eligible to take the New Jersey Nursing Home Administrator's Licensing Examination, according to the Department of Health requirements found in N.J.A.C. 8:34.

(b) The owner of a residential health care facility who meets the qualifications listed in (a) above may also serve as the administrator.

8:43-1.5 Qualifications of dietitians

Each dietitian shall be registered or eligible for registration by the Commission on Dietetic Registration (Office on Dietetic Credentialing, 216 W. Jackson Boulevard—7th Floor, Chicago, Illinois 60606-6995).

8:43-1.6 Qualifications of direct care staff

(a) The facility shall exercise good faith and due diligence to ensure that staff providing direct care and resident supervision to residents in the facility:

1. Are in good physical and mental health, emotionally stable, of good moral character, are concerned for the safety and well-being of residents;

2. Have not been convicted of a crime relating adversely to the person's ability to provide resident care, such as homicide, assault, kidnapping, sexual offenses, robbery, and crimes against the family, children or incompetents, except where the applicant or employee with a criminal history has demonstrated his rehabilitation in order to qualify for employment at the facility; and

3. Are at least 18 years of age, or have obtained working papers.

8:43-1.7 Qualifications of the director of health maintenance and monitoring services

The director of health maintenance and monitoring services shall be a registered professional nurse.

8:43-1.8 Qualifications of licensed practical nurses

Each licensed practical nurse shall be so licensed by the New Jersey State Board of Nursing.

*8:43-1.9 Qualifications of nurse practitioner/clinical nurse specialists (NP/CNS)

Each nurse practitioner/clinical nurse specialist (NP/CNS) shall be so certified by the New Jersey Board of Nursing, in accordance with N.J.A.C. 13:37-7, in one of the following categories of advanced practice: Adult Health, Family, Gerontology, Psychiatric/Mental Health, or Community Health.*

8:43-*[1.9]**1.10* Qualifications of pharmacists

Each pharmacist shall be so registered by the New Jersey State Board of Pharmacy.

8:43-*[1.10]**1.11* Qualifications of physicians

Each physician shall be licensed or authorized by the New Jersey Board of Medical Examiners to practice medicine in the State of New Jersey.

8:43-*[1.11]**1.12* Qualifications of registered professional nurses

Each registered professional nurse shall be so licensed by the New Jersey State Board of Nursing.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:43-2.1 Certificate of need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, licensed to operate, or closed except upon application for, and receipt of, a certificate of need issued by the Commissioner.

(b) Application forms for a certificate of need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625
609-292-6552

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the certificate of need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:43-2.2 Application for licensure

(a) Following receipt of a certificate of need, any person, organization, or corporation desiring to operate a residential health care facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

ADOPTIONS

HEALTH

Director
Licensing and Certification
Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
609-588-7726

(b) The Department shall charge a nonrefundable fee of \$100.00 plus \$3.00 per bed for the filing of an application for licensure of a residential health care facility and for the annual renewal of the license.

(c) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing and Certification Program.

8:43-2.3 Newly constructed or expanded facilities

(a) Any residential health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

(b) The licensure application for a newly constructed or expanded facility shall include written approval of final construction of the physical plant by Health Facilities Construction Services, Division of Health Facilities Evaluation and Licensure, New Jersey State Department of Health, in accordance with this chapter.

(c) An on-site inspection of the construction of the physical plant shall be made by representatives of Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

8:43-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this manual.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:43-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing and Certification Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. The completed licensure application is on file with the Department;

3. The fee for filing of the application has been received by the Department;

4. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

5. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

6. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this manual; and

7. Personnel are employed in accordance with the staffing requirements in this manual.

(c) No facility shall admit residents to the facility until the facility has the written approval and/or license issued by the Licensing and Certification Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and resident records and conferences with residents.

(e) A temporary license may be issued to a facility for a period of up to six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:43-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less, as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or requirements are not met.

8:43-2.6 Surrender of license

The facility shall notify each resident, the resident's physician, and any guarantors of payment*, the county welfare agency, the Office of the Ombudsman, the Department of Human Services, and the SSI program, Region II office, if residents are SSI recipients,* at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing and Certification Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:43-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this manual, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of residents or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing and Certification Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure resident safety; and

4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:43-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of residents from a facility whenever he or she determines imminent danger to any person's health or safety***[.]****, in accordance with the following:

1. The county welfare agency, the Office of the Ombudsman, and the Department of Human Services shall be notified by the Department at the time the residents are to be removed;

2. The Department shall request county participation in coordination with appropriate service agencies, and make monitoring visits to ensure appropriate care and services to residents during the interim period until relocation takes place;

3. The Department shall notify the SSI program, Region II office, if residents are SSI recipients; and

4. The Department shall cooperate with all agencies and providers of services to relocate residents in the same area if possible.*

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary or provisional license and facilities with a full license.

8:43-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, assess a monetary penalty, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

8:43-2.10 Special residential health care services

(a) Any existing or new residential health care facility proposing to *serve a specialized client population representing]* ***establish a specialized program where the residents in such a program will constitute*** a substantial proportion of its census shall submit a plan for provision of services appropriate to the needs of these clients. Such a plan shall be reviewed by the Department and approval shall be received prior to the initiation of such admissions and services. ***This requirement shall not apply to a facility which is serving residents with special needs (that is, mental illness, diabetes, etc.) as part of its normal admission and retention policies.***

(b) The Department may impose operational standards derived from the plan submitted by the facility and from other adopted licensure regulations appropriate to this population as a condition on the issuance of a license. Such conditions are subject to the enforcement actions and procedures specified at N.J.A.C. 8:43-2.8 and 2.9.

SUBCHAPTER 3. PHYSICAL PLANT

8:43-3.1 Scope

(a) Physical plant rules at N.J.A.C. 8:43-3.1 through *[3.21]* ***3A.11*** shall apply to new construction, alterations or renovations of residential health care facilities.

(b) Alterations and renovations shall be evaluated as follows:

1. Alterations exceeding 50 percent: If alterations or repairs are made within any period of 12 months, costing in excess of 50 percent of the current replacement value of the structure, requirements for new structures shall apply to the entire structure, including those portions not altered or repaired;

2. Alterations under 50 percent: If alterations or repairs are made within any period of 12 months, costing between 25 percent and 50 percent of the current replacement value of the structure, only the altered or repaired portions need conform to the requirements for new structures;

3. Alterations under 25 percent: If alterations or repairs are made within any period of 12 months, costing under 25 percent of the current replacement value of the structure, the construction official and appropriate subcode officials shall determine to what degree the portions so altered or repaired shall be made to conform to the requirements for new structures.

(c) Physical plant standards for existing licensed facilities shall be maintained and existing facilities will be inspected according to those codes and standards which were in effect at the time of licensure, unless otherwise required by statute.

(d) Prior to approval of a certificate of need for a transfer of ownership, the Department shall ***have the option to*** conduct a physical plant inspection of the facility*. ***[to determine the extent of physical plant deficiencies, based upon current codes and standards. Subsequent to the Department's inspection:]***

1. ***If provided, the Department inspection shall assess the facility for compliance with codes and standards in effect at the time of initial licensure, in accordance with (c) above; N.J.A.C. 8:43-3B.1 through 3B.6, codes and standards in effect at the time of inspection;***

[1.]**2. A report of the physical plant inspection shall be provided to the prospective buyer and sellers; and

[2.]**3. A plan of correction shall be submitted to the Department for all physical plant deficiencies ***in violation of codes and standards in effect at the time of initial licensure, exclusive of waivers, N.J.A.C. 8:43-3B.1 through 3B.6 and all other standards required by law and applicable to existing facilities*.**

(e) A request for waiver of any physical plant standards whose correction creates a financial hardship may be submitted by a prospective buyer and will be reviewed by the Department, in accordance with N.J.A.C. 8:43-2.7.

8:43-3.2 Physical plant

Construction of residential health care facilities in new buildings, additions, alterations and renovations to existing buildings shall be in compliance with N.J.A.C. 5:23-*[3.2 of]**, the New Jersey Uniform Construction Code, Use Group I-1. of the Sub-Code, ***[and in compliance with the Americans with Disabilities Act (ADA)]*** ***and the BOCA National Building Code as delineated in N.J.A.C. 5:23*.**

8:43-3.3 Restrictions

Mixed use occupancy shall not be permitted in buildings classified as High Hazard (H), Factory (F) or assembly (A-2) Use Groups.

8:43-3.4 Ventilation

[(a)] Means of ventilation shall be provided ***[either by a window with an openable area or by mechanical ventilation for every habitable room. If mechanical ventilation is used, there shall be at least two air changes per hour]*** ***in accordance with BOCA National Building Code, Chapter 12, and BOCA National Mechanical Code, Chapter 16, as required by N.J.A.C. 5:23*.**

[(b)] Means of ventilation shall be provided for every bathroom or water closet compartment (toilet). Ventilation shall be provided either by a window with an openable area or by mechanical ventilation with at least 10 air changes per hour.

(c) All hallway corridors and passageways shall have a minimum of two outside air changes per hour.]*

8:43-3.5 Exit access passageways and corridors

The width of passageways, aisles and corridors shall not be less than 44 inches. If an existing building(s) is being converted to a residential health care facility, the authority having jurisdiction may consider an exception which would allow a 36 inch corridor, in accordance with N.J.A.C. 8:43-2.7.

8:43-3.6 Automatic fire alarm system and detectors systems

(a) Smoke detectors shall be provided ***[in corridors not more than 30 feet on center and not more than 15 feet from any wall and in all residents' bedrooms, even in a completely sprinklered building]*** ***throughout all facilities, and shall be in accordance with all applicable sections of the BOCA National Building Code, Chapter 9, as reflected in the rules of the Department of Community Affairs*.**

(b) All alarm systems shall be connected to a full-time fire station or police station or other approved agency. Detectors for self-closing doors, windows and shutters shall be connected to fire alarm systems. Air handling systems shall be provided with smoke detectors. All detectors shall be hardwired and connected to fire alarm system.

8:43-3.7 Fire suppression systems

[(a)] Facilities licensed for 21 or more beds, of all construction types except type 1A, 1B, and 2B or one story non-combustible/

combustible protected construction types 2B, 3A, 4 and 5A, shall be provided with a fire suppression system in accord with section 1002.0 of 1990 BOCA National Building Code.

(b) In facilities which are not required to have a complete fire suppression system, all hazardous areas, including kitchens, boiler rooms, electrical rooms, laundry rooms and areas used for storage of combustible materials, shall be protected by a fire suppression system.]*

In new construction, fire suppression systems shall be installed in accordance with all applicable sections of the BOCA Building Code, Chapter 9, as reflected in the rules of the Department of Community Affairs.

8:43-3.8 Interior finish requirement

(a)] Interior wall and ceiling finishes *[in resident areas]* shall be *[Class A (having a flame spread of 0-25 and smoke development of 0-450, based on test results from National Fire Protection Association (NFPA) 255, Standard Method of Test of Surface Burning Characteristics of Building Materials). In all other areas, interior wall and ceiling finishes shall be Class A or Class B (having a flame spread of 26-75 and smoke development of 0-450)]* ***installed in accordance with all applicable sections of the BOCA Building Code, Chapter 8, as reflected in the rules of the Department of Community Affairs.***

(b) Interior floor finishes in corridors, stairways and exits shall be Class I or Class II (critical radiant flux, minimum of 0.45 watts per square centimeter (W/sq.cm.) or 0.22 W/sq.cm., respectively, based on test results from NFPA 253, Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source).]

8:43-3.9 Attached structures

Attached structures such as storage sheds or private garages located beneath buildings shall have *[wall partitions,]* ***fire separation assemblies at the walls,*** floors, and ceilings separating the space from the adjacent interior enclosed space constructed of not less than one-hour fire resistance rating. Attached private garages shall be completely separated from the adjacent interior enclosed spaces and the attic area by means of *[one-inch gypsum board or equivalent]* ***one-hour rated fire separation assembly*** applied to the garage side. The sills of all door openings in the garage between garage and building shall be raised not less than four inches above the garage floor. *[The door openings protectives shall be 1¾" solid core wood doors or approved equivalent.]* ***Openings shall be protected in accordance with BOCA, Chapter 7, as reflected in the rules of the Department of Community Affairs.***

SUBCHAPTER 3A. PHYSICAL ENVIRONMENT

8:43-3A.1 Resident bedrooms

(a) Sleeping rooms for one resident shall have a minimum of 90 square feet of clear floor area. "Clear floor area" means space exclusive of toilet rooms, fixed closets, fixed wardrobes, alcoves, or vestibules.

(b) Sleeping rooms occupied by more than one resident shall have a minimum of 70 square feet of clear floor area per resident. There shall be three feet of clear space between beds and at the foot of each bed to insure comfort and safety to residents. Space for storage of personal possessions and a non-folding arm chair shall be provided for each bed.

(c) No more than four residents shall be housed in any one room, regardless of room size.

(d) Toilets, bathing facilities, and handwashing sinks shall be available in the following minimum ratios (excluding bedrooms which have private facilities as part of the bed count and excluding facilities of family members and resident employees):

1. Toilets shall be provided so that each resident bedroom shall be adjacent to a toilet room, with no more than four residents served by this toilet.

2. Handwashing sinks shall be provided in every resident bedroom and in every toilet room except in private bedroom(s) where the handwashing sink in the bathroom is sufficient.

3. Tubs or showers shall be provided in a ratio of one per eight residents, with a minimum of one tub per fifty residents, or at least one tub per resident sleeping floor.

4. On floors other than sleeping floors utilized by residents there shall be at least a toilet and a lavatory available and accessible from a common corridor.

(e) Resident bedroom doors may be lockable by the occupant only from the corridor side (outside) by the use of a key. Egress from the room shall be possible at all times by turning the doorknob or pressing a lever. Duplicate keys to resident rooms which are locked shall be carried by designated staff at all times.

8:43-3A.2 Living and recreation rooms

(a) A living room or rooms shall be provided to insure adequate seating for the licensed capacity of the facility. There shall be 15 square feet per resident. The living room(s) shall have ample space for socialization as well as other resident activities such as letter writing, card playing, radio, television, and reading.

(b) Facilities with a licensed capacity of 30 or more residents shall provide two or more separate living or recreation rooms. A quiet sitting room with a minimum of 120 square feet shall be provided on each floor.

8:43-3A.3 Dining room

(a) Twenty-five square feet per resident shall be provided in a dining room or rooms.

(b) The congregate or common dining room shall be a separate area and shall not be a part of any other room. This area may be used for the recreation activities of residents, exclusive of the time required for dining service.

8:43-3A.4 Storage space

(a) Each facility shall provide a minimum of 30 square feet of lighted storage space per resident, in accordance with the following allotments:

1. At least ten square feet of locked personal storage, which may be in a room or common area other than the resident's bedroom; and

2. At least twenty square feet for linens, foods, cleaning and other supplies.

8:43-3A.5 Lighting and electricity

A bedside light shall be available for each bed, in addition to one duplex outlet for each bed and ceiling lights or other fixtures suitable for lighting the entire room.

8:43-3A.6 Laundry equipment

(a) Each facility shall provide at least one non-commercial washer and dryer for residents' personal items.

(b) Where laundry equipment is limited to non-commercial type (ordinary household or residential types), no special fire protective measures shall be required.

(c) When commercial-type laundry equipment is utilized, it shall be installed in a separate laundry room. The remainder of the home shall be protected from the laundry room by *[partitions and openings]* ***fire separation assemblies*** of at least one-hour fire-resistance rating. Doors to such laundry rooms shall be protected in accordance with *[N.J.A.C. 8:43-3.17(b)]* ***BOCA National Building Code, Chapter 7, as reflected in the rules of the Department of Community Affairs.***

(d) All dryers shall be vented to the outside of the building.

8:43-3A.7 Kitchens

*(a) All interior openings in common-area kitchens, except doorways, shall be protected by materials of at least one-hour fire-resistance rating.

(b) Interior kitchen doors shall be:

1. Hollow metal doors; or
2. Solid wood doors of the flush type not less than 1¾ inches thick.

(c) Doors leading from kitchens to adjacent areas shall swing in one direction, shall be self-closing, tightfitting, and shall be equipped

with an automatic releasing device. Such doors shall have transparent wire-glass vision panels which shall not exceed 100 inches in area and shall be installed in steel frames.]*

[(d)] Kitchen exhaust fans and metal ducts shall be kept free of grease and dirt; metal ducts from such fans shall comply with *[1990]* BOCA National Mechanical Code Article 5*, as reflected in the rules of the Department of Community Affairs*.

8:43-3A.8 Fire extinguisher specifications

(a) There shall be a minimum of two fire extinguishers in the basement, at least one on each floor of the building, and as required in kitchen areas. All fire extinguishers shall bear the seal of the Underwriters Laboratories.

(b) The following types of fire extinguishers shall be provided:

1. In kitchen areas, because of danger of grease fires, extinguishers shall be of the Class B dry chemical type 2-B and a minimum of 5 lbs. The maximum travel distance to an extinguisher shall be 50 feet.

2. In the basement area, extinguisher shall be Class B dry chemical type 2-B and a minimum of 5 lbs., if oil or gas is used as fuel. The maximum travel distance to an extinguisher shall be 50 feet.

3. In all other areas a Class A air-pressurized 2½ gallon water type 2-A extinguisher shall be provided. The maximum travel distance to an extinguisher shall be 75 feet.

8:43-3A.9 Employees' sleeping rooms

In any facilities where 24-hour awake coverage is not required, the employees' sleeping rooms shall be equipped with a four-inch alarm bell connected to the fire alarm system.

8:43-3A.10 Sounding devices

(a) An intercom system with alarm shall be provided on every resident floor and shall ring at an area staffed 24 hours a day and also in the staff sleeping quarters.

(b) Self-locking doors at the main entrance and other entrances opening onto a roof or balcony shall be equipped with a sounding device such as bell, buzzer or chimes, which is in operating condition. The sounding device shall be affixed to the outside of the door or to the adjacent exterior wall, for use in the event that a person is unable to re-enter the building and shall ring at an area staffed 24 hours a day and at staff sleeping quarters.

8:43-3A.11 Ceiling heights

Ceiling heights in corridors, storage rooms, resident rooms, and toilet rooms shall be *[at least 7 feet 8 inches]* ***in accordance with BOCA National Building Code, Chapter 12, as reflected in the rules of the Department of Community Affairs***. Ceilings in normally unoccupied spaces may be reduced to at least *[7]* ***seven*** feet.

SUBCHAPTER 3B. EXISTING FACILITIES

8:43-3B.1 Physical plant standards for all existing licensed facilities

Existing licensed facilities shall comply with and shall continue to be inspected according to those codes and standards which were in effect at the time of their initial licensure, and in addition shall comply with N.J.A.C. *[8:43-3.23 through 3.27]* ***8:43-3B.2 through 3B.6***.

8:43-3B.2 *[Smoke detectors]* ***Fire safety***

[Smoke detectors shall be provided in all residents' bedrooms, even in a completely sprinklered building. The detectors may be either battery operated or hardwired.]

Smoke detectors, fire suppression systems, and building separations shall be in compliance with the Uniform Fire Code of the State of New Jersey, N.J.A.C. 5:18, Subchapters 3 and 4, as applicable.

*[8:43-3B.3 Fire suppression systems

In all facilities which are not required to have a complete automatic fire suppression system, all hazardous areas, kitchens, electrical rooms, laundry rooms and areas used for storage of combustible materials shall be protected by a fire suppression system.

8:43-3B.4 Attached structures

Attached structures, such as storage sheds or private garages located beneath buildings, shall have wall partitions, floors and

ceilings separating the space from the adjacent interior enclosed space constructed of not less than one-hour fire resistance rating. Attached private garages shall be completely separated from the adjacent interior enclosed spaces and the attic area by means of one-inch gypsum board or equivalent applied to the garage side. The sills of all door openings in the garage between garage and building shall be raised not less than 4 inches above the garage floor. The door openings protectives shall be 1¾" solid core wood doors or approved equivalent.]*

8:43-*[3B.5]****3B.3*** Resident bedrooms

(a) Existing licensed facilities shall have 70 square feet of floor area for single rooms and 50 square feet of floor area per resident in multi-bed rooms.

(b) No more than four residents shall be housed in any one room, regardless of room sizes.

8:43-*[3B.6]****3B.4*** Fire extinguishers; specifications

(a) There shall be a minimum of two fire extinguishers in the basement, at least one on each floor of the building, and as required in kitchen areas. All fire extinguishers shall bear the seal of the Underwriters Laboratories. The following types of extinguishers shall be provided:

1. In kitchen areas, because of danger of grease fires, extinguishers shall be of the Class B dry chemical type 2-B and a minimum of 5 lbs. The maximum travel distance to an extinguisher shall be 50 feet;

2. In the basement area, extinguishers shall be Class B dry chemical type 2-B and a minimum of 5 lbs. if oil or gas is used as fuel. The maximum travel distance to an extinguisher shall be 50 feet; and

3. In all other areas, a Class A air-pressurized 2½ gallon water type extinguisher shall be provided. The maximum travel distance to an extinguisher shall be 75 feet.

SUBCHAPTER 4. GENERAL REQUIREMENTS

8:43-4.1 Minimum services and staffing

(a) Each residential health care facility shall provide, at a minimum, personal care, health maintenance and monitoring, pharmacy, dietary, and recreational services.

(b) The facility shall provide at all times at least one employee in each building or structure occupied by residents, in order to provide necessary resident supervision, as follows:

1. In residential health care facilities with 24 or more residents, the facility shall provide sufficient staff for resident supervision 24 hours per day by an employee who is awake on the premises.

2. In residential health care facilities with fewer than 24 licensed beds, the facility shall provide sufficient staff for resident supervision. During the normal sleeping hours of residents, inactive resident supervision shall be provided by an employee who is on duty and available on the premises to provide care and services, but not necessarily awake.

(c) In all residential health care facilities with more than 24 beds, the facility shall have the capacity to provide a sufficient number of on-duty employees (other than residents) to assure a minimum of one hour of resident supervision for each resident during a 24-hour period.

(d) In addition to meeting the requirements of (b) above, all residential health care facilities which have more than one floor shall have a system in place to assure resident safety by providing for immediate notification of staff through an emergency communication system and periodic monitoring of all areas occupied by residents.

(e) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

8:43-4.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Any proposed change in ownership shall be reported to the Director of the Licensing and Certification Program of the Department in writing at least 30 days prior to the change and in conformance with requirements for Certificate of Need applications.

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(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to that person's capability of owning or operating the facility.

(c) The owner or governing authority of the facility shall assume legal responsibility for the management, operation, and financial viability of the facility.

8:43-4.3 Submission and availability of documents

The facility shall, upon request, submit in writing any documents which are required by the rules in this manual to the Director of the Licensing and Certification Program of the Department.

8:43-4.4 Personnel

(a) The facility shall develop written job descriptions and shall ensure that personnel are assigned duties based upon their education, training, and competencies and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide resident care shall be licensed, certified, or authorized under the appropriate laws and/or rules of the State of New Jersey.

(c) The facility shall maintain and implement written staffing schedules. Actual hours worked by each employee shall be documented.

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training. All personnel shall receive orientation at the time of employment and at least annual in-service education regarding, at a minimum, emergency plans and procedures and the infection prevention and control program.

(e) The staffing ratios of this chapter are minimum only and the residential health care facility shall employ staff in sufficient number and with sufficient ability and training to provide the basic care and resident supervision required in this chapter.

(f) The facility shall have a policy regarding personnel with a reportable communicable disease, infection or exposure to infection, specifying that such an employee shall be excluded from the residential health care facility until that employee has received a physical examination and certification that the condition will not endanger the health of residents or other employees.

8:43-4.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and resident care services of the facility;

2. A description of the services provided;

3. Specification of business hours and visiting hours;

4. Policies and procedures for reporting all diagnosed and/or suspected cases of resident abuse or exploitation, as follows:

i. All county welfare agencies shall be notified, in accordance with N.J.S.A. 40:69A-60.5, P.L.1979, c.469, The Rooming and Boarding House Act of 1979, as amended; and

ii. If the resident is 60 years of age or older, the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall also be notified, in compliance with N.J.S.A. 52:27G-7.1 et seq.;

5. Policies and procedures for maintaining confidentiality of resident records, including policies and procedures for examination of resident records by the resident and other authorized persons and for release of the resident's records to any individual outside the facility, as consented to by the resident or as required by law or third party payor;

6. Policies and procedures for the maintenance and confidentiality of personnel records for each employee, including at least the employee's name, previous employment, educational background, credentials, license number with effective date and date of expiration

(if applicable), certification (if applicable), verification of credentials, prior criminal records, records of physical examinations, job description, and evaluations of job performance; and

7. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and persons providing direct resident care services in the facility through contractual arrangements or written agreement.

(b) The facility shall make all policy and procedure manuals available to residents, guardians, designated responsible persons, prospective applicants, and referring agencies during normal business hours or by prior arrangement.

8:43-4.6 Resident transportation

(a) The facility shall ensure that resident transportation will be provided, either directly or by arrangement, which may include an arrangement with a family member or other responsible person, to and from health care services provided outside the facility. The facility shall have policies and procedures addressing reasonable plans for security and accountability for the resident and his or her personal possessions, as well as transfer of resident information to and from the provider of the service.

(b) The facility shall assist the resident in arranging for transportation to activities of social, religious, and community groups in which the resident chooses to participate.

8:43-4.7 Written agreements

The facility shall have a written agreement or its equivalent, or a linkage for services not provided directly by the facility. If the facility provides care to residents with psychiatric disorders, the facility shall also have a written agreement with one or more community mental health centers specifying which services will be provided by the mental health center. The written agreements shall require that services be provided in accordance with the rules in this chapter.

8:43-4.8 Reportable events

(a) The facility shall notify the Department immediately by telephone at 609-588-7725 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption for three or more hours of basic physical plant services;

2. Termination of employment of the administrator, and the name and qualifications of his or her replacement;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, all residents who are missing for 24 hours, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to residents and/or personnel, disruption of services, and extent of damages;

5. Any major occurrence or incident shall be reported promptly to the Department by telephone, and shall be confirmed in writing to the Department as soon as possible thereafter;

6. All alleged or suspected crimes which are serious crimes committed by or against residents, which have also been reported at the time of occurrence to the local police department; and

7. All suspected cases of resident abuse or exploitation which have been reported to the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly and/or to the county welfare agencies.

8:43-4.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility during normal business hours, to residents and the public:

1. All waivers granted by the Department;

2. A list of deficiencies from the last annual licensure inspection survey report and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding resident rights;

4. Visiting hours (including at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily) and business hours of the facility, including the policies of the facility regarding limitations and activities during these times;

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5. The toll-free hot line number of the Department; telephone numbers of county agencies and of the State of New Jersey Office of the Ombudsman; and

6. The names of, and a means to formally contact, the owner and/or members of the governing authority.

8:43-4.10 Information reportable to State Board of Medical Examiners

(a) In accordance with the Professional Medical Conduct Reform Act, P.L.1989, c.300, as amended, the facility shall notify the New Jersey Board of Medical Examiners of all actions which result in reduction or restriction of staff privileges of any practitioner who is employed by or who is under contract to the facility. The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the facility against any practitioner licensed by the Board when the proceeding or action results in a practitioner's reduction or suspension of privileges or removal or resignation from the facility's medical staff; and

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved.

(b) For purposes of (a) above, "practitioner" means physician, medical resident or intern, or podiatrist.

(c) Notifications shall be provided within seven days of the reported event, on forms provided by the Department of Health for that purpose. Forms shall be submitted to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. (Questions may be directed to the Board Office at (609) 292-4843.)

8:43-4.11 Maintenance of records

(a) The facility shall maintain an annual chronological listing of residents admitted and discharged, including the destination of residents who are discharged; and

(b) Statistical data, such as resident census and facility characteristics, shall be forwarded on request, in a format provided by the Department.

8:43-4.12 Admission and retention of residents

(a) The administrator or the administrator's designee shall conduct an interview with the resident and, if available, the resident's family, guardian, or interested agency, prior to or at the time of the resident's admission. The interview shall include at least orientation to the facility's policies, business hours, fee schedule, services provided, resident rights, and criteria for admission and discharge. Documentation of the resident interview shall be included in the resident's record.

(b) At the initial interview prior to or at the time of admission of each resident, the administrator or the administrator's designee shall be provided with the name, address, and telephone number of a family member, guardian, responsible person or designated community agency who can be notified in the event of the resident's illness, incident, or other emergency.

(c) A physician shall certify for each resident that he or she has seen the resident within 30 days prior to admission and that the resident does not have needs which exceed the level of care provided by the facility, is free from communicable disease, is not in need of skilled nursing care, is mobile under his or her own power with or without assistive devices, and, if incontinence is suspected, has received a medical and nursing evaluation to determine whether the facility can provide an appropriate level of services to the resident.

(d) For emergency admissions, the physician's certification shall be received within 72 hours of admission.

(e) If a facility has reason to believe, based on a resident's behavior, that the resident poses a danger to himself or herself or others, and that the facility is not capable of providing proper care to the resident, then the attending physician or the physician on call shall evaluate the resident to determine whether the resident is appropriately placed in that facility*[,] *and* to locate a new placement if necessary*[,]**.* [and to initiate the]* *The* mental health screening process *[in accordance with]**, as defined in* Title 30 of New Jersey Statutes Annotated*[,]**,* may be initiated by the health maintenance and monitoring nurse, or by the administrator after consultation with the physician or nurse. The facility's health

maintenance and monitoring nurse is also authorized to decide whether to initiate the mental health screening process when circumstances warrant immediate action to protect the health, safety and welfare of the resident or other residents of the facility.*

(f) If the facility is not of fire-resistive construction, residents who are blind or who can walk independently assisted by crutches or other assistive devices shall be housed on a floor with direct grade level access.

(g) The facility may admit residents who require wheelchairs if the following conditions are met:

1. The resident is able to propel the wheelchair independently;

2. The resident's living unit shall be located on a floor at grade level, or if not at grade level, on a floor with handicap access to grade level;

3. The corridor on which the resident's living unit is located shall be at least 44 inches wide;

4. Each door through which the resident must travel to exit shall be at least 32 inches wide; and

5. The facility shall be in full compliance with uniform fire safety codes.

(h) If any condition listed in (g) above is not met, the facility may request approval from the Department to admit the resident. These conditions shall not apply to a resident who uses a wheelchair for convenience, but who is capable of ambulating independently without a wheelchair. The Department's determination will be made on a case-by-case basis.

(i) If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or his or her family, guardian, or designated community agency shall, upon written request, be given the reason for such denial in writing, signed by the administrator, within 15 days of the receipt of the written request.

(j) Each resident shall be admitted or retained only upon his or her own volition.

8:43-4.13 Involuntary discharge

(a) Written notification by the administrator or the administrator's designee shall be provided to a resident and/or his or her family, guardian, designated responsible person, and county welfare agencies of a decision to involuntarily discharge the resident from the facility. Such involuntary discharge shall only be upon grounds contained in the facility's policies and procedures and shall occur only if the resident has been notified and informed of such policies in advance of admission. The notice of discharge shall be given at least 30 days in advance of the involuntary discharge and shall include the reason for discharge and the resident's right to appeal. A copy of the notice shall be entered in the resident's record.

(b) The resident shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing and a copy shall be included in the resident's record with the disposition or resolution of the appeal. The resident shall have the right to retain legal counsel to appeal.

(c) In an emergency situation, as stated in N.J.A.C. 8:43-4.12*[(d)]***(e)*, for the protection of the life and safety of the resident or others, the facility may discharge the resident without 30 days notice. The Department and county welfare agencies shall be notified in the event of such discharge.

8:43-4.14 Notification requirements

(a) The resident's family, guardian, and/or responsible person or community agency*, the county welfare agency and any other agency in which the client is a participating program member or under treatment,* shall be notified, promptly after the occurrence, in the event of the following:

1. Any significant change in the resident's physical or mental status;

2. Any serious accident, criminal act or incident occurs which involves the resident and results in serious harm or injury or results in the resident's arrest or detention.

3. The transfer of the resident from the facility; or

4. The death of the resident.

(b) The Department shall also be notified of the events in (a)2 above.

(c) The notification required in (a) above shall be given at the time of occurrence, and then documented in the resident's record.

8:43-4.15 Policies and procedures for dispute resolution; forum for discussion of advance directives

(a) The facility shall establish procedures for considering disputes among the resident, health care representative and the attending physician concerning the resident's decision-making capacity or the appropriate interpretation and application of the terms of an advance directive to the resident's course of treatment. The procedures may include consultation with an institutional ethics committee, a regional ethics committee or another type of affiliated ethics committee, or with any individual or individuals who are qualified by their background and/or experience to make clinical and ethical judgments.

(b) The facility's policies shall establish a process for residents, families, and staff to discuss and address questions and concerns relating to advance directives and decisions to accept or refuse medical treatment.

8:43-4.16 Policies and procedures for advance directives

(a) For purposes of this Chapter, "advance directive" means a written statement of a resident's instructions and directions for health care in the event of future decision making incapacity, in accordance with the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., P.L. 1991, c.201. An advance directive may include a proxy directive, and instruction directive, or both.

(b) The facility shall develop and implement procedures to ensure that there is a routine inquiry made of each adult resident, upon admission to the facility and at other appropriate times, concerning the existence and location of an advance directive. If the resident is incapable of responding to this inquiry, the facility shall have procedures to request the information from the resident's family or, in the absence of a family member, another individual with personal knowledge of the resident. The procedures shall assure that the resident or family's response to this inquiry shall be documented in the resident's record. Such procedures shall also define the role of facility admissions, nursing, social service and other staff, as well as the responsibilities of the attending physician.

(c) The facility shall develop and implement procedures to promptly request and take reasonable steps to obtain a copy of currently executed advance directives from all residents. These shall be entered into the resident's record when received.

(d) The facility shall have procedures to provide each adult resident upon admission and, where the resident is unable to respond, the family or other representative of the resident, with a written statement of his or her rights under New Jersey law to make decisions concerning the right to refuse medical care and the right to formulate an advance directive. Such a statement shall be issued by the Commissioner. Appropriate information and materials on advance directives and the institution's written policies and procedures concerning implementation of such rights shall also be provided. Such written information shall also be made available in any language which is spoken, as a primary language, by more than 10 percent of the population served by the facility.

(e) The facility shall develop and implement procedures for referral of residents requesting assistance in executing an advance directive or additional information to either staff or community resource persons that can promptly advise and/or assist the resident.

(f) The facility shall develop and implement policies to address application of the facility's procedures for advance directives to residents who are experiencing an urgent life-threatening situation.

(g) A resident shall be transferred to another health care facility only for a valid medical reason, in order to comply with other applicable laws or Department rules, to comply with clearly expressed and documented resident choice, or in conformance with the New Jersey Advance Directives for Health Care Act in the instance of private, religiously affiliated health care institutions who establish policies defining circumstances in which they will decline to participate in the implementation of advance directives. Such institutions must provide notice of their policies to residents or their families or health care representatives prior to or upon admission.

A timely and respectful transfer of the individual to another institution which will implement the resident's advance directive shall be effected. The facility's inability to care for the resident shall be considered a valid medical reason. The sending facility shall receive approval from a physician and the receiving health care facility before transferring the resident.

(h) At least one education training program each year shall be held for all administrative staff and employees providing resident supervision and/or personal care on the rights and responsibilities of staff under the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., P.L. 1991, c.201, and internal facility policies and procedures which implement this law.

8:43-4.17 Building occupancy

(a) A facility licensed as a residential health care facility shall not be used for any other purpose, *[including the use of the facility for housing quarters of the owner, the administrator, or other employees, without prior approval from the Department]* ***with the following exception: the facility may be used for housing quarters of the owner, the administrator, or other staff members, if prior approval by the Department is obtained*.**

(b) Resident occupancy shall be limited to floors at or above the grade level, with the following exceptions:

1. Basement occupancy may be permitted if no more than one-half the height of the room or rooms to be occupied is below grade level and if there are no other conditions which might jeopardize the health, safety or welfare of the resident;

2. Any resident who requires assistance from staff to ambulate stairs shall be housed on a floor with grade level access; and

3. Any resident with a walker, crutch(es) or leg brace(es) shall be assessed before being placed on a floor other than a grade level floor in order to ensure that the resident is able to evacuate the building safely.

8:43-4.18 Resident bedrooms

(a) Each resident's personal living unit shall have direct access to corridors and toilet facilities without passing through the rooms of other residents, kitchen or dining areas, or other occupied rooms.

(b) No more than four residents shall be housed in one bedroom.

8:43-4.19 Interpretation services

The facility shall demonstrate the ability to provide a means to communicate with any resident admitted who is non-English-speaking and/or has a communication disability, using available community services.

SUBCHAPTER 5. ADMINISTRATION

8:43-5.1 Appointment of administrator

An administrator shall be appointed and an alternate shall be designated in writing to act in the absence of the administrator. The administrator or a designated alternate shall be available on the premises of the facility at all times.

8:43-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including resident rights;

2. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Ensuring that all personnel are assigned duties based upon their ability and competency to perform the job and in accordance with job descriptions;

4. Ensuring the provision of staff orientation and staff education; and

5. Establishing and maintaining liaison relationships and communication with facility staff and services and with residents and their families.

SUBCHAPTER 6. RESIDENT CARE POLICIES

8:43-6.1 Resident care policies and procedures

(a) Written resident care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures regarding the following:

1. Resident rights;
2. The determination of staffing levels to ensure a minimum of one hour of resident supervision for each resident of the facility during each 24-hour period. Supervision may be provided by on-duty employees who are engaged in the direct supervision and care of residents, and also by those providing basic services such as food service, housekeeping, laundry and general maintenance, who, by reason of their availability on the premises, provide care and supervision as needed;
3. The referral of residents to health care providers in order to provide a continuum of resident care;
4. Emergency medical and dental care of residents, including notification of the resident's family, guardian, or designated community agency, and care of residents during periods of acute illness;
5. Obtaining written informed consent for any medical procedures performed at the facility which require informed consent by law, and the circumstances under which written informed consent shall be obtained;
6. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and N.J.S.A. 26:3D-7 et seq. as follows:
 - i. Residents shall not be permitted to smoke in their rooms and in other secluded areas;
 - ii. Restricted smoking areas shall be designated and rules governing such smoking specified and rigidly enforced. Nonflammable ashtrays in sufficient numbers shall be provided in permitted smoking areas. In any area where smoking is permitted, there shall be adequate outside ventilation;
 - iii. A facility may continue to enforce a smoke-free policy in effect on the implementation date of these rules and shall set forth this policy in its admission agreement;
 - iv. At the facility's option, it may institute a smoke-free policy after the implementation date of these rules. Any prospective smoke-free policy shall be set forth in the facility's admission agreement and shall only apply to residents entering the facility on or after the policy's effective date. The facility shall protect the rights of resident smokers by providing a designated area with adequate outside ventilation for controlled smoking. If inside, the designated smoking room shall be adequately ventilated to prevent recirculation of smoke to other areas of the facility. If outside, the designated area shall provide reasonable protection from inclement weather;
7. Discharge, termination by the facility, transfer, and readmission of residents, including criteria for each;
8. The care and control of pets, if the facility permits pets in the facility or on its premises ***(see recommendations set forth in Appendix E)***;
9. ***[Residents leaving the facility or its premises, including expected time of return. The facility shall have a system, such as a sign-in sheet, to document resident's time of leaving, destination and time of return;]* *A system to monitor residents leaving the facility or its premises, which shall include a policy to determine those circumstances where the resident's absence shall be investigated;*** and
10. Care of deceased residents, including, but not limited to, policies and procedures regarding the following:
 - i. Pronouncement of death: The resident's family, guardian, or designated community agency shall be notified at the time of death. The deceased shall not be removed from the facility until pronounced dead and the death is documented in the resident's medical record; and
 - ii. Transportation of the deceased in the facility, and removal from the facility, in a dignified manner.

8:43-6.2 Financial arrangements

- (a) The facility shall:

1. Inform residents of any and all fees for services provided and charges for supplies routinely utilized. The resident shall also be informed of costs of supplies which are specially ordered;

2. Maintain a written record of all financial arrangements with the resident and/or his or her family, guardian, or designated community agency, with copies furnished to the resident and, upon request, to the person or agency with whom the arrangements were made;

3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

i. Upon written approval and authority of the resident and/or his or her family, guardian, or designated community agency, who shall be given a copy of the written approval; ***or***

ii. Upon written orders of the resident's physician, stipulating specific services not included in the admission agreement; ***or***

iii. Upon 30 days' prior written notice to the resident and/or his or her family of charges, expenses, or other financial liabilities that are in addition to the agreed daily, weekly, or monthly rate. The resident's prior written approval for additional charges shall not be required in the event of a health emergency that requires the resident to receive immediate special services or supplies; and

4. Provide the resident with information regarding financial assistance available from third-party payors and/or other payors and referral systems for residents' financial assistance.

8:43-6.3 Personal needs allowance

(a) The administrator or his or her representative shall reserve for each resident who receives Supplementary Security Income (SSI) or General Public Assistance a monthly personal needs allowance of at least the amount specified by the Division of Youth and Family Services of the New Jersey State Department of Human Services pursuant to N.J.S.A. 44:7-87(h) and N.J.A.C. 10:123-3, and under the following conditions:

1. The resident shall not be required to provide the owner, administrator, employee or their representative(s) with any portion of the personal needs allowance.

2. No owner, administrator, employee or their representative(s) shall coerce, intimidate, or exploit residents into providing them with any portion of the personal needs allowance.

3. Each resident shall receive his or her personal needs allowance within three working days of the receipt of the check by the administrator.

(b) Every administrator to whom a resident's personal funds are entrusted shall maintain written records, such as a ledger, including the date each payment was received, the amount of payment, the date of each disbursement, the amount of each disbursement, the reason for each disbursement and to whom each disbursement was made.

(c) The resident shall sign to acknowledge receipt of funds, goods or services purchased with such funds at the time of disbursement.

(d) Residents' funds received in trust or on deposit with the facility shall be kept in a separate bank account(s) and not commingled with the facility's general funds. If residents' funds are kept in an interest bearing account, all interest earned shall be credited to the resident after bank charges, if any, are deducted.

SUBCHAPTER 7. PERSONAL CARE SERVICES

8:43-7.1 Provision of personal care services

[(a)] Each resident shall be provided with personal care services (bathing, oral hygiene, hair care, manicuring and pedicuring, and shaving) as needed to maintain acceptable personal hygiene.

8:43-7.2 Resident clothing

(a) The administrator or the administrator's designee shall assist residents in obtaining clothing which is suitable for the climate and weather conditions, of proper size, and in sufficient amounts for necessary changes.

(b) Clothing shall be laundered as frequently as necessary to maintain cleanliness, in accordance with N.J.A.C. 8:43-15.8.

ADOPTIONS

HEALTH

8:43-7.3 Facilities and furnishings

(a) The administrator shall ensure that each resident has, within his or her sleeping area, the following items, which shall at all times be clean and comfortable and in good repair:

1. Beds:
 - i. A standard bed not less than 36 inches in width;
 - ii. A bedspring which is in good condition;
 - iii. A mattress not less than four inches in thickness that fits the bed.
 - iv. Beds shall not be located under windows, against radiators or air conditioners, or in alcoves unless a resident has chosen to place his or her bed in such a location and the administrator has determined that such placement poses no safety risk to the resident.
 - v. Roll-away beds, day beds, cots and latex foam mattresses shall be prohibited. (Day beds may be permitted, if the resident so requests.)
2. Pillows: At least one standard size pillow. Extra pillows available to meet the needs of the resident. Latex foam pillows shall be prohibited.
3. Chairs: At least one chair.
4. Reading light: A reading light and/or a bed light.
5. Storage:
 - i. A closet in the resident's room;
 - ii. A dresser or chest for personal possessions;
 - iii. A night table.
6. Bed linen:
 - i. A moisture-proof mattress or a moisture-proof mattress cover or pad which can be removed for cleaning or laundering;
 - ii. A pillowcase for each pillow;
 - iii. At least two sheets or two sheet blankets or a combination thereof; sheets and pillowcases shall be changed at least weekly and more often if necessary;
 - iv. A washable blanket and such additional blankets as are necessary for the resident's comfort;
 - v. A bedspread.
7. Personal linen: A washcloth and a bath towel which shall be changed when soiled.
8. Windows: Shades, curtains, drapes, or blinds shall be provided for all windows, to ensure privacy.

SUBCHAPTER 8. DIETARY SERVICES

8:43-8.1 Provision of meals

The residential health care facility shall provide dietary services to meet the daily nutritional needs of residents.

8:43-8.2 Requirements for dietary services

(a) The facility shall establish and implement written policies and procedures for the provision of dietary services.

(b) Beginning January 1, 1994, ***or subsequent date as determined by the Commissioner,*** the facility shall designate a consultant dietician to be responsible for the direction, provision, and quality of the dietary service, ***[unless]* *when*** the Commissioner determines that adequate funds are ***[not]*** available to implement the requirements, based upon a financial analysis conducted subsequent to ***[an increase in]***:

1. ***An increase in*** Supplemental Security (S.S.I.) income by the State of New Jersey (see N.J.S.A. 44:7-85 et seq.);
2. ***Additional third*** ***[Third]*** party insurance coverage of residential health care facility services; or
3. ***A finding that the majority of providers have adequate revenues*** ***[Revenues]*** in excess of expenses ***[for a majority of providers]***.

(c) Notice of ***[any postponement or suspension]*** of the operative date ***[in]* *of*** (b) above shall be provided in the New Jersey Register by the Commissioner.

(d) The dietician required in (b) above shall be responsible for, but not limited to, the following:

1. Participating in developing and implementing written objectives, policies, a procedure manual, an organization plan, and a quality assurance program for the dietary service;
2. Participating in planning and budgeting for the dietary service;

3. Ensuring that dietary services are provided to meet the dietary needs of residents;

4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Participating in staff education activities and providing consultation to facility personnel; and

6. Providing nutritional counseling.

(e) If the facility fails to substantially comply with the requirements of this subchapter, or if residents of the facility have significant nutritional deficiencies, the Department may require a consultant dietician to be retained by the facility to assist in correcting the deficiencies in dietary services cited by the Department, in addition to other enforcement actions. The facility shall retain the consultant dietician until all deficiencies have been corrected.

(f) The facility shall provide:

1. Policies and procedures for planning, preparing, and serving meals, purchasing food, supervising residents at mealtime, and providing therapeutic diets in accordance with admission policy of the facility and as prescribed by the resident's physician. "Therapeutic diet" means a diet prescribed by a physician, and may include modifications in nutrient content, caloric value, consistency, methods of food preparation, content of specific foods, or a combination of these modifications;

2. Nutrients and calories for each resident, in accordance with current recommended dietary allowance of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, and physical activity, therapeutic needs of the resident if therapeutic diets are provided, and Appendix A*, **A Daily Food Guide***;

3. A current diet manual;

4. Diets served to residents that are consistent with the diet manual;

5. Written menu plans for all meals and snacks;

6. For each resident at each meal, a place setting consisting of at least a dish(es), a glass and/or cup, fork, spoon, and napkin, and a knife or additional utensils as required or requested by the resident; and

7. For each resident's use, in the dining room at each meal, salt, pepper, sugar or sugar substitute, dairy or non-dairy additives for beverages, and condiments, unless contraindicated by the resident's physician.

(g) All meals shall be served in the dining room. Exceptions may be made if the resident is ill, or requests that his or her meal be served in another location.

(h) All meals shall be attractive when served to residents.

(i) The facility and personnel shall comply with the provisions of Chapter XII of the New Jersey Sanitary Code, N.J.A.C. 8:24 (see Appendix C).

8:43-8.3 Administrator's responsibilities

(a) The administrator or the administrator's designee shall ensure that the dietary service:

1. Selects foods and beverages, which include fresh and seasonal foods, and prepares menus with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of residents;

2. Has written and dated menus for all meals and snacks, planned at least seven days in advance for all diets. The same menu shall not be used more than once in any continuous seven day period. The facility shall offer substitute food and drink of equivalent nutritional value, if requested by a resident at least 24 hours in advance;

3. Posts current menus, with portion sizes, in the food preparation area and in a conspicuous place in residents' area, or provides a copy of the menu to each resident. Any changes or substitutes in menus shall be posted or provided in writing to each resident. Menus, with changes or substitutes, shall be kept on file in the facility for at least 30 days;

4. Prepares and serves daily to residents at least three meals;

5. Complies with written policies regarding meal hours. No more than 15 hours shall elapse between an evening meal and breakfast

the next morning, and the first meal shall not be served before 7:00 A.M.;

6. Provides evening snacks and beverages;
7. Prepares food by cutting, chopping, grinding, or blending to meet the needs of each resident;
8. Provides self-help feeding devices as required by residents;
9. Maintains a file of recipes for menu items that require a recipe, adjusted to yield, which shall be used in preparing foods listed on the posted menus;
10. Maintains thermometers in refrigerators and freezers;
11. Adheres to written policies and procedures for the selection, storage, use, and disposition of nondisposable and disposable items. Disposable items shall not be reused;
12. Prepares work schedules for the dietary service so as to allow residents to eat at their own pace;
13. Maintains at least a three-day supply of non-perishable food on the premises; and
14. Develops a written schedule of cleaning operations for the kitchen, including daily, weekly, monthly, or annual tasks.

8:43-8.4 Commercial food management services

If a commercial food management firm provides dietary services, it shall be required to conform to the standards of this subchapter.

SUBCHAPTER 9. HEALTH SERVICES

8:43-9.1 Health maintenance and monitoring services

(a) The residential health care facility shall provide health maintenance and monitoring services under the direction of a registered professional nurse.

(b) The facility shall have at least one registered professional nurse available at all times. Available, in this instance, shall mean on call and capable of being reached by telephone.

(c) A registered professional nurse shall be designated in writing as the director of health maintenance and monitoring services and shall be responsible for the direction, provision and quality of health maintenance and monitoring services. The director shall be responsible, in coordination with the administrator, for developing and implementing written objectives, standards of practice, policies and procedures and an organization plan for the health maintenance and monitoring service. The director may be employed directly by the facility or on a contractual basis.

(d) Written policies and procedures shall include, but not be limited to the following:

1. Assessing the health service needs of all residents in the facility;
2. Monitoring the conditions of the residents on a continuing basis;
3. Notification of the administrator if there are significant changes in a resident's condition;
4. Assessing the resident's need for referral to a physician or community agencies as appropriate;
5. Maintaining records as required by the facility; and
6. Serving as a resource person and health educator to the residents and to the administrator of the facility.

(e) The facility shall provide health maintenance and monitoring services according to the following schedule:

1. The facility shall provide a minimum of 0.25 hours of nursing care from a registered professional nurse per resident per week. Facilities having an average resident census, over a 12-month period, of greater than 75 percent or more residents whose source of income is SSI, Municipal Assistance or Interim Assistance shall be exempted and shall provide a minimum of 0.20 hours of nursing care from a resident professional nurse per resident per week. A facility claiming that 75 percent or more of its residents are SSI, Municipal Assistance, or Interim Assistance recipients shall provide documentation to the Department and receive approval prior to reducing health monitoring and maintenance staffing to the level of 0.20 hours of nursing care. ***So long as the total minimum hourly requirement is met, the registered professional nurse shall determine whether visits to an individual resident shall be weekly, biweekly, or according to a schedule based on the individual resident's needs, as determined by the nurse's assessment.***

2. Beginning January 1, 1994, ***or subsequent date as determined by the Commissioner,*** if the Commissioner determines that adequate funds are available to implement these requirements, based upon a financial analysis conducted subsequent to an increase in SSI funding by the State of New Jersey; or additional third party insurance coverage is available; or that the Commissioner has issued a finding that the majority of providers have adequate revenues in excess of expenses, the facility shall provide a minimum of 0.33 hours (20 minutes) of nursing care from a registered professional nurse per resident per week, of which a maximum of 0.13 hours (8 minutes) of each 0.33 hours (20 minutes) of nursing care may be delegated to a licensed practical nurse. Notice of ***[any postponement or suspension of]*** the operative date in this paragraph shall be provided in the New Jersey Register by the Commissioner.

8:43-9.2 Provision of health services

(a) The facility shall arrange for health services to be provided to residents as needed.

(b) At the time of admission, arrangements shall be made between the administrator and the resident, guardian, or designated community agency regarding the physician and dentist to be called in case of illness, or the person to be called for a resident who, because of religious affiliation, is opposed to medical treatment.

(c) Beginning January 1, 1994, or subsequent date published in the New Jersey Register in accordance with N.J.A.C. 8:43-9.1(e)2, each resident shall be screened by a licensed professional nurse at least monthly. Screening shall be done every 60 days, until the time monthly screening begins. "Screening" means a personal evaluation of the resident which includes a review of the resident's physical and mental status, progress in response to nursing interventions, and education of the resident to new nursing interventions. The licensed professional nurse shall document each resident's monthly screening in the resident record.

(d) The registered professional nurse shall notify the resident's physician of any significant change in the resident's physical or psychological condition.

(e) Each resident shall receive an initial nursing assessment, and, beginning January 1, 1994, ***or upon the operative date of N.J.A.C. 8:43-9.1(e)2 above, whichever is later,*** a quarterly nursing assessment from the registered professional nurse. Until quarterly screening begins, each resident shall receive a semiannual nursing assessment from the registered professional nurse. The nursing assessment shall include, at a minimum, evaluation of the following:

1. Cognitive patterns;
2. Communication/hearing patterns;
3. Vision patterns;
4. Physical functioning and structural problems;
5. Continence;
6. Psychosocial well-being;
7. Mood and behavior patterns;
8. Activity pursuit patterns;
9. Disease diagnoses;
10. Health conditions;
11. Oral/nutritional status;
12. Oral/dental status;
13. Skin condition;
14. Medication use; and
15. Special treatment and procedures.

(f) Notice of ***[any postponement or suspension of]*** the operative dates in (c) and (e) above shall be provided in the New Jersey Register by the Commissioner.

(g) The nursing assessment required by (e) above shall be documented on the minimum data set for resident assessment and care screening (MDS), which is included in Appendix B, or on an equivalent assessment instrument which has been developed by the facility and approved by the Department prior to its use.

(h) The registered professional nurse or a physician shall be called at the onset of illness of any resident to arrange for assessment of the residents's nursing care needs of medical needs and for the needed nursing care intervention or medical care.

(i) A resident with a temporary illness may be cared for in a residential health care facility for a period not to exceed one week. If a resident needs bed care for a more extended period, arrangements shall be made for his or her prompt transfer to an appropriate health care facility.

(j) Each resident shall have an annual physical examination by a physician, which shall be documented in the resident's record. The physician shall certify annually that the resident does not have needs which exceed the care provided by the residential health care facility. ***A collaborating physician may delegate responsibility for the physical examination to a nurse practitioner/clinical nurse specialist, in accordance with N.J.A.C. 13:37-7.***

(k) Residents shall be permitted free choice of a physician.

(l) The administrator shall arrange for a physician to be available for emergencies, including injuries or accidents to residents, or when required by a resident's condition.

(m) If the physician determines the need for a transfer to another health care facility because the residential health care facility cannot meet the resident's needs, such transfers shall be initiated promptly. The registered professional nurse shall be notified to ensure that the resident is receiving appropriate care during the transfer period. If the resident is not transferred within seven days, the Department shall be notified and assistance shall be requested from the Department to arrange for transfer of the resident.

SUBCHAPTER 10. MEDICATIONS

8:43-10.1 Self-administration of medications

(a) A designated employee shall provide resident supervision and/or assistance during self-administration of medications in accordance with physicians' orders*, or orders from a nurse practitioner/clinical nurse practitioner who has written joint protocols with a collaborating physician, in accordance with N.J.A.C. 13:37*. Any employee who has been designated to provide resident supervision or assistance during self-administration of medications shall have received training from the health maintenance and monitoring nurse, the provider pharmacist, or the consultant pharmacist.

1. The facility shall document the provision of training to each employee who has been designated to provide resident supervision and/or assistance with self-administration of medications; and

2. The facility shall document any observed instance where medications are not taken in accordance with physician's orders.

(b) Self-administration of medications by residents shall be performed as follows:

1. By removing a dose from a previously dispensed, properly labeled container (including a unit dose container);

2. By verifying it with the directions on the label; and

3. By taking orally, injecting, inserting, or otherwise administering the medication.

8:43-10.2 Designation of a consultant pharmacist

(a) The facility shall designate a consultant pharmacist who shall be responsible for the direction, provision, and quality of pharmaceutical services. The consultant pharmacist may be the director of pharmaceutical services or pharmacist provider. The consultant pharmacist shall be responsible for, but not limited to, the following:

1. Training of employees;

2. Educating staff and residents regarding medications;

3. Establishing policies and procedures which ensure safe and appropriate self-administration of medications;

4. *[Reviewing medication records]* ***Drug regimen review***; and

5. Inspecting all areas in the facility where medications are stored and maintaining records of such inspections.

(b) The consultant pharmacist shall be present in the facility at least quarterly and shall provide written reports to the administrator and to the health maintenance and monitoring nurse.

(c) If the facility fails to substantially comply with the requirements of this subchapter the Department may require a pharmacist be retained by the facility to assist in correcting the deficiencies in pharmaceutical services cited by the Department, in addition to the

requirements at (b) above, and in addition to other enforcement actions. The facility shall retain the pharmacist until all deficiencies have been corrected.

8:43-10.3 Storage of medications

(a) The facility shall provide a medication storage area of sufficient size for the storage of all medications of residents, and shall assure that:

1. The storage area shall be conveniently located and adequately lighted;

2. The storage area shall be kept locked when not in use;

3. The storage area shall be used only for storage of medications and medical supplies;

4. The key to the storage area shall be kept on the person on duty responsible for resident supervision; and

5. Each resident's medications shall be kept separated in the storage area, with the exception of large volume medications which may be labeled and stored together in the storage area.

(b) If a resident is authorized through a written physician's order *, or order from a nurse practitioner/clinical nurse practitioner who has written joint protocols with a collaborating physician, in accordance with N.J.A.C. 13:37* to store medications in such resident's room, the facility shall provide a secure locked area for storage of such medications which complies with the requirements for medication storage areas stated in (a)1 and 2 above. Exceptions for emergency medications to remain unlocked in the resident's room may be made with the approval of the consultant pharmacist.

(c) Medications shall be stored in accordance with manufacturer's instructions.

(d) Medications which require refrigeration shall be properly maintained. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopeia) requirements. If medications are stored in a refrigerator in common with food, medications shall be stored in a container which is securely fastened to the refrigerator and locked.

(e) All medications shall be kept in their original containers and shall be properly labeled and identified.

1. The label of each resident's prescription medication container shall be permanently affixed and contain the resident's full name, physician's name, prescription number, name and strength of drug, ***directions for use,*** lot number, date of issue, expiration date, manufacturer's name if generic, and cautionary and/or accessory labels. If a generic substitute is used, the drug shall be labeled according to the Drug Utilization Review Council Formulary, N.J.A.C. 8:71 and N.J.S.A. 24:6E-1 et seq. Required information appearing on individually packaged drugs or within an alternate medication delivery system need not be repeated on the label.

2. All over-the-counter (OTC) medications repackaged by the pharmacy shall be labeled with an expiration date, name and strength of the drug, lot number, date of issue, manufacturer's name if generic, and cautionary and/or accessory labels. Original manufacturer's containers shall be labeled with at least the resident's name, and the name label shall not obstruct any of the aforementioned information.

3. If a unit dose drug distribution system is used, each dose of medication shall be individually packaged in a hermetically sealed, tamper-proof container, and shall carry full manufacturer's disclosure information on each discrete dose. Disclosure information shall include, but not be limited to, the following: product name and strength, ***directions for use,*** lot number, expiration date, and manufacturer's or distributor's name. ("Bingo" or punch card systems are not required to have each discrete dose labeled.)

(f) Single use and disposable items shall not be reused.

(g) No stock supply of prescription medications shall be maintained.

(h) Discontinued or expired medications shall be destroyed within 30 days, in the facility. All medication destruction in the facility shall be witnessed by two persons, each of whom shall be either the administrator, the licensed nurse or the consultant pharmacist.

SUBCHAPTER 11. RECREATIONAL SERVICES

8:43-11.1 Provision of recreational services

(a) A planned, diversified program of recreational activities shall be offered at least 6 days a week, including individual and/or group activities, on-site or off-site, to meet the needs of residents.

(b) A diversity of programs shall be available to maintain residents' sense of usefulness and self-respect, including at a minimum, on a monthly basis, the following:

1. Social, such as parties, club meetings, picnics, and other special events;
2. Physical, such as exercise, sports, dancing, and swimming;
3. Creative, educational and cultural, such as crafts, poetry, drama, music, art, gardening, discussion groups, and guest speaker programs;
4. Spiritual, such as religious services;
5. Awareness, including, for example, cognitive and sensory individual and group stimulation for residents; and
6. Community-integrating, such as visits by community volunteers, visits by nursery school classes, exchange visits with other health care facilities, participation in senior citizen organization meetings or support group sessions, and participation in adopt-a-grandparent programs.

(c) If the facility requires an exception from any of the categories of activities listed at (b)1 through 6 above, reasons for the exception, such as impracticability or lack of appropriateness or interest on the part of residents, shall be documented.

(d) Indoor and outdoor recreational activities shall be provided.

(e) Residents shall have the opportunity to organize and participate in a resident council that presents the resident's concerns to the administrator of the facility.

8:43-11.2 Administrator's responsibility for recreational services

(a) The administrator or the administrator's designee shall be responsible for the direction, provision, and quality of the recreational service. The administrator shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual and an organizational plan for the recreational service;
2. Ensuring that recreational services are provided and are coordinated with other resident care services to provide a continuum of care for the resident;
3. Assisting in developing and maintaining written job descriptions for recreational service personnel, and assigning duties based upon education, training, competencies, and job descriptions; and
4. Posting a current weekly recreational activities schedule where it can be read by residents and staff.

SUBCHAPTER 12. EMERGENCY SERVICES AND PROCEDURES

8:43-12.1 Emergency medical services

(a) The facility shall have a procedure to access all available emergency medical services.

(b) The facility shall have a written plan for arranging for emergency transportation of residents to another health care facility for care and returning them to the residential health care facility.

(c) The facility shall maintain first aid supplies to meet the emergency needs of the residents. The supplies shall be approved by the physician who is available for resident emergencies and reviewed by the provider pharmacist.

8:43-12.2 Emergency plans and procedures

(a) The facility shall develop written emergency plans, policies, and procedures which shall include plans and procedures to be followed in case of medical emergencies, power failures, fire, or natural disasters. The emergency plans shall be filed with the Department of Health and the Department shall be notified when the plans are changed. Copies of emergency plans shall also be forwarded to both municipal and county emergency management officials for their review.

(b) The emergency plans, including a written evacuation diagram specific to the unit that includes evacuation procedure location of fire exits, alarm boxes, and fire extinguishers, and all emergency procedures shall be conspicuously posted throughout the facility. All employees shall be trained in procedures to be followed in the event of a fire and instructed in the use of fire-fighting equipment and resident evacuation as part of their initial orientation and at least annually thereafter.

(c) Procedures for emergencies shall specify persons to be notified, process of notification and verification of notification, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating residents, procedures for reentry and recovery, frequency of fire drills, tasks and responsibilities assigned to all personnel, and shall specify medications and records to be taken from the facility upon evacuation and to be returned following the emergency.

8:43-12.3 Drills and tests

(a) The facility shall conduct at least one drill of the emergency plans every month, of which at least one annually shall take place during every working shift. The facility shall maintain documentation of all drills, including the date, hour, description of the drill, participating staff, and signature of the person in charge. In addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, other natural disaster, bomb threat, or nuclear accident (a total of 12 drills). All staff shall be assigned to participate in at least one drill annually, and selected residents may participate in drills.

(b) ***The facility shall request of the local fire department that at least one joint fire drill [shall] be conducted annually[, involving the local fire department]*. *Upon scheduling a joint fire drill, the [The] facility shall notify first aid and civil defense agencies of this drill and shall participate in community-wide disaster drills.**

(c) The facility shall test at least one manual pull alarm each month of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(d) Fire extinguishers shall be conspicuously hung, kept easily accessible, shall be visually examined monthly and the examination shall be recorded on a tag which is attached to the fire extinguisher. Fire extinguishers shall also be inspected and maintained in accordance with manufacturers' and applicable National Fire Protection Association (NFPA) requirements. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

SUBCHAPTER 13. RESIDENT RECORDS

8:43-13.1 Maintenance of resident records

(a) A current, complete record shall be maintained for each resident.

(b) Records and information regarding the individual resident shall be considered confidential and the resident shall have the opportunity to examine such records, in accordance with facility policies. The written consent of the resident shall be obtained for release of his or her records to any individual not associated with the facility, except in the case of the resident's transfer to another health care facility, or as required by law, third-party payor, or authorized government agencies.

(c) All resident records shall be maintained for a period of 10 years after the discharge of a resident from the home.

(d) The following records shall be maintained and shall be kept available on the premises for review at any time by representatives of the Department of Health:

1. A register which contains a current census of all residents, along with other pertinent information shall be maintained by each residential health care facility. The following standards for maintaining the register shall apply:

i. The administrator or the administrator's designee shall make all entries in the register and shall be responsible for its maintenance and safe-keeping;

ii. The register shall be kept up-to-date at all times. Admissions, discharges and discharge destination, and other changes shall be recorded within 24 hours;

iii. The register, which is a permanent record, shall be kept in a safe place, in a fire-resistant container; and

iv. All entries into the register shall be clear, legible, and written in ink or typed.

2. Each resident's record shall include at least the following:

i. The resident's completed admission application and all records forwarded to the facility;

ii. The resident's name, last address, date of birth, name and address of sponsor or interested agency, date of admission, date of discharge (and discharge destination) or death, the name, address and telephone number of physician to be called, and the name and address of nearest relative, guardian, responsible person, or interested agency, documentation of the existence or nonexistence of an advance directive and the facility's inquiry of the resident concerning this, together with any other information the resident wishes to have recorded;

iii. A statement by a physician of the individual's suitability for admission to the facility, as specified in N.J.A.C. 8:43-4.12(c). The administrator or the administrator's designee shall be responsible for having the certification properly completed and signed by a physician. When first contact is made regarding the placement of an individual in the facility, the administrator or the administrator's designee shall inform the individual making the inquiry that the medical certification must be completed before admission;

iv. Whenever a resident dies in the residential health care facility, the administrator or the administrator's designee shall include written documentation from the physician of the date and time of death, the name of the person who pronounced the death, disposition of the body, and a record of notification of the family;

v. A complete record of physicians' *or nurse practitioner/certified nurse specialist* visits, as known by the facility, including dates and physician's *or NP/CNS* comments if applicable; and

vi. Annual nursing assessments and nurse's health monitoring and maintenance notes, entered in accordance with N.J.A.C. 8:43-9.2 or more frequently based on individual resident's needs.

SUBCHAPTER 14. RESIDENT RIGHTS

8:43-14.1 Policies and procedures regarding resident rights

(a) The facility shall establish and implement written policies regarding the rights and responsibilities of residents, and shall be responsible for developing and adhering to procedures implementing such policies. These policies and procedures and a copy of N.J.S.A. 55:13B-17 et seq. shall be given to residents and their next of kin and/or sponsors and/or guardians, and to each member of the facility's staff. These policies and procedures and N.J.S.A. 55:13B-17 et seq. shall also be conspicuously posted in the facility.

(b) Each employee of the facility, upon employment, shall receive inservice education concerning the implementation of policies and procedures regarding resident rights.

(c) The facility shall comply with all applicable State and Federal statutes, rules, and regulations concerning resident rights, including N.J.S.A. 52:27G-7.1 et seq. and Chapter 500, P.L. 1979, N.J.S.A. 55:13B-17 et seq.

(d) Any suspected case of resident abuse or exploitation shall be reported to the county welfare agency, in accordance with P.L. 1979, c.469, the Rooming and Boarding House Act of 1979. If the resident is 60 years of age or older, the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall also be notified, pursuant to N.J.S.A. 52:27G-7.1 et seq.

8:43-14.2 Rights of each resident

(a) Resident rights, policies, and procedures shall ensure that, as a minimum, each resident admitted to the facility:

1. Is informed of these rights, as evidenced by his or her written acknowledgment, and is given a statement of these rights and the facility's rules and regulations, and an explanation of the resident's responsibility to adhere to all regulations of the facility and to respect the personal rights and private property of other residents;

2. Is informed, and is given a written statement prior to or at the time of admission and during stay, as documented in the resident's record, of services available in the facility and of all charges including room, board, laundry, and personal services, and is given written notification at least 30 days prior to any change in charges. This statement shall include the payment, fee, deposit, and refund policy of the facility;

3. Is allowed to retain the services of his or her personal physician at his or her own expense or under a third-party payment system; is assured of assistance in obtaining medical care, may refuse medication and treatment, after being informed of the effects of such actions; and may refuse to participate in research projects (but if the resident chooses to participate, his or her informed written consent shall be obtained);

4. Is, except in the case of an emergency, transferred or discharged only for medical reasons or for his/her welfare or that of other residents upon the written order of the resident's physician, who shall document the reason for the transfer or discharge in the resident's record, or for nonpayment for the resident's stay, or for repeated violations of the facility's written rules and regulations after being advised of them in writing, if required by the Department, or to comply with clearly expressed and documented resident choice, or in conformance with the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., as specified in N.J.A.C. 8:43-4.16;

i. If a transfer or discharge on a non-emergency basis is requested by the facility, the resident or, in the case of an adjudicated mentally incompetent resident, the next of kin and/or sponsor and/or guardian, shall be given at least 30 days advance notice in writing of such transfer or discharge;

5. Is encouraged and assisted, throughout the period of stay, to exercise rights as a resident and as a citizen, and to this end may voice grievance on behalf of himself or herself or others, initiate action for damages or other relief for deprivations or infringements of the right to treatment and care established by any applicable statute, rule, regulation, or contract, and recommend changes in policies and services to facility personnel and/or to outside representatives of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal.

i. The administrator shall provide all residents and/or next of kin and/or sponsors and/or guardians with the following names, addresses, and telephone numbers where complaints may be lodged:

Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367

Trenton, N.J. 08625

Telephone: (800) 792-9770 and

State of New Jersey

Office of the Ombudsman for the

Institutionalized Elderly

CN 808

Trenton, N.J. 08625

Telephone: (800) 624-4262

ii. These telephone numbers shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices. The facility shall also conspicuously post the name, address, and telephone number of the county welfare agency and the county office on aging.

6. Is free from mental and physical abuse, free from exploitation, in accordance with N.J.S.A. 52:27G-7.1, and free from chemical and physical restraints. Drugs and other medication shall not be used for punishment, for convenience of facility personnel, or in quantities that interfere with a resident's living activities;

7. Is allowed to keep and use his or her personal property, including at least clothing and personal possessions used on a daily basis, unless this would be unsafe, impractical, or an infringement on the rights of other residents. The residential health care facility must provide reasonable protection of the resident's personal possessions from theft, loss, and misplacement;

8. Is assured confidential treatment of his or her personal and health and social records and has the opportunity to examine such

records. The written consent of the resident shall be obtained for release of his or her records to any individual outside the facility, except in the case of the resident's transfer to another health care facility, or as required by law or third-party payor;

9. Is treated with consideration, respect, and full recognition of his or her dignity, individuality, and right to privacy, including, but not limited to, privacy concerning his or her treatment and condition and the care of his or her personal needs. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

10. Is not required to perform services for the facility. If the resident volunteers to perform services for the facility, the resident shall receive *[direct]* supervision;

11. May associate and communicate privately with persons of his or her choice, may have reasonable opportunities for private and intimate physical and social interaction with other people, may join with other residents or individuals within or outside the facility to work for improvements in resident care, may send and receive personal mail unopened, and upon his or her request, shall be given assistance in the reading and writing of correspondence;

i. The facility shall, with the consent of the resident being visited, permit visitors, legal services representatives, employees of the Department of the Public Advocate, employees and volunteers of the Office of the Ombudsman for the Institutionalized Elderly in the Department of Community Affairs, representatives of governmental welfare and social agencies, and all governmental representatives full and free access at a reasonable hour to the facility in order to visit with, and make personal, social and legal services available to all residents;

12. May participate in facility activities, and meet with, and participate in activities of social, religious, and community groups at his/her discretion; and has the opportunity for physical exercise and the opportunity to be outdoors;

13. Is allowed to leave the facility. If the resident's absence is medically contraindicated, the physician or other appropriate person(s) shall be notified in the event that the resident leaves the facility;

14. May retain and use personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except where the facility can demonstrate that such would be unsafe, impractical to do so, infringes upon the rights of others and that mere convenience is not the facility's motive to restrict this right. If the resident has property on deposit with the facility, he or she shall have daily access to such property during specific periods established by the facility, and at a reasonable hour;

15. Has the right to unrestricted communication, including personal visitation with any person of his or her choice during visiting hours, which must be set at reasonable times and for no less than 12 hours per day. The facility shall develop policies specifying times when visits are allowed and shall conspicuously post its visiting hours;

16. The facility shall develop policies and procedures so that the resident is allowed visits from his or her next of kin and/or sponsor and/or guardian at any time, if ill. Members of the clergy shall be notified by the facility at the resident's request, and shall be admitted at the request of the resident and/or next of kin and/or sponsor and/or guardian at any time. Privacy shall be ensured for visits with his or her family, friends, clergy, social workers, attorney, counselor, advocates, or for professional or business purposes;

17. Is allowed unaccompanied access to telephones, in the facility, at a reasonable hour, both to make and to receive confidential calls, and has the right to a private telephone at his or her expense. If the facility provides telephones which are not coin-operated, the resident shall be charged no more than the actual cost of the call, except that an access fee no greater than the charge for a local call on a coin-operated telephone may be charged;

18. Is not required to go to bed and has the right to be outside his or her bedroom;

19. Is allowed, or his or her next of kin and/or sponsor and/or guardian and/or conservator, as defined in N.J.S.A. 3B:13A-1 through 13A-36, Laws of 1983, Chapter 192, is allowed, to manage

the resident's personal financial affairs, or is given at least a quarterly written statement of financial transactions made on his or her behalf, should the facility accept his or her written delegation of this responsibility.

i. The written delegation of responsibility shall be witnessed by a person who is unconnected with the facility, its operations, and its personnel, and shall be included in the resident's record;

ii. The financial statement shall account for all the resident's property on deposit at the beginning of the quarter, all deposits and withdrawals transacted during the quarter (substantiated by receipts given to the resident or his or her next of kin and/or sponsor and/or guardian), and the property on deposit at the end of the quarter;

iii. The facility shall maintain a monthly written record for each resident who receives Social Security Administration (SSA) and/or Supplemental Security Income (SSI) checks. The written record shall include the resident's name, the date and amount of each check, the date and amount of each disbursement, the reasons for each disbursement, and to whom each disbursement was made;

iv. Each resident residing in a residential health care facility who receives benefits generated from the Home Energy Assistance Program shall not be required to provide the owner, operator, employee, or their representative with any portion of monies provided through the Home Energy Assistance Program. No owner, operator, employee, or representative of the facility shall coerce, intimidate, or exploit residents into providing them with any portion of their home energy assistance checks;

20. Is assured of exercising civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any resident or facility. Knowledge of available choices shall not be infringed upon and the facility shall encourage and assist in the exercise of these rights. Arrangements shall be made, at the resident's expense, for attendance at religious services of his or her choice when requested;

21. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions. The resident's participation may be restricted or prohibited if recommended by the resident's physician in the resident's record, and consented to by the resident;

22. Is not deprived of any constitutional, civil, and/or legal rights solely by reason of admission to the facility. Such rights shall include, but not be limited to, the right to gainful employment, to move to a different living arrangement, to wear his or her own clothing, and to determine his or her own dress, hair style, and other personal choices according to individual preference; and

23. Is allowed to discharge himself or herself from the facility upon presentation of a written *[release]* *notice to the administrator* and, in the case of an adjudicated mentally incompetent resident, upon the written consent of his or her next of kin and/or sponsor and/or guardian.

SUBCHAPTER 15. HOUSEKEEPING, SANITATION, SAFETY AND MAINTENANCE

8:43-15.1 Provision of housekeeping, sanitation, safety and maintenance

(a) The facility shall provide and maintain a sanitary and safe environment for residents, in accordance with the requirements of Chapter 12 of the New Jersey Sanitary Code, N.J.A.C. 8:24.

(b) The facility shall provide housekeeping, laundry, pest control, and maintenance services.

(c) Written objectives, policies, a procedure manual, and an organizational plan for housekeeping, sanitation, safety, laundry and maintenance services shall be developed and implemented.

8:43-15.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

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(c) Housekeeping personnel shall be trained in cleaning procedures within the scope of their responsibility, including the use, cleaning and care of equipment.

8:43-15.3 Resident environment

(a) The following housekeeping and sanitation conditions shall be met:

1. The facility and its contents, including all environmental surfaces, shall be clean to sight and touch and free of dirt and debris;

2. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

3. All resident areas shall be free of noxious odors;

4. All facility furnishings shall be clean and in good repair, and facility mechanical equipment shall be in working order. Broken or worn items shall be repaired, replaced, or removed promptly;

5. All equipment and materials necessary for cleaning, disinfecting, sanitizing, and sterilizing (if applicable) shall be provided;

6. Thermometers which are accurate to within three degrees Fahrenheit shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration, in accordance with Chapter 12 of the New Jersey Sanitary Code, N.J.A.C. 8:24;

7. Sufficient and adequately lighted storage space shall be provided in the facility for the proper storage of residents' clothing, linens, drugs, food, cleaning and other supplies;

8. Articles in storage shall be elevated from the floor and away from walls (if moisture is present)*, ceilings, and air vents;

9. Unobstructed aisles shall be provided in storage areas;

10. Effective and safe controls shall be used to minimize and eliminate the presence of rodents, flies, roaches and other vermin in the facility. The premises shall be kept in such condition as to prevent the breeding, harborage, or feeding of vermin. All openings to the outer air shall be effectively protected against the entrance of insects;

11. Items that come in contact with open skin or mucous membranes shall be sterilized or, at a minimum, receive high level disinfection;

12. Items that come in contact with intact skin, such as bedpans, toilets and sinks, shall be disinfected, using a process for disinfection established by the facility as specified above, at N.J.A.C. 8:43-15.2; and

13. Toilet tissue, soap, paper towels or air dryers, and waste receptacles shall be provided in each bathroom at all times. ***Residents' personal cloth towels may be used in private or semi-private bathrooms.*** A self-draining dish or device shall be provided for storage of bar soap, if bar soap is used.

(b) The following safety conditions shall be met:

1. Scatter rugs shall not be permitted*, **except that residents may have the option to use scatter rugs which have non-skid backing in individual resident bedrooms. The facility shall ensure that scatter rugs are only used in a manner that does not jeopardize resident safety.*** *[and floors]* ***Floors*** shall be coated with slip-resistant floor finish. Carpeting shall be kept clean and odor free and shall not be frayed, worn, torn, or buckled;

2. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

3. All household, cleaning and personal care products in the facility shall be identified and labeled. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room *[that is used for no other purpose]*. The facility shall ensure that all household and cleaning products in a resident's possession are stored in the resident's locked room or other secure location. The telephone number of the poison control center shall be conspicuously posted in the facility;

4. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater;

5. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in accordance with fire safety requirements specified at Table 313.1.4.1 of BOCA National Building Code;

6. Wastebaskets and ashtrays shall be made of noncombustible materials;

7. If pets are allowed in the facility, the facility shall provide safeguards to prevent interference in the lives of residents *as

required by N.J.A.C. 8:43-6.1(a),* and the facility *[shall]* *should* comply with guidelines for pet facilitated therapy issued by the *Veterinary Public Health Program of the*** New Jersey State Department of Health; ***(Appendix E)*****

8. The use of open fireplaces shall be restricted to the living and recreation rooms *[on the first floor]* of the building;

i. When a fireplace is in use it shall be protected by a metal screen or glass enclosure;

ii. When a fireplace is in use it shall be under the supervision of a responsible employee;

iii. All ashes shall be kept in metal containers;

9. A licensed electrician or an independent inspection agency approved by the State of New Jersey shall annually inspect and provide a written statement that the electrical circuits and wiring in the facility are satisfactory and in safe condition;

i. The written statement shall include the date of inspection, and shall indicate that circuits are not overloaded, that all wiring and permanent fixtures are in safe condition, and that all portable electrical appliances, including lamps, are U.L. approved;

ii. The written statement shall be forwarded annually to the New Jersey Department of Health, Division of Health Facilities Evaluation; and

10. All partitions in the basement shall be constructed of non-combustible material.

8:43-15.4 Waste removal

(a) All solid or liquid waste which is not regulated medical waste, garbage, and trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers and collected from storage areas regularly so as to prevent nuisances such as odors. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24.

(b) Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be unobstructed and connected to the sanitary sewage disposal system.

(c) Plastic bags shall be used for solid waste removal. Plastic bags used for solid waste removal shall be of sufficient strength to safely contain waste from point of origin to point of disposal and shall be effectively closed prior to disposal.

8:43-15.5 Heating and air conditioning

(a) The heating and air conditioning system shall be adequate to maintain the required temperature in all areas used by residents. ***When the heating system is used, the*** *[The]* temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) during the day ("day" means the time between sunrise and sunset) and 68 degrees Fahrenheit (20 degrees Celsius) at night, when residents are in the facility.

1. Filters for heaters and air conditioners shall be provided and maintained in accordance with manufacturer's specifications.

2. Tanks for all new installations of oil furnaces or other equipment shall be located outside the building. Previously installed oil storage tanks shall have the vent pipe and fill pipe located outside the building.

3. An identifiable electrical emergency shut-off switch shall be provided, on the first floor, for any oil burner.

4. Portable heaters shall not be permitted.

(b) During warm weather conditions, the temperature of the facility shall not exceed 82 degrees Fahrenheit.

1. The facility shall establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 82 degrees Fahrenheit or higher for a continuous period of four hours or longer. The facility shall provide for and operate adequate ventilation in all areas used by residents.

2. Beginning January 1, 1994, ***or subsequent date as determined by the Commissioner,*** if the conditions of N.J.S.A. 26:2H-14.3 are met, all areas of the facility used by residents shall be equipped with

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air conditioning and the air conditioning shall be operated so that the temperature in these areas does not exceed 82 degrees Fahrenheit. Notice *[of any postponement or suspension]* of the operative date in this paragraph shall be provided in the New Jersey Register by the Commissioner.

8:43-15.6 Water supply

(a) The water supply used for drinking or culinary purposes shall be adequate in quantity, of a safe and sanitary quality, and from a water system which shall be 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. Copies of the Safe Drinking Water Act can be obtained from the Department of Environmental Protection, Bureau of Potable Water, CN 209, Trenton, New Jersey 08625.

(b) There shall be no back-siphonage conditions present.

(c) There shall be no cross connections between city and well water supplies. When the facility uses well water for potable water every day, a double check valve shall be permitted if the facility has approval for such use from the water company and the New Jersey State Department of Environmental Protection.

(d) The temperature of the hot water used for bathing and handwashing shall be maintained between 95 degrees and 110 degrees Fahrenheit (35 to 43 degrees Celsius).

(e) Equipment requiring drainage, such as ice machines, shall be drained to a sanitary connection.

(f) The sewage disposal system shall be maintained in good repair and operated in compliance with State and local laws, ordinances, and regulations.

8:43-15.7 Building and grounds maintenance

(a) The building and grounds shall be well maintained at all times. The interior and exterior of the building shall be kept in good condition to ensure an attractive appearance, provide a pleasant atmosphere, and safeguard against deterioration. The building and grounds shall be kept free from fire hazards and other hazards to residents' health and safety.

(b) A written work schedule for building and grounds maintenance operations shall be established and implemented, with categorization of maintenance assignments as daily, weekly, monthly, or annually within each area of the facility and the grounds.

8:43-15.8 Laundry services

(a) Written policies and procedures shall be established and implemented for the facility's laundry services, including, but not limited to, policies and procedures regarding the following:

1. The storage and transportation of laundry;
2. Collection and storage of soiled laundry in a ventilated area;
3. Protection of clean laundry from contamination during processing, transporting, and storage; and
4. Handling and laundering of residents' clothing and personal items separately from other laundry.

(b) Soiled laundry shall be stored in a ventilated, vermin-proof area, separate from laundry supplies, and shall be stored, sorted, rinsed, and laundered only in areas specifically designated for those purposes.

(c) All soiled laundry from resident rooms and other service areas shall be stored, transported, collected, and delivered in a covered laundry bag or cart. Laundry carts shall be in good repair, kept clean, and identified for use with either clean or soiled laundry.

(d) Clean laundry shall be protected from contamination during processing, storage, and transportation within the facility.

(e) Soiled and clean laundry shall be kept separate. An established procedure shall be followed to reduce the number of bacteria in the fabrics. Equipment or surfaces such as tables that come into contact with soiled laundry shall be sanitized after use.

(f) Residents who choose to launder their personal items shall be provided with in-house assistance and resident supervision, as required*, **in accordance with a schedule developed by the facility which will allow such residents access at a reasonable hour***.

(g) If the facility provides an on-premises laundry in lieu of using a commercial laundry service, it shall provide a receiving, holding, and sorting area with hand-washing facilities in close proximity. The

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walls, floors, and ceilings of the area shall be clean and in good repair. Ventilation shall be adequate to prevent heat and odor buildup. If a structural change is required by this rule, the facility shall demonstrate an alternate system to meet the intended requirements of all subsections of this rule.

SUBCHAPTER 16. INFECTION PREVENTION AND CONTROL SERVICES

8:43-16.1 Infection control program

(a) The facility shall develop and implement an infection prevention and control program.

(b) The health maintenance and monitoring nurse, in coordination with the administrator, shall be responsible for the direction, provision, and quality of infection prevention and control services. The health maintenance and monitoring nurse, in coordination with the administrator, shall be responsible for, but not limited to, developing and maintaining written objectives, a policy and procedure manual, and an organizational plan for the infection prevention and control service.

8:43-16.2 Development of infection control policies and procedures

(a) The facility shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control. Written policies and procedures shall be consistent with the following Centers for Disease Control publications:

1. Guideline for Handwashing and Hospital Environmental Control; and

2. Infection control practices, including universal precautions, in accordance with the Occupational Safety and Health Administration (OSHA) rule, 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne pathogens.

NOTE: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161

or

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

8:43-16.3 General infection control policies and procedures

(a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures for the following:

1. In accordance with Chapter II, New Jersey State Sanitary Code, N.J.A.C. 8:57, a system for investigating, reporting and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all residents or personnel having these infections, diseases, or conditions (see Appendix D);

2. Infection control and isolation, in accordance with the Occupational Safety and Health Administration (OSHA) rule 29, CFR part 1910.1030, Occupational Exposure to Bloodborne Pathogens;

3. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;

4. Surveillance techniques to minimize sources and transmission of infection;

5. Techniques to be used during each resident contact, including handwashing before and after caring for a resident;

6. Protocols for identification of residents with communicable diseases and education of residents regarding prevention and spread of communicable diseases;

7. ***Where applicable, cleaning,*** *[Cleaning, and, where applicable,]* sterilization and disinfection practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and non-disposable resident care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged, labeled, processed, transported, and stored to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

(b) High-level disinfection techniques approved by the New Jersey State Department of Health shall be used for all reusable respiratory therapy equipment and instruments that touch mucous membranes.

(c) Disinfection procedures for items that come in contact with bedpans, sinks, and toilets shall conform with established protocols for cleaning and disinfection.

(d) Personnel who have had contact with resident excretions, secretions, or blood, whether directly or indirectly, in activities such as performing a physical examination, providing catheter care, and emptying bedpans, shall wash their hands with soap and warm water for between 10 and 30 seconds or use other effective hand sanitation techniques immediately after such contact.

(e) Equipment and supplies used for sterilization, disinfection, and decontamination purposes shall be maintained according to manufacturers' specifications.

(f) Needles and syringes used by residents as part of home self-care shall be destroyed in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto, and shall then be placed in a puncture-resistant container prior to disposal.

8:43-16.4 Employee health and resident policies and procedures for infection prevention and control

(a) Each new employee, including members of the medical staff employed by the facility, upon employment shall receive a ***two-step*** Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions shall be employees with documented negative ***two-step*** Mantoux tuberculin skin test results (zero to nine millimeters of induration) within the last year, employees with a documented positive Mantoux skin test result (10 or more millimeters of induration), employees who have received appropriate medical treatment for tuberculosis, or when medically contraindicated. Results of the Mantoux tuberculin skin tests administered to new employees shall be acted upon as follows:

1. If the ***first step of the*** Mantoux tuberculin skin test result is ***[between five and nine millimeters or more]*** ***less than 10 millimeters*** of induration, the ***second step of the two-step Mantoux*** test shall be ***[repeated]*** ***administered*** one to three weeks later. ***[If the test result is below five millimeters of induration, no follow-up test is required.]***

2. If the Mantoux test is significant (10 millimeters or more of induration), a chest x-ray shall be performed and, if necessary, followed by chemoprophylaxis or therapy.

3. Any employee with positive results shall be referred to the employee's personal physician and shall be excluded from work until the physician provides written approval to return.

(b) The facility shall have written policies and procedures ***[establishing timeframes for subsequent]*** ***requiring annual Mantoux*** tuberculin skin tests for all employees ***[after the initial test.]*** ***, except those exempted under (a) above.***

(c) The facility shall assure that all current employees who have not received the Mantoux test upon employment, except those exempted by (a) above, shall receive a test within three months of the effective date of this rule. The facility shall act on the results of tests of current employees in the same manner as prescribed in (a) above.

[d)](e)*** The facility shall report annually the results of all tuberculin testing of personnel, on forms provided by the Department of Health, Division of Epidemiology, Tuberculosis Program, in accordance with N.J.A.C. 8:57, Communicable Diseases.*

[(d)](e)*** Employees who have signs or symptoms of a communicable disease shall not be permitted to perform functions that expose residents to risk of transmission of the disease.

[(e)](f)*** If a communicable disease prevents the employee from working for a period of more than three days, a physician's statement approving the employee's return shall be required prior to the employee's return to work.

[(f)](g)*** The facility shall develop and implement procedures for the care of employees who become ill while at work or who have a work-related accident.

[(g)](h)*** The facility shall maintain records documenting contagious diseases contracted by employees during employment.

[(h)](i)*** The facility shall maintain listings of all residents and personnel who have infections, diseases, or conditions which are reportable to the Department pursuant to Chapter II, New Jersey State Sanitary Code, N.J.A.C. 8:57, unless prohibited by Federal or state law.

[(i)](j)*** All residents shall be provided with an opportunity to wash their hands before each meal and shall be encouraged to do so. Staff shall wash their hands before each meal and before assisting residents in eating.

[(j)](k)*** The health maintenance and monitoring nurse shall perform at least monthly checks of handwashing practices throughout the facility.

8:43-16.5 Staff education and training for infection prevention and control

All employees shall be informed about the facility's infection control procedures, including personal hygiene requirements.

8:43-16.6 Regulated medical waste

(a) Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal and State laws and regulations.

(b) The facility shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules promulgated pursuant to the aforementioned act, including, but not limited to, N.J.A.C. 7:26-3A.

APPENDIX A A Daily Food Guide

MEAT GROUP

Foods included: Beef; veal; lamb; pork; variety meats, such as liver, heart, kidney. Poultry and eggs. Fish and shellfish. As alternates—dry beans, dry peas, lentils, nuts, peanuts, peanut butter.

Amounts Recommended: Choose 2 or more servings every day. Count as a serving: 2 to 3 ounces of lean cooked meat, poultry or fish—all without bone; 1 egg, ½ cup cooked dry beans, dry peas, or lentils; 2 tablespoons peanut butter may replace one-half serving of meat.

VEGETABLE-FRUIT GROUP

Foods Included: All vegetables and fruits. This guide emphasizes those that are valuable as sources of vitamin C and vitamin A.

Sources of Vitamin C: Good sources—Grapefruit or grapefruit juice; orange or orange juice; cantaloupe; guava; mango; papaya; raw strawberries; broccoli; Brussels sprouts; green pepper; sweet red pepper. Fair sources—Honeydew melon; lemon; tangerine or tangerine juice; watermelon; asparagus tips; raw cabbage; collards; garden cress; kale; kohlrabi; mustard greens; potatoes and sweet potatoes cooked in the jacket; spinach; tomatoes or tomato juice; turnip greens.

Sources of Vitamin A: Dark-green and deep-yellow vegetables and a few fruits, namely: Apricots, broccoli, cantaloupe, carrots, chard, collards, cress, kale, mango, persimmon, pumpkin, spinach, sweet potatoes, turnip greens and other dark-green leaves, winter squash.

Amounts Recommended: Choose 4 or more servings each day, including: 1 serving of a good source of vitamin C or 2 servings of a fair source. 1 serving, at least every other day, of a good source of vitamin A. If the food for chosen vitamin C is also a good source of vitamin A, the additional serving of a Vitamin A food may be omitted.

The remaining 1 to 3 or more servings may be of any vegetable or fruit, including those that are valuable for vitamin C and for vitamin A.

Count as 1 serving: ½ cup of vegetable or fruit; or a portion as ordinarily served, such as 1 medium apple, banana, orange, or potato, half a medium grapefruit or cantaloupe, or the juice of 1 lemon.

MILK GROUP

Foods Included: Milk—fluid whole, evaporated, skim, dry, buttermilk. Cheese—cottage; cream; Cheddar-type, natural or process. Ice cream.

Amounts Recommended: Some milk every day for everyone.

Recommended amounts are given below in terms of 8-ounce cups of whole fluid milk:

Children under 9	2 or 3
Children 9 to 12	3 or more
Teenagers	4 or more
Adults	2 or more
Pregnant women	3 or more
Nursing mothers	4 or more

Part or all of the milk may be fluid skim milk, buttermilk, evaporated milk, or dry milk.

Cheese and ice cream may replace part of the milk. The amount of either it will take to replace a given amount of milk is figured on the basis of calcium content. Common portions of cheese and of ice cream and their milk equivalents in calcium are:

1-inch cube Cheddar-type cheese	½ cup milk
½ cup cottage cheese	⅓ cup milk
2 tablespoons cream cheese	1 tablespoon milk
½ cup ice cream	¼ cup milk

BREAD-CEREAL GROUP

Foods Included: All breads and cereals that are whole grain, enriched, or restored; check labels to be sure. Specifically, this group includes: Breads; cooked cereals; ready-to-eat cereals; cornmeal; crackers; flour; grits; macaroni and spaghetti; noodles; rice; rolled oats; and quick breads and other baked goods if made with whole-grain or enriched flour. Bulgur and par-boiled rice and wheat also may be included in this group.

Amounts Recommended: Choose 4 servings or more daily. Or, if no cereals are chosen, have an extra serving of breads or baked goods, which will make at least 5 servings from this group daily.

Count as 1 serving: 1 slice of bread; 1 ounce ready-to-eat cereal; ½ to ¾ cup cooked cereal, cornmeal, grits, macaroni, noodles, rice or spaghetti.

OTHER FOODS

To round out meals and meet energy needs, almost everyone will use some foods not specified in the four food groups. Such foods include: unenriched, refined breads, cereals, flours; sugars; butter, margarine, other fats. These often are ingredients in a recipe or added to other foods during preparation or at the table.

Try to include some vegetable oil among the fats used.

INTRODUCTION

Food alone cannot make anyone healthy. Good health also depends on heredity, environment, and health care, that is, exercise, habits, smoking, etc. affect health status. Lifestyle is also important to health. But a diet based on these guidelines can help promote good health.

When planning your facility's menu incorporate the following **Dietary Guidelines for Americans**.

1. Serve a variety of foods.
2. Prepare a diet moderately low in fat, saturated fat and cholesterol.
3. Offer a diet with plenty of vegetables, fruits and whole grain products.
4. Use salt and sodium in moderation when preparing foods.
5. Offer foods high in sugars in moderation.

#1 EAT A VARIETY OF FOODS

These guidelines call for moderation avoiding extremes in diet. More than 40 different nutrients are essential for good health. Essential nutrients include vitamins, minerals, amino acids from protein, certain fatty acids from fat, and sources of calories (protein, carbohydrates, and fat). These nutrients should come from a variety of foods, not from a few highly fortified foods or supplements. Any food that supplies calories and nutrients can be part of a nutritious diet. The content of the total diet over a day or more is what counts.

Many foods are good sources of several nutrients. For example, vegetables and fruits are important for Vitamins A and C, folic acid, minerals, and fiber. Breads and cereals supply B vitamins, iron, and protein; whole-grain types are also good sources of fiber. Milk provides protein, B vitamins, vitamins A and D, calcium, and phosphorus. Meat, poultry, and fish provide protein, B vitamins, iron and zinc.

No single food can supply all nutrients in the amounts needed. For example, milk supplies calcium but little iron; meat supplies iron but little calcium. Diets should be adjusted to meet individual factors and needs such as healthy weight, cholesterol and blood pressure levels, etc. For a nutritious diet, consume a variety of foods.

#2 CHOOSE A DIET LOW IN FAT, SATURATED FAT AND CHOLESTEROL

Most health authorities recommend an American diet with less fat, saturated fat, and cholesterol. Populations like ours with diets high in fat have more obesity and certain types of cancer. The higher levels of saturated fat and cholesterol in our diets are linked to our increased risk for heart disease.

A diet low in fat makes it easier to include the variety of foods you need for nutrients without exceeding calorie needs because fat contains over twice the calories of an equal amount of carbohydrates or protein. A diet low in saturated fat and cholesterol can help maintain a desirable level of blood cholesterol. For adults this level is below 200 mg/dl. As blood cholesterol increases above this level, greater risk for heart disease occurs. Risk can also be increased by high blood pressure, cigarette smoking, diabetes, a family history of premature heart disease, obesity, and being a male.

The way diet affects blood cholesterol varies among individuals. However, blood cholesterol does increase in most people when they eat a diet high in saturated fat and cholesterol and excessive in calories. Of these, dietary saturated fat has the greatest effect; dietary cholesterol has less.

Total fat. An amount that provides 30 percent or less of calories is suggested. Thus, the upper limit on the grams of fat in the diet depends on the calories needed. For example, at 2,000 calories per day, your suggested upper limit is 600 calories from fat (2,000 × .30). This is equal to 67 grams of fat (600 ÷ 9, the number of calories each gram of fat provides).

Saturated fat. An amount that provides less than 10 percent of calories (less than 22 grams at 2,000 calories per day) is suggested. All fats contain both saturated and unsaturated fat (fatty acids). The fats in animal products are the main sources of saturated fat in most diets, with tropical oils (coconut, palm kernel, and palm oils) and hydrogenated fats providing smaller amounts.

Cholesterol. Animal products are the source of all dietary cholesterol. Eating less fat from animal sources will help lower cholesterol as well as total fat and saturated fat in your diet.

FOR A DIET LOW IN FAT, SATURATED FAT, AND CHOLESTEROL

- Use fats and oils sparingly in cooking.
- Use small amounts of salad dressings and spreads, such as butter, margarine, and mayonnaise. One tablespoon of most of these spreads provides 10 to 11 grams of fat.
- Choose liquid vegetable oils most often because they are lower in saturated fat.
- Check labels on foods to see how much fat and saturated fat are in a serving.
- Choose lean meat, poultry, fish, dry beans, and eggs as protein sources.

CHOOSE A DIET WITH PLENTY OF VEGETABLES, FRUITS AND GRAIN PRODUCTS

This guideline recommends that adults eat at least three servings of vegetables and two servings of fruits daily. It recommends at least six servings of grain products, such as breads, cereals, pasta, and rice, with an emphasis on whole grains.

Vegetables, fruits and grain products are emphasized in this guideline especially for their complex carbohydrates, dietary fiber, and other food components linked to good health.

These foods are generally low in fats. By choosing the suggested amounts of them, you are likely to increase carbohydrates and dietary fiber and decrease fat in the diet, as health authorities suggest.

Complex carbohydrates, such as starches, are in breads, cereals, pasta, rice, dry beans and peas, and other vegetables, such as potatoes and corn. Dietary fiber—a part of plant foods—is in whole-grain breads and cereals, dry beans and peas, vegetables, and fruits. It is best to eat a variety of these fiber-rich foods because they differ in the kinds of fiber they contain.

Eating foods with fiber is important for proper bowel function and can reduce symptoms of chronic constipation, diverticular disease, and hemorrhoids. Populations like ours with diets low in dietary fiber and complex carbohydrates and high in fat, especially saturated fat, tend to have more heart disease, obesity, and some cancers. Just how dietary fiber is involved is not yet clear.

Some of the benefit from a higher fiber diet may be from the food that provides the fiber, not from fiber alone. For this reason, it's best

to get fiber from foods rather than from supplements. In addition, excessive use of fiber supplements is associated with greater risk for intestinal problems and lower absorption of some minerals.

Advice for today: Eat more vegetables, including dry beans and peas; fruits; and breads, cereals, pasta, and rice. Increase your fiber intake by eating more of a variety of foods that contain fiber naturally.

USE SALT AND SODIUM ONLY IN MODERATION

Table salt contains sodium and chloride—both are essential in the diet. However, most Americans eat more salt and sodium than they need. Food and beverages containing salt provide most of the sodium in our diets, much of it added during processing and manufacturing.

In populations with diets low in salt, high blood pressure is less common than in populations with diets high in salt. Other factors that affect blood pressure are heredity, obesity, and excessive drinking of alcoholic beverages.

In the United States, about one in three adults has high blood pressure. If these people restrict their salt and sodium, usually their blood pressure will fall.

- Use salt sparingly, if at all, in cooking and at the table.
- When planning meals, consider that:
 - fresh and plain frozen vegetables prepared without salt are lower in sodium than canned ones.
 - cereals, pasta, and rice cooked without salt are lower in sodium than ready-to-eat cereals.
 - milk and yogurt are lower in sodium than most cheeses.
 - fresh meat, poultry, and fish are lower in sodium than most canned and processed ones.
 - most frozen dinners and combination dishes, packaged mixes, canned soups, and salad dressings contain a considerable amount of sodium.
 - so do condiments, such as soy and other sauces, pickles, olives, catsup, and mustard.
- Use salted snacks, such as chips, crackers, pretzels, and nuts, sparingly.
- Check labels for the amount of sodium in foods. Choose those lower in sodium most of the time.

USE SUGARS ONLY IN MODERATION

Americans eat sugars in many forms. Sugars provide calories and most people like their taste. Some serve as natural preservatives, thickeners, and baking aids in foods. This guideline cautions about eating sugars in large amounts and about frequent snacks of foods containing sugars and starches.

Sugars and many foods that contain them in large amounts supply calories but are limited in nutrients. Thus, they should be used in moderation by most healthy people and sparingly by people with low calorie needs. Both sugars and starches—which break down into sugars—can contribute to tooth decay. Sugars and starches are in many foods that also supply nutrients—milk; fruits; some vegetables; and breads, cereals, and other foods with sugars and starches as ingredients.

Adapted from *Nutrition and Your Health: Dietary Guidelines for Americans*; Third Edition, 1990: U.S. Department of Agriculture, U.S. Department of Health and Human Services.

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*APPENDIX E

GUIDELINES AND CONSIDERATIONS FOR PET FACILITATED THERAPY IN NEW JERSEY INSTITUTIONS

I. All Pets

A. Companion pets should not pose a threat or nuisance to the patients, staff, or visitors because of size, odor, sound, disposition, or behavioral characteristics. Aggressive or unprovoked threatening behavior should mandate the pet's immediate removal.

B. Animals which may be approved include: dogs, cats, birds (except carnivorous), fish, hamsters, gerbils, guinea pigs, and domestic rabbits.

Wild animals such as turtles and other reptiles, ferrets, and carnivorous birds should not be permitted in the program.

C. In order to participate, dogs or cats should be either altered or determined not to be in estrus ("heat").

D. Sanitary constraints:

1. Pets should be prohibited from the following areas:
 - a. food preparation, storage, and serving areas, with the exception of participating resident's bedroom;
 - b. areas used for the cleaning or storage of human food utensils and dishes;
 - c. vehicles used for the transportation of prepared food;
 - d. nursing stations, drug preparation areas, sterile and clean supply rooms;
 - e. linen storage areas; and
 - f. areas where soiled or contaminated materials are stored.
2. Food handlers should not be involved in the cleanup of animal waste.

3. The administrator is responsible for acceptable pet husbandry practices and may delegate specific duties to any other staff members except food handlers. The areas of responsibility include: feeding and watering, food cleanup/cage cleaning, exercising, and grooming.

4. Spilling or scattering of food and water should not lessen the standard of housekeeping or contribute to an increase in vermin or objectionable odor.

5. Dogs and cats should be effectively housebroken and provisions must be made for suitably disposing of their body wastes.

6. Animal waste should be disposed of in a manner which prevents the material from becoming a community health or nuisance problem and in accordance with applicable sanitation rules and ordinances. Accepted methods include disposal in sealed plastic bags (utilizing municipally approved trash removal systems) or via the sewage system for feces.

7. Proper and frequent handwashing shall be a consideration of all persons handling animals.

E. Animals found to be infested with external parasites (ticks, fleas, or lice) or which show signs of illness (for example, vomiting or diarrhea) should be immediately removed from the premises and taken to the facility's veterinarian.

F. The parent or guardian of a child bitten by a dog, cat, or other animal, when no physician attends such child, shall within 12 hours after first having knowledge that the child was so bitten, report to the person designated by law or by the local board, under authority of law, to receive reports of reportable communicable diseases in the municipality in which the child so bitten may be the name, age, sex, color, and precise location of the child (N.J.S.A. 26:4-80).

If an adult is bitten by a dog, cat, or other animal and no physician attends him, the adult, or, if he is incapacitated, the person caring for him, shall report to the person designated by law or by the local board of health to receive reports of communicable diseases in the municipality in which the adult so bitten may be the name, age, sex, color, and the precise location of the adult. The report shall be made within 12 hours after the adult was so bitten, or if he is incapacitated, the report shall be made within 12 hours after the person caring for him shall first have knowledge that the adult was so bitten (N.J.S.A. 26:4-81).

G. The local health department should be promptly notified by telephone of any pet which dies on the premises.

1. If the deceased is a bird, the body should be immediately taken to the facility's veterinarian. If the veterinarian is not available, the deceased bird should be securely wrapped in impermeable wrapping material and frozen until veterinary consultation is available. Payment for a laboratory examination should be the responsibility of the institution, or the pet's owner.

2. If the deceased is another type of animal, the body should not be disposed of until it is determined by the local department of health that rabies testing is not necessary.

H. The rights of residents who do not wish to participate in the pet program should be considered first. Patients not wishing to be exposed to animals should have available a pet free area within the participating facility.

II. Visiting Pets

A. Visiting pets are defined as any animal brought into the facility on a periodic basis for pet therapy purposes. The owner should accompany the animal and be responsible for its behavior and activities while it is visiting at the facility.

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B. Visiting dogs should:

1. be restricted to the areas designated by the facility administrator;
2. maintain current vaccination against canine diseases of distemper, hepatitis, leptospirosis, parainfluenza, parvovirus, coronavirus, bordetella (kennel cough), and rabies. Proof of vaccination shall be included on a health certificate which is signed by a licensed veterinarian and kept on file at the facility;
3. be determined not to be in estrus ("heat") at the time of the visit;
4. be licensed and wear an identification tag on the collar, choker chain, or harness, stating the dog's name, the owner's name, address, and telephone number; and
5. be housebroken if more than four months of age. Younger dogs may be admitted, subject to the approval of the administrator.

C. Visiting cats should:

1. Maintain current vaccination against feline pneumonitis, panleukopenia, rhinotracheitis, calicivirus, chlamydia, and rabies. Proof of vaccination should be included on a health certificate which is signed by a licensed veterinarian and kept on file at the facility.
2. Determined not to be in estrus ("heat") at the time of the visit.

D. Visiting hamsters, gerbils, guinea pigs, domestic rabbits, laboratory mice, or rats:

1. The owner should be liable and responsible for the animal's activities and behavior.

E. No visiting birds should be allowed to participate in the program.

III. Residential Pets:

A. Residential pets are defined as any animal which resides at a facility in excess of four hours during any calendar day and is owned by a staff member, patient, the facility, or a facility approved party. The financial responsibility for the residential animal's maintenance is the animal owner's responsibility.

B. All documentation of compliance will be maintained by the facility administrator in a file for review and inspection. The official health records should include the rabies vaccination certificate and a current health certificate.

C. Residential animals should have a confinement area separate from the patients where they can be restricted when indicated. An area should be available for each participating unit and should be approved by the administrator.

D. A licensed veterinarian should be designated as the facility's veterinarian and should be responsible for establishing and maintaining a disease control program for residential pets.

E. Specific Species:

1. Residential dogs should:

a. Maintain current vaccination against canine diseases of distemper, hepatitis, leptospirosis, parainfluenza, parvovirus and rabies. In addition, the animal's file should include a currently valid Rabies Vaccination Certificate, NASPHV #51. A three year type rabies vaccine should be utilized.

b. Have an annual heartworm test commencing at one year of age and should be maintained on heartworm prevention medication.

c. Have a fecal examination for internal parasites twice yearly. Test results should be negative before the dog's initial visit to the facility.

d. Follow the recommended procedures of the facility's veterinarian for controlling external parasites.

e. Be neutered.

f. Be licensed with the municipality and wear an identification tag on the collar, choker chain, or harness, stating the dog's name, the owner's name, address, and telephone number.

g. Have a health certificate completed by a licensed veterinarian within one week before the animal's initial visit to the facility. The certificate should be updated annually thereafter.

h. Be immediately removed from the premises and taken to the facility's veterinarian if infested with internal or external parasites, vomit, or have diarrhea, or show signs of a behavioral change or infectious disease. Medical records of the veterinarian's diagnosis and treatment should be maintained in the animal's file. The animal should not have patient contact until authorized by the facility's veterinarian.

i. Be housebroken if more than four months of age. Younger dogs may be admitted subject to the requirements of the administrator.

j. Be fed in accordance with the interval and quantity recommended by the facility's veterinarian. Feeding and watering bowls should be washed daily and stored separately from dishes and utensils used for human consumption.

k. Be provided fresh water daily and have 24-hour access to the water dish.

l. Be provided a suitable bedding area. Bedding should be cleaned or changed as needed. Dirty bedding should be processed or disposed of as necessary.

m. Be permitted outside the facility only if under the supervision of a staff member, a responsible person or within a fenced area.

n. Be regularly groomed and receive a bath whenever indicated.

2. Residential birds:

a. Should be treated by a licensed veterinarian with an approved chlortetracycline treatment regimen prior to being housed at the institution to ensure the absence of psittacosis. The period of treatment varies between 30 to 45 days and is species-dependent. A signed statement from the veterinarian indicating such treatment should be kept in the bird's file.

b. That die, or are suspected of having psittacosis, should be immediately taken to the facility's veterinarian. In the event the bird dies and the veterinarian is not available, the bird's body should be securely wrapped in impermeable wrapping material and frozen until veterinary consultation is available.

3. Residential hamsters, gerbils, guinea pigs, domestic rabbits, laboratory mice or rats should be examined yearly by a licensed veterinarian for health status. A health certificate should be completed for each animal or group of animals. Any animal which becomes sick or dies should be promptly taken to the facility's veterinarian.*

APPENDIX B. Resident Assessment

MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)
BACKGROUND INFORMATION/INTAKE AT ADMISSION

I. IDENTIFICATION INFORMATION

1. RESIDENT NAME	(First) (Middle Initial) (Last)
2. DATE OF CURRENT ADMISSION	Month Day Year
3. MEDICARE NO. (SOC. SEC. or Comparable No. if no Medicare No.)	
4. FACILITY PROVIDER NO.	Federal No.
5. GENDER	1. Male 2. Female
6. RACE/ETHNICITY	1. American Indian/Alaska Native 2. Asian/Pacific Islander 3. Black, not of Hispanic origin 4. Hispanic 5. White, not of Hispanic origin
7. BIRTHDATE	Month Day Year
8. LIFETIME OCCUPATION	
9. PRIMARY LANGUAGE	Resident's primary language is a language other than English 0. No 1. Yes (Specify)
10. RESIDENTIAL HISTORY PAST 5 YEARS	(Check all settings resident lived in during 5 years prior to admission) Prior stay at this nursing home Other nursing home/residential facility MH/psychiatric setting MR/DD setting NONE OF ABOVE
11. MENTAL HEALTH HISTORY	Does resident's RECORD indicate any history of mental retardation, mental illness, or any other mental health problem? 0. No 1. Yes
12. CONDITIONS RELATED TO MR/DD STATUS	(Check all conditions that are related to MR/DD status, that were manifested before age 22, and are likely to continue indefinitely) Not applicable—no MR/DD (Skip to Item 13) MR/DD with Organic Condition Cerebral palsy Down's syndrome Autism Epilepsy Other organic condition related to MR/DD MR/DD with no organic condition Unknown
13. MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
14. ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
15. LIVED ALONE	0. No 1. Yes 2. In other facility
16. ADMISSION INFORMATION AMENDED	(Check all that apply) Accurate information unavailable earlier Observation revealed additional information Resident unstable at admission

II. BACKGROUND INFORMATION AT RETURN/READMISSION

1. DATE OF CURRENT READMISSION	Month Day Year
2. MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
3. ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
4. LIVED ALONE	0. No 1. Yes 2. In other facility
5. ADMISSION INFORMATION AMENDED	(Check all that apply) Accurate information unavailable earlier Observation revealed additional information Resident unstable at admission

III. CUSTOMARY ROUTINE (ONLY AT FIRST ADMISSION)

1. CUSTOMARY ROUTINE (Year prior to first admission to a nursing home)	(Check all that apply. If all information UNKNOWN, check last box only.)
CYCLE OF DAILY EVENTS	
Stays up late at night (e.g., after 9 pm)	a.
Naps regularly during day (at least 1 hour)	b.
Goes out 1+ days a week	c.
Stays busy with hobbies, reading, or fixed daily routine	d.
Spends most time alone or watching TV	e.
Moves independently indoors (with appliances, if used)	f.
NONE OF ABOVE	g.
EATING PATTERNS	
Distinct food preferences	h.
Eats between meals all or most days	i.
Use of alcoholic beverage(s) at least weekly	j.
NONE OF ABOVE	k.
ADL PATTERNS	
In bed/clothes much of day	l.
Wakens to toilet all or most nights	m.
Has irregular bowel movement pattern	n.
Prefers showers for bathing	o.
NONE OF ABOVE	p.
INVOLVEMENT PATTERNS	
Daily contact with relatives/close friends	q.
Usually attends church, temple, synagogue (etc.)	r.
Finds strength in faith	s.
Daily animal companion/presence	t.
Involved in group activities	u.
NONE OF ABOVE	v.
UNKNOWN—Resident/family unable to provide information	

END

Signature of RN Assessment Coordinator: _____

Signatures of Others Who Completed Part of the Assessment:

MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)
(Status in last 7 days, unless other time frame indicated)

SECTION A. IDENTIFICATION AND BACKGROUND INFORMATION

Form for Section A: Identification and Background Information. Includes fields for Assessment Date, Resident Name, Social Security No., Medicaid No., Medical Record No., Reason for Assessment, Current Payment Source(s), Responsibility/Legal Guardian, Advanced Directives, Discharge Planned, Participate in Assessment, and Signatures.

Form for Section B: Cognitive Patterns. Includes items for Cognitive Skills for Daily Decision-Making, Indicators of Delirium—Periodic Disordered Thinking/Awareness, and Change in Cognitive Status.

SECTION C. COMMUNICATION/HEARING PATTERNS

Form for Section C: Communication/Hearing Patterns. Includes items for Hearing, Communication Devices/Techniques, Modes of Expression, Making Self Understood, Ability to Understand Others, and Change in Communication/Hearing.

SECTION B. COGNITIVE PATTERNS

Form for Section B: Cognitive Patterns. Includes items for Comatose, Memory, and Memory/Recall Ability.

SECTION D. VISION PATTERNS

Form for Section D: Vision Patterns. Includes items for Vision, Visual Limitations/Difficulties, and Visual Appliances.

Legend for coding responses: [shaded box] = Code the appropriate response; [checkbox] = Check all the responses that apply.

SECTION E. PHYSICAL FUNCTIONING AND STRUCTURAL PROBLEMS

1. ADL SELF-PERFORMANCE—(Code for resident's PERFORMANCE OVER ALL SHIFTS during last 7 days—Not including setup)			
0. INDEPENDENT — No help or oversight — OR — Help/oversight provided only 1 or 2 times during last 7 days			
1. SUPERVISION — Oversight, encouragement or cueing provided 3+ times during last 7 days — OR — Supervision plus physical assistance provided only 1 or 2 times during last 7 days			
2. LIMITED ASSISTANCE — Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times — OR — More help provided only 1 or 2 times during last 7 days			
3. EXTENSIVE ASSISTANCE — While resident performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times: — Weight-bearing support — Full staff performance during part (but not all) of last 7 days			
4. TOTAL DEPENDENCE — Full staff performance of activity during entire 7 days			
2. ADL SUPPORT PROVIDED — (Code for MOST SUPPORT PROVIDED OVER ALL SHIFTS during last 7 days; code regardless of resident's self-performance classification)		(1)	(2)
0. No setup or physical help from staff			
1. Setup help only			
2. One-person physical assist			
3. Two+ persons physical assist			
a.	BED MOBILITY	How resident moves to and from lying position, turns side to side, and positions body while in bed	
b.	TRANSFER	How resident moves between surfaces—to/from: bed, chair, wheelchair, standing position (EXCLUDE to/from bath/toilet)	
c.	LOCOMOTION	How resident moves between locations in his/her room and adjacent corridor on same floor. If in wheelchair, self-sufficiency once in chair	
d.	DRESSING	How resident puts on, fastens, and takes off all items of street clothing, including donning/removing prosthesis	
e.	EATING	How resident eats and drinks (regardless of skill)	
f.	TOILET USE	How resident uses the toilet room (or commode, bedpan, unna); transfer on/off toilet, cleanses, changes pad, manages ostomy or catheter, adjusts clothes	
g.	PERSONAL HYGIENE	How resident maintains personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum (EXCLUDE baths and showers)	
3.	BATHING	How resident takes full-body bath/shower, sponge bath, and transfers in/out of tub/shower (EXCLUDE washing of back and hair. Code for most dependent in self-performance and support. Bathing Self-Performance codes appear below)	
0. Independent—No help provided			
1. Supervision—Oversight help only			
2. Physical help limited to transfer only			
3. Physical help in part of bathing activity			
4. Total dependence			
4.	BODY CONTROL PROBLEMS	(Check all that apply during last 7 days)	
	Balance—partial or total loss of ability to balance self while standing	a.	g.
	Bedfast all or most of the time	b.	h.
	Contracture to arms, legs, shoulders, or hands	c.	i.
	Hemiplegia/hemiparesis	d.	j.
	Quadriplegia	e.	k.
	Arm—partial or total loss of voluntary movement	f.	l.
	Hand—lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid)		
	Leg—partial or total loss of voluntary movement		
	Leg—unsteady gait		
	Trunk—partial or total loss of ability to position, balance, or turn body		
	Amputation		
	NONE OF ABOVE		
5.	MOBILITY APPLIANCES/DEVICES	(Check all that apply during last 7 days)	
	Cane/walker	a.	d.
	Brace/prosthesis	b.	e.
	Wheeled self	c.	f.
	Other person wheeled		
	Lifted (manually/mechanically)		
	NONE OF ABOVE		

6.	TASK SEGMENTATION	Resident requires that some or all of ADL activities be broken into a series of subtasks so that resident can perform them 0. No 1. Yes	
7.	ADL FUNCTIONAL REHABILITATION POTENTIAL	Resident believes he/she capable of increased independence in at least some ADLs Direct care staff believe resident capable of increased independence in at least some ADLs Resident able to perform tasks/activity but is very slow Major difference in ADL Self-Performance or ADL Support in mornings and evenings (at least a one category change in Self-Performance or Support in any ADL) NONE OF ABOVE	a. b. c. d. e.
8.	CHANGE IN ADL FUNCTION	Change in ADL self-performance in last 90 days 0. No change 1. Improved 2. Deteriorated	

SECTION F. CONTINENCE IN LAST 14 DAYS

1. CONTINENCE SELF-CONTROL CATEGORIES (Code for resident performance over all shifts)			
0. CONTINENT — Complete control			
1. USUALLY CONTINENT — BLADDER, incontinent episodes once a week or less; BOWEL, less than weekly			
2. OCCASIONALLY INCONTINENT — BLADDER, 2+ times a week but not daily; BOWEL, once a week			
3. FREQUENTLY INCONTINENT — BLADDER, tended to be incontinent daily, but some control present (e.g., on day shift); BOWEL, 2-3 times a week			
4. INCONTINENT — Had inadequate control. BLADDER, multiple daily episodes; BOWEL, all (or almost all) of the time			
a.	BOWEL CONTINENCE	Control of bowel movement, with appliance or bowel continence programs, if employed	
b.	BLADDER CONTINENCE	Control of urinary bladder function (if dribbles, volume insufficient to soak through underpants), with appliances (e.g., Foley) or continence programs, if employed	
2.	INCONTINENCE RELATED TESTING	(Skip if resident's bladder continence code equals 0 or 1 AND no catheter is used) Resident has been tested for a urinary tract infection Resident has been checked for presence of a fecal impaction, or there is adequate bowel elimination NONE OF ABOVE	a. b. c.
3.	APPLIANCES AND PROGRAMS	Any scheduled toileting plan External (condom) catheter Indwelling catheter Intermittent catheter Did not use toilet room/commode/unna	a. Pads/briefs used b. Enemas/irrigation c. Ostomy d. NONE OF ABOVE e.
4.	CHANGE IN URINARY CONTINENCE	Change in urinary continence/appliances and programs in last 90 days 0. No change 1. Improved 2. Deteriorated	f. g. h. i.

SECTION G. PSYCHOSOCIAL WELL-BEING

1.	SENSE OF INITIATIVE/INVOLVEMENT	At ease interacting with others At ease doing planned or structural activities At ease doing self-initiated activities Establishes own goals Pursues involvement in life of facility (e.g., makes/keeps friends; involved in group activities; responds positively to new activities; assists at religious services) Accepts invitations into most group activities NONE OF ABOVE	a. b. c. d. e. f. g.
2.	UNSETTLED RELATIONSHIPS	Covert/open conflict with and/or repeated criticism of staff Unhappy with roommate Unhappy with residents other than roommate Openly expresses conflict/anger with family or friends Absence of personal contact with family/friends Recent loss of close family member/friend NONE OF ABOVE	a. b. c. d. e. f. g.
3.	PAST ROLES	Strong identification with past roles and life status Expresses sadness/anger/empty feeling over lost roles/status NONE OF ABOVE	a. b. c.

SECTION H. MOOD AND BEHAVIOR PATTERNS

1.	SAD OR ANXIOUS MOOD	(Check all that apply during last 30 days) VERBAL EXPRESSIONS of DISTRESS by resident (sadness, sense that nothing matters, hopelessness, worthlessness, unrealistic fears, vocal expressions of anxiety or grief) DEMONSTRATED (OBSERVABLE) SIGNS of mental DISTRESS — Tearfulness, emotional groaning, sighing, breathlessness — Motor agitation such as pacing, handwringing or picking — Failure to eat or take medications, withdrawal from self-care or leisure activities — Pervasive concern with health — Recurrent thoughts of death—e.g., believes he/she about to die, have a heart attack — Suicidal thoughts/actions NONE OF ABOVE	a. b. c. d. e. f. g. h.
2.	MOOD PERSISTENCE	Sad or anxious mood intrudes on daily life over last 7 days — not easily altered, doesn't "cheer up" 0. No 1. Yes	
3.	PROBLEM BEHAVIOR	(Code for behavior in last 7 days) 0. Behavior not exhibited in last 7 days 1. Behavior of this type occurred less than daily 2. Behavior of this type occurred daily or more frequently WANDERING (moved with no rational purpose, seemingly oblivious to needs or safety) VERBALLY ABUSIVE (others were threatened, screamed at, cursed at) PHYSICALLY ABUSIVE (others were hit, shoved, scratched, sexually abused) SOCIALLY INAPPROPRIATE/DISRUPTIVE BEHAVIOR (made disrupting sounds, noisy, screams, self-abusive acts, sexual behavior or disturbing in public, smeared/threw food/ feces, hoarding, rummaged through others' belongings)	a. b. c. d. e.
4.	RESIDENT RESISTS CARE	(Check all types of resistance that occurred in the last 7 days) Resisted taking medications/injection Resisted ADL assistance NONE OF ABOVE	a. b. c.
5.	BEHAVIOR MANAGEMENT PROGRAM	Behavior problem has been addressed by clinically developed behavior management program. (Note: Do not include programs that involve only physical restraints or psychotropic medications in this category) 0. No behavior problem 1. Yes, addressed 2. No, not addressed	
6.	CHANGE IN MOOD	Change in mood in last 90 days 0. No change 1. Improved 2. Deteriorated	
7.	CHANGE IN PROBLEM BEHAVIOR	Change in problem behavioral signs in last 90 days 0. No change 1. Improved 2. Deteriorated	

SECTION I. ACTIVITY PURSUIT PATTERNS

1.	TIME AWAKE	(Check appropriate time periods over last 7 days) Resident awake all or most of time (i.e., naps no more than one hour per time period) in the: Morning a. Evening c. Afternoon b. NONE OF ABOVE d.
2.	AVERAGE TIME INVOLVED IN ACTIVITIES	0. Most—more than 2/3 of time 2. Little—less than 1/3 of time 1. Some—1/3 to 2/3 of time 3. None
3.	PREFERRED ACTIVITY SETTINGS	(Check all settings in which activities are preferred) Own room a. Outside facility d. Day/activity room b. NONE OF ABOVE e. Inside NH/off unit c.

4.	GENERAL ACTIVITY PREFERENCES (adapted to resident's current abilities)	(Check all PREFERENCES whether or not activity is currently available to resident) Cards/other games a. Spiritual/religious activities f. Crafts/arts b. Trips/shopping g. Exercise/sports c. Walking/wheeling outdoors h. Music d. Watch TV l. Read/write e. NONE OF ABOVE j.
5.	PREFERS MORE OR DIFFERENT ACTIVITIES	Resident expresses/indicates preference for other activities/choices 0. No 1. Yes

SECTION J. DISEASE DIAGNOSES

Check only those diseases present that have a relationship to current ADL status, cognitive status, behavior status, medical treatments, or risk of death. (Do not list old/ inactive diagnoses.)	
1. DISEASES	(If none apply, CHECK the NONE OF ABOVE box)
HEART/CIRCULATION Arteriosclerotic heart disease (ASHD) Cardiac dysrhythmias Congestive heart failure Hypertension Hypotension Peripheral vascular disease Other cardiovascular disease	PSYCHIATRIC/MOOD Anxiety disorder Depression Manic depressive (bipolar disease)
NEUROLOGICAL Alzheimer's Dementia other than Alzheimer's Aphasia Cerebrovascular accident (stroke) Multiple sclerosis Parkinson's disease	SENSORY Cataracts Glaucoma OTHER Allergies Anemia Arthritis Cancer Diabetes mellitus Explicit terminal prognosis Hypothyroidism Osteoporosis Seizure disorder
PULMONARY Emphysema/Asthma/ COPD Pneumonia	Septicemia Urinary tract infection— in last 30 days NONE OF ABOVE
2. OTHER CURRENT DIAGNOSES AND ICD-9 CODES	
a. _____	
b. _____	
c. _____	
d. _____	
e. _____	
f. _____	

SECTION K. HEALTH CONDITIONS

1. PROBLEM CONDITIONS	(Check all problems that are present in last 7 days unless other time frame indicated)
Constipation Diarrhea Dizziness/vertigo Edema Fecal impaction Fever Hallucinations/delusions Internal bleeding Joint pain	Pain—resident complains or shows evidence of pain daily or almost daily Recurrent lung aspirations in last 90 days Shortness of breath Syncope (fainting) Vomiting NONE OF ABOVE
2. ACCIDENTS	
Fell in past 30 days a.	Hip fracture in last 180 days c.
Fell in past 31-180 days b.	NONE OF ABOVE d.

3.	STABILITY OF CONDITIONS	Conditions/diseases make resident's cognitive, ADL, or behavior status unstable—fluctuating, precarious, or deteriorating	a.
		Resident experiencing an acute episode or a flare-up of a recurrent/chronic problem	b.
		NONE OF ABOVE	c.

4.	SKIN PROBLEMS/ CARE	Open lesions other than stasis or pressure ulcers (e.g., cuts)	a.
		Skin desensitized to pain, pressure, discomfort	b.
		Protective/preventive skin care	c.
		Turning/repositioning program	d.
		Pressure relieving beds, bed/chair pads (e.g., egg crate pads)	e.
		Wound care/treatment (e.g., pressure ulcer care, surgical wound)	f.
		Other skin care/treatment	g.
		NONE OF ABOVE	h.

SECTION L. ORAL/NUTRITIONAL STATUS

1.	ORAL PROBLEMS	Chewing problem	a.				
		Swallowing problem	b.				
		Mouth pain	c.				
		NONE OF ABOVE	d.				
2.	HEIGHT AND WEIGHT	Record height (a.) in inches and weight (b.) in pounds. Weight based on most recent status in last 30 days; measure weight consistently in accord with standard facility practice—e.g., in a.m. after voiding, before meal, with shoes off, and in nightclothes.					
		<table border="1"> <tr> <td>HT (in.)</td> <td>WT (lb.)</td> </tr> <tr> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>	HT (in.)	WT (lb.)	<input type="text"/>	<input type="text"/>	
		HT (in.)	WT (lb.)				
<input type="text"/>	<input type="text"/>						
c. Weight loss (i.e., 5%+ in last 30 days; or 10% in last 180 days)	0. No 1. Yes	a.					
3.	NUTRITIONAL PROBLEMS	Complains about the taste of many foods	a.				
		Insufficient fluid; dehydrated	b.				
		Did NOT consume all/almost all liquids provided during last 3 days	c.				
		Regular complaint of hunger	d.				
		Leaves 25%+ food uneaten at most meals	e.				
		NONE OF ABOVE	f.				
4.	NUTRITIONAL APPROACHES	Parenteral/IV	a.				
		Feeding tube	b.				
		Mechanically altered diet	c.				
		Syringe (oral feeding)	d.				
		Therapeutic diet	e.				
		Dietary supplement between meals	f.				
		Plate guard, stabilized built-up utensil, etc.	g.				
		NONE OF ABOVE	h.				

SECTION O. MEDICATION USE

1.	NUMBER OF MEDICATIONS	(Record the number of different medications used in the last 7 days; enter "0" if none used)	
2.	NEW MEDICATIONS	Resident has received new medications during the last 90 days	
		0. No 1. Yes	
3.	INJECTIONS	(Record the number of days injections of any type received during the last 7 days)	
4.	DAYS RECEIVED THE FOLLOWING MEDICATION	(Record the number of days during last 7 days; enter "0" if not used; enter "1" if long-acting meds. used less than weekly)	
		Antipsychotics	a.
		Antianxiety/hypnotics	b.
		Antidepressants	c.
5.	PREVIOUS MEDICATION RESULTS	(SKIP this question if resident currently receiving antipsychotics, antidepressants, or antianxiety/hypnotics—otherwise code correct response for last 90 days) Resident has previously received psychoactive medications for a mood or behavior problem, and these medications were effective (without undue adverse consequences)	
		0. No, drugs not used	
		1. Drugs were effective	
		2. Drugs were not effective	
		3. Drug effectiveness unknown	

SECTION M. ORAL/DENTAL STATUS

1.	ORAL STATUS AND DISEASE PREVENTION	Debris (soft, easily movable substances) present in mouth prior to going to bed at night	a.
		Has dentures and/or removable bridge	b.
		Some/all natural teeth lost—does not have or does not use dentures (or partial plates)	c.
		Broken, loose, or carious teeth	d.
		Inflamed gums (gingivitis); swollen or bleeding gums; oral abscesses, ulcers or rashes	e.
		Daily cleaning of teeth/dentures	f.
		NONE OF ABOVE	g.

SECTION P. SPECIAL TREATMENT AND PROCEDURES

1.	SPECIAL TREATMENTS AND PROCEDURES	SPECIAL CARE—Check treatments received during the last 14 days	
		Chemotherapy	a.
		Radiation	b.
		Dialysis	c.
		Suctioning	d.
		Trach. care	e.
		IV meds	f.
		Transfusions	g.
		O ₂	h.
		Other	i.
		NONE OF ABOVE	j.
		THERAPIES—Record the number of days each of the following therapies was administered (for at least 10 minutes during a day) in the last 7 days:	
		Speech—language pathology and audiology services	
		Occupational therapy	
		Physical therapy	
		Psychological therapy (any licensed professional)	
		Respiratory therapy	
2.	ABNORMAL LAB VALUES	Has the resident had any abnormal lab values during the last 90-days?	
		0. No 1. Yes 2. No tests performed	
3.	DEVICES AND RESTRAINTS	Use the following codes for last 7 days:	
		0. Not used	
		1. Used less than daily	
		2. Used daily	
		Bed rails	a.
Trunk restraint	b.		
Limb restraint	c.		
Chair prevents rising	d.		

SECTION N. SKIN CONDITION

1.	STASIS ULCER	(open lesion caused by poor venous circulation to lower extremities)	
		0. No 1. Yes	
2.	PRESSURE ULCERS	(Code for highest stage of pressure ulcer)	
		0. No pressure ulcers	
		1. Stage 1 A persistent area of skin redness (without a break in the skin) that does not disappear when pressure is relieved	
		2. Stage 2 A partial thickness loss of skin layers that presents clinically as an abrasion, blister, or shallow crater	
		3. Stage 3 A full thickness of skin is lost, exposing the subcutaneous tissues—presents as a deep crater with or without undermining adjacent tissue	
		4. Stage 4 A full thickness of skin and subcutaneous tissue is lost, exposing muscle and/or bone	
3.	HISTORY OF RESOLVED/ CURED PRESSURE ULCERS	Resident has had a pressure ulcer that was resolved/cured in last 90 days	
		0. No 1. Yes	

Resident's Name:	Medical Record No.:
------------------	---------------------

Signature of RN Assessment Coordinator: _____

RESIDENT ASSESSMENT PROTOCOL SUMMARY			
1. For each RAP area triggered, show whether you are proceeding with a care plan intervention. 2. Document problems, complications, and risk factors; the need for referral to appropriate health professionals; and the reasons for deciding to proceed or not to proceed to care planning. Documentation may appear anywhere the facility routinely keeps such information, such as problem sheets or nurses' progress notes. 3. Show location of this information.			
RAP Problem Area	Care Planning Decision		Location of Information
	Proceed	Not Proceed	
DELIRIUM	<input type="checkbox"/>	<input type="checkbox"/>	
COGNITIVE LOSS/DEMENTIA	<input type="checkbox"/>	<input type="checkbox"/>	
VISUAL FUNCTION	<input type="checkbox"/>	<input type="checkbox"/>	
COMMUNICATION	<input type="checkbox"/>	<input type="checkbox"/>	
ADL FUNCTIONAL/ REHABILITATION POTENTIAL	<input type="checkbox"/>	<input type="checkbox"/>	
URINARY INCONTINENCE AND INDWELLING CATHETER	<input type="checkbox"/>	<input type="checkbox"/>	
PSYCHOSOCIAL WELL-BEING	<input type="checkbox"/>	<input type="checkbox"/>	
MOOD STATE	<input type="checkbox"/>	<input type="checkbox"/>	
BEHAVIOR PROBLEM	<input type="checkbox"/>	<input type="checkbox"/>	
ACTIVITIES	<input type="checkbox"/>	<input type="checkbox"/>	
FALLS	<input type="checkbox"/>	<input type="checkbox"/>	
NUTRITIONAL STATUS	<input type="checkbox"/>	<input type="checkbox"/>	
FEEDING TUBES	<input type="checkbox"/>	<input type="checkbox"/>	
DEHYDRATION/FLUID MAINTENANCE	<input type="checkbox"/>	<input type="checkbox"/>	
DENTAL CARE	<input type="checkbox"/>	<input type="checkbox"/>	
PRESSURE ULCERS	<input type="checkbox"/>	<input type="checkbox"/>	
PSYCHOTROPIC DRUG USE	<input type="checkbox"/>	<input type="checkbox"/>	
PHYSICAL RESTRAINTS	<input type="checkbox"/>	<input type="checkbox"/>	

August 15, 1990

RESIDENT ASSESSMENT PROTOCOL TRIGGER LEGEND

LEGEND:
 ● Automatic Trigger—Go directly to RAP Instructions
 ▲ Potential Trigger—Go to RAP Instructions for more detailed trigger definitions
 Instructions: Match MDS Item codes with trigger codes below. Proceed to RAP Instructions as indicated by symbol. Circle all RAPs that are "triggered," based on your review.

MDS Item	Code	Delirium	Cognitive Loss/Dementia	Visual Function	Communication	ADL Functional/Rehabilitation Potential	Urinary Incontinence and Involving Catheter	Psychosocial and Involving Behavior	Mood State	Behavior Problem	Activities	Falls	Nutritional Status	Feeding Tubes	Dehydration/Fluid Maintenance	Dental Care	Pressure Ulcers	Psychotropic Drug Use	Physical Restraints
B2 a or b	1		▲																
B3 a,b,c,d	fewer than 3 ✓		▲																
B4	0,1,2				▲														
	1,2,3		▲																
B5 a,b,c,d,e	any ✓	●																	
B6	2	●																	▲
C4	2,3				▲														
C5	1,2,3		▲																
	2,3				▲	▲													
C6	2	●																	
D1	1,2,3		●																
D2 a	✓		●																
E1 a,b,c,d,e,f	3,4				▲														
E3 a	3,4				▲														
E4 a,b,d,e,h,j	any ✓									▲									
E7 a,b	any ✓				▲														
E8	2																		▲
F1 b	2,3,4					▲													
F3 b,c,d,f	any ✓					▲													
G2 a,b,c,d	any ✓						●												
G3 b	✓						●												
H1 a,b,c,d,e,f,g	any ✓							●											
H1 d	✓																		▲
H2	1							●											
H3 a,b,c or d	1,2								●										
H6	2	▲																	
H7	2	●																	
I2	0,2,3									▲									
I5	1									●									
J1 ee	✓																		▲
J2	260, 261, 262											●							
	263, 263.0, 263.1											●							
	263.2, 263.8, 263.9											●							
	276.5																		▲
	291.0, 292.81	●																	
	293.0, 293.1	●																	
K1 b,c,i,h,n	any ✓																		▲
K2 a,b	any ✓									●									
L1 c	✓																		●
L2 c	1											●							▲
L3 a,d,e	any ✓											●							●
L3 b	✓											●							●
L3 c,e	✓											●							▲
L4 a,b	any ✓											●							▲
L4 a,c,d,e	any ✓											●							▲
L4 b	✓											●							●
M1 a,c,d,e	any ✓																		●
M1 f	not ✓																		●
N2	1,2,3,4											●							●
N4 c,d,e,f,g	none ✓																		▲
O4 a,b,c	1-7									▲	▲								▲
P2 b or d	1,2										▲								●

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session

October 19, 1993

Take notice that the following agenda item is scheduled for Notice of Proposal in the December 20, 1993 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Tuesday, October 19, 1993 from 3:00 P.M. to 6:00 P.M. in the 8th floor Training Room, 225 East State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Thursday, October 14, 1993.

Rule Proposal: N.J.A.C. 6:28, Special Education.

Please note: Publication of the above item is subject to change depending upon the actions taken by the State Board of Education at the October 6, 1993 monthly public meeting.

CORRECTIONS

(b)

THE COMMISSIONER

Notice of Action on Petition for Rulemaking

N.J.A.C. 10A:4-9.15

Petitioner: George R. Jacques, New Jersey State Prison.

Take notice that on August 12, 1993, the New Jersey Department of Corrections received a petition for rulemaking concerning N.J.A.C. 10A:4-9.15, the Department's rules on Inmate Discipline—Evidence Required. Public notice of this petition was published in the September 20, 1993, New Jersey Register.

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department has determined that the matter will receive further deliberations.

Upon the conclusion of the Department's deliberations by October 18, 1993, the decision will be mailed to the petitioner and published in a future New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

ENVIRONMENTAL PROTECTION AND ENERGY

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast and Upper Raritan Water Quality Management Plans

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Northeast and Upper Raritan Water Quality Management (WQM) Plans. This amendment proposal was submitted on behalf of the Environmental Disposal Corporation (EDC) and would update the Bedminster Township and Bernards Township Wastewater Management Plans. The amendment proposes expansion of the EDC sewage treatment plant (STP) in Bedminster Township, which discharges to an unnamed tributary of the North Branch Raritan River, to serve an annual average flow of 1.9 million gallons per day from Bedminster Township, Far Hills Borough, Peapack-Gladstone Borough and Bernards Township. The projected wastewater flow from Bernards Township to

be served by the EDC STP is increased from 390,425 gallons per day (gpd) to 562,337 gpd by this amendment. No change in service area is proposed.

This notice is being given to inform the public that a plan amendment has been proposed for the Northeast and Upper Raritan WQM Plans. All information related to the WQM Plans and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, CN 423, 401 East State Street, Trenton, New Jersey 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 Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEPE address cited above with a copy sent to Mr. James F. Cosgrove, Omni Environmental, The Princeton Corporate Center, Three Independence Way, Princeton, New Jersey 08540. 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 NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE 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 Dr. Van Abs at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(d)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on September 2, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment allows for a new wastewater treatment system to serve the proposed Skylands Park Management 4,200 seat minor league baseball stadium and 24,000 square foot museum/sports complex in Frankford Township, Sussex County. A Wastewater Recycling and Treatment System is proposed to treat the projected wastewater flow of 24,000 gallons per day. This amendment updates the Frankford Township Wastewater Management Plan.

(e)

BUREAU OF HAZARDOUS SUBSTANCES INFORMATION

Notice of Receipt of Petition For Rulemaking Prohibition of the Trade Name Pesticide "Penn-cap- M" except by Special One Time Permit under N.J.A.C. 7:30-1.1

Petitioner: Thomas Park Thatcher.

Take notice that on September 8, 1993, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking requesting the amendment of the Department's Pesticide Control Code N.J.A.C. 7:30.

Petitioner, Thomas Park Thatcher is a non-commercial beekeeper, as defined in N.J.A.C. 2:24-4.1 and a member of the New Jersey State Beekeepers Association.

Petitioner states that the use of the pesticide "Penn-cap-M" creates a specific risk of harm, injury and damage to honey bee colonies.

Pennacp-M is a slow release pesticide in capsule form. Bees collect Pennacp-M granules, because of their resemblance to pollen granules, and transport them from the target sites to the colony for consumption or storage as future food supply. Collection of Pennacp-M granules by bees and the storage of the full strength active ingredient can cause bee colony kills miles from the treated field. Additionally, such bioaccumulation and storage by bees reconcentrates the product and extends the duration of its toxic effects. The use of Pennacp-M is currently prohibited or allowed only by special use permit, in the states of California, Maine and Massachusetts.

Petitioner requests that the use of Pennacp-M should be prohibited, except in those instances where no other product and/or combination of applications can achieve the same pest control results. In such cases, an application for the use of the product should be made to the Department and the applicant must conclusively demonstrate that the desired pest control cannot be achieved by any other pesticide or combination of pesticide applications. Beekeepers within six miles of the target Pennacp-M site should be notified of the permit application and given the opportunity to comment prior to the issuance of the permit.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Examination Fee for Licensing Nursing Home Administrators N.J.A.C. 8:34-1.7

Take notice that the examination fee charged to each applicant for nursing home administrator licensure for the October 14, 1993 examination will be \$125.00. This represents a decrease from the \$175.00 fee charged for the April, 1993, examination. This notice is being given in accordance with N.J.A.C. 8:34-1.7(f), which requires that the "Department shall provide timely notice of the examination fee in the Public Notice section of the New Jersey Register."

In order to be licensed as a nursing home administrator in New Jersey, a candidate must take the National Association of Boards of Examiners (NAB) examination. The Department administers the examination, which is purchased from NAB and the Professional Education Service (PES). The cost of the examination is determined by the NAB. There is a per candidate examination fee for member state boards and a different per candidate fee for non-member state boards.

In May, 1993, the New Jersey State Department of Health became a member state board of the NAB. The decrease in the fee to be charged to each candidate for the October, 1993 examination reflects this change in the status of New Jersey as a member state board of the NAB.

(b)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Action on Petition for Rulemaking Hospital Licensing Standards N.J.A.C. 8:43G-4.1, 8:43G-5.2 and 8:31B-3.35

Petitioner: Frank R. Ciesla, Esq., representing the New Jersey Hospital Association.

Take notice that on September 16, 1992, the New Jersey State Department of Health received a petition from Frank R. Ciesla, Esq., representing the New Jersey Hospital Association, requesting that the Department amend its hospital licensing standards at N.J.A.C. 8:43G-4.1 and 8:43G-5.2 and promulgate a new rule to be known as N.J.A.C. 8:31B-3.35, Non-resident care costs. Public notice of the receipt of this petition was published in the New Jersey Register at 24 N.J.R. 4131(a) (see also 24 N.J.R. 4290(a)). These amendments and new rules were requested by the New Jersey Hospital Association to relieve hospitals of the regulatory obligations which require that they render care to all patients, without regard to the patient's state of residence and need for care. The requested amendments would have had the effect of requiring hospitals to render care only to New Jersey residents or to those non-residents

who are in need of emergency care due to life-threatening conditions. The requested new rule would also have established a mechanism enabling hospitals to receive reimbursement for non-life threatening care rendered to bad debt and indigent non-residents through a hospital-specific cost factor.

The New Jersey legislature, in enacting the Health Care Reform Act, P.L.1992, c.160, reaffirmed public policy that inability to pay cannot constitute a reason for denial of admission. Section 14 of this law states that "no hospital shall deny admission to a patient on the basis of that patient's ability to pay or source of payment." Hospitals that violate this provision are subject to a civil penalty of \$10,000 for each violation. The proposed amendments to licensing requirements would potentially create instances in which denials would be based upon a patient's ability to pay.

The requested amendment may also be inconsistent with the Anti-Dumping provisions of Section 1867 of the Social Security Act, in which the Federal government prohibits discrimination based upon inability to pay when emergency services are needed. A hospital must screen each patient who presents with an emergency medical condition or who is in labor, and must provide treatment to stabilize the medical condition or effect an appropriate transfer of the individual to another medical facility. The refusal to screen, treat, and admit or transfer a patient based upon out-of-state residence could violate the provisions of this anti-dumping law, and would potentially result in the termination of the Medicare provider agreement with the hospital.

The Department would also note that the hospital reimbursement system has been fundamentally modified by the Health Care Reform Act, which was enacted after the initial petition for rule-making was submitted. The New Jersey Health Care Trust Fund is no longer in existence; consequently, the petitioner's suggestion that hospitals be reimbursed through a hospital-specific cost shift would no longer be applicable.

The requested amendment that hospitals be obligated to render care only to New Jersey residents and to those non-residents who are in need of emergency care due to life-threatening conditions is contrary to the philosophy of the Department of Health, which is committed to the basic patient right to medical treatment in an acute care hospital regardless of external factors such as race, age, religion, national origin, residence, ability to pay, or source of payment.

The Department finds that the intent and effect of the petition is inconsistent with public health policy, and potentially in conflict with State and Federal law. The petition for further formal rulemaking is accordingly denied.

HUMAN SERVICES

(c)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds Juvenile Shelter Care Program in Cumberland County

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: Juvenile Shelter Care Program in Cumberland County.

B. Purpose for which the grant program funds shall be used: Provision of 24-hour crisis supervision and arrangement of educational programming, recreation, medical services (both routine and special—medical, dental, eye care), other clinical services (including mental health), and transportation of youth to activities and appointments.

C. Amount of money in grant program: \$264,329 on an annualized basis. This grant requires a \$15,789 match.

D. Organizations which may apply for funding under this program: All profit and not-for-profit agencies, organizations, corporate bodies, private or public entities, and individuals basing the program in Cumberland County, New Jersey may submit proposals under this announcement.

E. Qualifications needed by an applicant to be considered for funding:
1. The applicant must have demonstrated experience in the provision of social services to children, individuals and families.

2. The applicant must have demonstrated experience in working with confidential and sensitive information in a judicious manner. The applicant must also comply with the confidentiality laws and rules governing the Department of Human Services and the Division of Youth and Family Services.

3. The applicant must demonstrate sound fiscal practices and management stability. A copy of the applicant's most recent financial audit should be submitted.

4. The shelter care provider must be licensed by DYFS Bureau of Licensing in compliance with the Manual of Standards for Children's Shelter Facilities and Homes, N.J.A.C. 10:124.

F. Procedure for eligible organizations to apply: Interested applicants may obtain a Request for Proposal by contacting:

Fred Rhinehart
DYFS Cumberland County District Office
106 W. Landis Avenue
Vineland, New Jersey 08360
609-696-6590

Agencies interested in applying for these funds may also obtain a copy of the Request for Proposal by attending a **bidder's conference** scheduled for Monday, October 18, 1993 at Cumberland County Administration Building, 790 E. Commerce Street, Bridgeton, in the Freeholders Conference Room at 10:00 A.M.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit one signed original and 10 copies to:

Fred Rhinehart
DYFS Cumberland County District Office
106 W. Landis Avenue
Vineland, New Jersey 08360
609-696-6590

H. Deadline by which application must be submitted: Applications can be submitted by mail or hand delivery and must be received in the Cumberland District Office by November 3, 1993 at 4:00 P.M.

I. Date by which applicants shall be notified of acceptance or rejection: Applicants shall be notified of acceptance or rejection by December 3, 1993.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES
Notice of Availability of Grant Funds
In-Home Services in Cumberland County

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: In-Home Services in Cumberland County.

B. Purpose for which the grant program funds shall be used: This program is intended to assist DYFS caseworkers in determining a set of objectives designed to relieve stress and resolve emotional conflict in families that may otherwise result in abuse/neglect/or risk of out-of-home placement and in carrying out some of the tasks necessary to meet these objectives.

C. Amount of money in grant program: \$100,000 on an annualized basis. No matching funds are required.

D. Organizations which may apply for funding under this program: All profit and not-for-profit agencies, organizations, corporate bodies, private or public entities, and individuals basing the program in Cumberland County, New Jersey may submit proposals under this announcement.

E. Qualifications needed by an applicant to be considered for funding:

1. The applicant must have demonstrated experience in the provision of social services to children, individuals and families.

2. The applicant must have demonstrated experience in working with confidential and sensitive information in a judicious manner. The applicant must also comply with the confidentiality laws and rules governing the Department of Human Services and the Division of Youth and Family Services.

3. The applicant must demonstrate sound fiscal practices and management stability. A copy of the applicant's most recent financial audit should be submitted.

F. Procedure for eligible organizations to apply: Interested applicants may obtain a Request for Proposal by contacting:

Fred Rhinehart
DYFS Cumberland County District Office
106 W. Landis Avenue
Vineland, New Jersey 08360
609-696-6590

Agencies interested in applying for these funds may also obtain a copy of the Request for Proposal by attending a **bidder's conference** scheduled for Monday, October 18, 1993 at Cumberland County Administration Building, 790 E. Commerce Street, Bridgeton, in the Freeholders Conference Room at 10:00 A.M.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit one signed original and 10 copies to:

Fred Rhinehart
DYFS Cumberland County District Office
106 W. Landis Avenue
Vineland, New Jersey 08360
609-696-6590

H. Deadline by which application must be submitted: Applications can be submitted by mail or hand delivery and must be received in the Cumberland District Office by November 3, 1993 at 4:00 P.M.

I. Date by which applicants shall be notified of acceptance or rejection: Applicants shall be notified of acceptance or rejection by December 3, 1993.

(b)

DIVISION OF FAMILY DEVELOPMENT
Notice of Availability of Grant Funds
Expansion of Essex County Family Development
Program Education and Employment-Directed
Activity Opportunities

Take notice that, in compliance with N.J.S.A. 52:14-34.4, the Department of Human Services, under the authority of Public Law 1991, Chapter 523, announces the availability of the following grant funds for the period January 1, 1994 through December 31, 1994.

A. Name of program: Aid to Families With Dependent Children (AFDC) Family Development Program (FDP) Expansion of Education and Employment-Directed Activity Opportunities for the County of Essex, New Jersey.

B. Purpose: To expand the number of available opportunities for AFDC individuals in the County of Essex to participate in educational or employment-directed activities under the Family Development Program. The funds are available to create additional opportunities in such activities for the AFDC/FDP population in the City of Newark and the balance of Essex County. Educational and employment-directed activities shall include, but are not limited to: job development and job placement; vocational counselling and assessment; basic educational or preparatory activities (that is, English as a second language (ESL), Adult Basic Education (ABE), family literacy programs, and General Educational Development (GED) programs); job readiness skills programs; vocational and occupational educational and training activities; post-secondary vocational certificate programs and educational programs; on-the-job training; Community Work Experience (CWEP) programs; job search; Work Supplementation Programs (WSP), and tutorial services.

C. Amount of available funding for program: \$4,948,000 in funding will be provided for the reasonable costs associated with providing educational and employment-directed activities to AFDC/FDP participants in the County of Essex, New Jersey.

D. Organizations which may apply for funding under this grant program: Public or private-for-profit or not-for-profit agencies that can provide trained personnel to provide slots for the AFDC/FDP population in the City of Newark and/or the balance of the County of Essex in the aforementioned educational or employment-directed activities.

E. Procedure for eligible organizations to apply: Request for proposal (RFP) packages will be available on October 4, 1993. Interested applicants may request an RFP, in writing, from:

INSURANCE

New Jersey Department of Human Services
Division of Family Development
Office of the Acting Deputy Director
CN 716
Trenton, New Jersey 08625
or, by telephone: (609) 588-2411

Additional information and technical assistance will be provided to interested applicants at a **Bidders' Conference** to be held at the Division of Family Development, Quakerbridge Plaza, Building 6, Third Floor Conference Rooms A and B, Trenton, New Jersey, on Wednesday, October 6, 1993 at 1:00 P.M.

RFP packages will be available, upon request, at the Bidders' Conference.

F. Address to which applications must be submitted: Applicants should submit one signed original and seven copies of the completed Request for Proposal document and all support materials to:

New Jersey Department of Human Services
Division of Family Development
Office of the Director
CN 716
Trenton, New Jersey 08625

G. Deadline by which applications must be submitted: The completed RFP document and all required supporting material must be received by the Office of the Director, at the above address, by 4:00 P.M. on Friday, November 5, 1993.

H. Date the applicant is to be notified of acceptance or rejection of submitted proposal: November 18, 1993.

INSURANCE

(a)

OFFICE OF THE COMMISSIONER

Notice of Public Hearing

New Jersey Small Employer Health Benefits Program Small Employer Health Benefits Program Plan of Operation

Proposed New Rules: N.J.A.C. 11:21-2

Take notice that, pursuant to N.J.S.A. 17B:27A-30, the Department of Insurance (Department) will hold a **public hearing** regarding the Plan of Operation proposed by the New Jersey Small Employer Health Benefits Program (SEH Program) which establishes the administration of the SEH Program pursuant to the provisions of N.J.S.A. 17B:27A-17 et seq., as amended, P.L.1993, c.162 (the Act). The Plan of Operation is contained in new rules proposed by the SEH Program at N.J.A.C. 11:21-2, published elsewhere in this issue of the New Jersey Register. The **hearing** shall be held by the Department as set forth below:

Date: Thursday, October 21, 1993 at 9:30 A.M.
Location: Department of Insurance
Mary G. Roebing Building
2nd Floor
20 West State Street
Trenton, NJ 08625

The purpose of the hearing is to receive public comment on the proposed SEH Program Plan of Operation which was submitted by the SEH Program Board to the Commissioner on September 3, 1993 pursuant to N.J.S.A. 17B:27A-30. The Act provides that the Plan of Operation and any subsequent amendments thereto shall be submitted by the SEH Program Board to the Commissioner who shall, after notice and a hearing, approve the Plan if he finds that it is reasonable and equitable and sufficiently carries out the provisions of the Act. The Plan of Operation shall become effective after the Commissioner has approved it in writing. The Plan or any subsequent amendments thereto shall be deemed approved if not expressly disapproved by the Commissioner in writing within 90 days of receipt by the Commissioner.

The hearing shall be conducted by a hearing officer designated by the Commissioner. A verbatim transcript of the hearing will be prepared by a certified stenographic reporter; interested parties may obtain a copy of the transcript by ordering it directly from the reporter at the hearing or thereafter.

At the hearing, interested parties may present oral comments about the proposed Plan of Operation. Any person intending to speak at the hearing should so advise the Department no later than October 14, 1993

PUBLIC NOTICES

by sending the Registration Form to the Department's address set forth on the Form. A copy of the Registration Form has been provided to all parties to whom this notice was mailed pursuant to P.L.1993, c.162, section 16. Any other person may obtain a Registration Form by submitting a request to the following address:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, NJ 08625-0325

At the hearing, oral testimony will be limited to a maximum of five minutes per person or organization. Persons who did not submit Registration Forms will be permitted to present comments only after the presentation of testimony from persons who submitted Registration Forms in a timely manner.

Take further notice that a copy of the SEH Program's proposed Plan of Operation (N.J.A.C. 11:21-2) may be inspected or obtained by interested parties directly from the SEH Program Board. Written comments on the Plan of Operation will be accepted by the SEH Program Board until October 19, 1993. To request a copy, or to submit written comments, write to:

Interim Administrator
New Jersey Small Employer Health
Benefits Program
SEH Box 1
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, NJ 08830

STATE

(b)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Availability of Grants for Fellowship

Support Fiscal Year 1995 (July 1, 1994-June 30, 1995)

Take notice that the New Jersey State Council on the Arts, acting under the authority of Public Law 1966, Chapter 214, hereby announces the availability of the following grant program, in accordance with N.J.S.A. 52:14-34.4, 34.5 and 34.6:

Name of program: Fellowship Support Program, Fiscal Year 1995.

Purpose: In recognition of outstanding artwork, Fellowships are granted to enable New Jersey resident artists to pursue their artistic goals. Fellowships are awarded in choreography, music composition, opera/music theatre composition, theatre (mime), experimental art, graphics, painting, sculpture, design arts, crafts, photography, media arts (film/video), prose, playwriting, poetry, and interdisciplinary.

Eligible applicants: Artists who are residents of the State of New Jersey (all awards are subject to verification of New Jersey residency); artists who have not received a fellowship since FY 1991-92; artists who are not matriculated students in an undergraduate program at the time of application (fellowships do not provide funding for scholarships or academic study in pursuit of a college degree). **Note:** Artists may only apply in one discipline and only in one category of a discipline.

Ineligible applicants: Artists who are residents in another state; are matriculated students in an undergraduate program at the time of application; artists who received a fellowship during FY 92, 93 or 94.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY 95. For FY 94 awards ranged from \$5,000 to \$12,000.

Match: This is a non-matching award.

Deadline for application submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than December 15, 1993 (5:00 P.M. if delivered in person to office).

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council further reviews the panel evaluations. Its final recommendations are voted upon by the

full Council at its annual meeting, tentatively scheduled for August 2, 1994. Applicants are notified in writing of the Council's decision within six weeks of the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after October 1, 1993. Call (609) 292-6130 or write GRANTS 94, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

(a)

NEW JERSEY STATE COUNCIL ON THE ARTS
Notice of Availability of Organization Grants Fiscal
Year 1995 (July 1, 1994-June 30, 1995)

Take notice that the New Jersey State Council on the Arts, acting under the authority of Public Law 1966, Chapter 214, hereby announces the availability of the following grant program, in accordance with N.J.S.A. 52:14-34.4, 34.5 and 34.6:

Name of program: Organization Grant Program Fiscal Year 1995.
 General Operating Support
 Special Project Support
 Arts Basic to Education Expansion Project Grant
 Major Impact Organization

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey, through the award of matching grants to eligible organizations. Matching grants under this program are exclusively to support arts projects, program and services and the operation of arts organizations during the fiscal year 1994/95 (July 1, 1994 to June 30, 1995).

Eligible applicants: Must be a New Jersey incorporated, nonprofit organization that is tax exempt 501(c)(3) or (4) by determination of the Internal Revenue Service; must have been in existence and active for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finances; and must comply with all existing State and Federal regulations and laws as described in the Guidelines and Application.

Ineligible applicants: Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

Grant size: Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY 95.

Match: All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must indicate at least a 4:1 match of applicant cash to NJSCA dollars; Special Project applicants (who are arts organizations), at least 1:1 match of applicant cash to NJSCA dollars; and Special Project applicants (who are not an arts organization), at least 3:1 match of applicant cash to NJSCA dollars. Indirect Costs, however, cannot be included.

Deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than January 7, 1994 (5:00 P.M. if delivered in person to office). All prospective applicants that are not direct recipients of FY 94 NJSCA Grants must submit a Letter of Intent.

Letters of intent are due on December 1, 1993 (5:00 PM receipt)—All categories, (organizations who have not received direct funds in FY 94 only).

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The consensus of the panel is further reviewed by the Council. The Council's final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for August 2, 1994. Applicants are notified in writing of the Council's decision within six weeks of the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after October 1, 1993. Call (609) 292-6130 or write GRANTS 95, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

TREASURY-GENERAL

(b)

STATE EMPLOYEES CHARITABLE CAMPAIGN
Notice of Acceptance of Applications from Charitable
Fund-Raising Organizations and Agencies for
Participation in State Employees Charitable Fund-
Raising Campaign for Fall of 1994

Take notice that Samuel Crane, Treasurer, State of New Jersey, pursuant to the Public Employee Charitable Fund-Raising Act, P.L. 1985, c.140 (N.J.S.A. 52:14-15.9c1 et seq.) and State Employees Charitable Fund-Raising Rules (N.J.A.C. 17:28-3.2(b)(1)), announces that the Department of the Treasury will be accepting applications via the Division of Consumer Affairs, c/o Anne Mallett, State Coordinator, PO Box 45025, Newark, NJ 07101 until December 1, 1993 from the charitable fund-raising organizations and agencies for participation in State Employees Charitable Fund-Raising Campaign for Fall of 1994.

For the purposes of this notice, "charitable fund-raising organization" shall mean a voluntary not-for-profit organization which receives and distributes voluntary charitable contributions. A charitable fund-raising organization, if eligible, shall participate on the Steering Committee. "Charitable fund-raising agency" shall mean a voluntary not-for-profit organization which provides health, welfare, or human care services to individuals. A charitable organization or agency shall be eligible to participate in the 1994 Campaign if it meets the following requirements and submits the required documents listed in the rules:

a. The organization/agency is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;

b. The organization/agency qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;

c. The organization/agency is not a private foundation as described in Section 509 of the Internal Revenue Code;

d. The organization/agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971," P.L. 1971, c.469 (C. 45:17A-1 et seq.);

e. The organization/agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State.

f. If an organization, it shall have raised at least \$60,000 and distributed that sum among at least 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State Campaign; if an agency shall have raised at least \$15,000 from individual citizens of New Jersey in each of its two fiscal preceding its application to participate in a State campaign.

Copies of the application may be obtained from the Division of Consumer Affairs at the address listed below and submitted with:

1. A cover letter;
2. Verification that the organization/agency meets the requirements as spelled out in a-f above;
3. A copy of the IRS form 990 for the preceding two years;
4. A copy of the independent auditor's report for the two preceding years;
5. A statement that the governing body has no conflict of interest in their service;
6. A list of the current governing body and identification of its officers;
7. A list of agencies to which the organization gave its funds in the two fiscal years prior to application and a list of agencies to which it anticipates giving funds received in this campaign, and a description of the health, welfare, or human care services that each provides, if applicable; and
8. Verification that each agency is registered under the Charitable Fund-Raising Act of 1971 except for those that are exempt under the law.

Additional information may be requested by the Treasurer.

Requests for application forms should be addressed to:

Anne Mallett
 State Coordinator
 New Jersey State Employees Charitable Campaign
 PO Box 45025
 Newark, NJ 07101

Applications can also be requested by calling (201) 504-6550.

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 August 2, 1993 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JULY 19, 1993

NEXT UPDATE: SUPPLEMENT AUGUST 16, 1993

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
24 N.J.R. 3455 and 3578	October 5, 1992	25 N.J.R. 1621 and 1796	April 19, 1993
24 N.J.R. 3579 and 3784	October 19, 1992	25 N.J.R. 1797 and 1912	May 3, 1993
24 N.J.R. 3785 and 4144	November 2, 1992	25 N.J.R. 1913 and 2150	May 17, 1993
24 N.J.R. 4145 and 4306	November 16, 1992	25 N.J.R. 2151 and 2620	June 7, 1993
24 N.J.R. 4307 and 4454	December 7, 1992	25 N.J.R. 2621 and 2794	June 21, 1993
24 N.J.R. 4455 and 4606	December 21, 1992	25 N.J.R. 2795 and 3050	July 6, 1993
25 N.J.R. 1 and 218	January 4, 1993	25 N.J.R. 3051 and 3276	July 19, 1993
25 N.J.R. 219 and 388	January 19, 1993	25 N.J.R. 3277 and 3582	August 2, 1993
25 N.J.R. 389 and 616	February 1, 1993	25 N.J.R. 3583 and 3884	August 16, 1993
25 N.J.R. 619 and 736	February 16, 1993	25 N.J.R. 3885 and 4360	September 7, 1993
25 N.J.R. 737 and 1030	March 1, 1993	25 N.J.R. 4361 and 4540	September 20, 1993
25 N.J.R. 1031 and 1308	March 15, 1993	25 N.J.R. 4541 and 4694	October 4, 1993
25 N.J.R. 1309 and 1620	April 5, 1993		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1			
1:10-1.1, 9.1, 9.2, 14.1, 14.2, 14.3, 18.1	25 N.J.R. 3888(a)		
1:13A-1.1, 14.2, 14.4, 18.1, 18.3	25 N.J.R. 2625(a)	R.1993 d.422	25 N.J.R. 4063(a)

Most recent update to Title 1: TRANSMITTAL 1993-1 (supplement June 21, 1993)

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
AGRICULTURE—TITLE 2			
2:6	24 N.J.R. 2974(a)	Expired	
2:6	24 N.J.R. 3981(a)		
2:68	25 N.J.R. 3889(a)		
2:69-1.11	25 N.J.R. 3585(a)		
2:71	25 N.J.R. 1801(a)	R.1993 d.379	25 N.J.R. 3453(a)
2:71-2.26			25 N.J.R. 3453(b)
2:72	25 N.J.R. 1802(a)	R.1993 d.378	25 N.J.R. 3453(c)
2:74	25 N.J.R. 1803(a)	R.1993 d.377	25 N.J.R. 3453(d)
2:76-5.1-5.4	25 N.J.R. 3279(a)		
2:76-6.2-6.11, 6.13, 6.16, 6.17	25 N.J.R. 1804(a)	R.1993 d.392	25 N.J.R. 3453(e)
2:76-6.11	25 N.J.R. 3890(a)		
2:76-10	25 N.J.R. 1811(a)	R.1993 d.391	25 N.J.R. 3461(a)

Most recent update to Title 2: TRANSMITTAL 1993-4 (supplement June 21, 1993)

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
BANKING—TITLE 3			
3:1-13.2	25 N.J.R. 3585(b)		
3:1-16.2, 16.3	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:2-1.4	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:4-2	25 N.J.R. 3586(a)		
3:6-15.2	25 N.J.R. 3586(b)		
3:11-7.11	25 N.J.R. 3586(b)		
3:28-4.7, 4.12	25 N.J.R. 3587(a)		
3:31	25 N.J.R. 3587(a)		
3:32	25 N.J.R. 2799(a)		
3:38-1.1, 1.10, 5.1	25 N.J.R. 1035(a)		
3:38-1.3, 4.1	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:41-2.1, 11	25 N.J.R. 623(a)		

Most recent update to Title 3: TRANSMITTAL 1993-6 (supplement July 19, 1993)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1-5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(c)		
4A:3	Classification, services and compensation	25 N.J.R. 1916(a)	R.1993 d.424	25 N.J.R. 4064(a)
Most recent update to Title 4A: TRANSMITTAL 1993-4 (supplement June 21, 1993)				
COMMUNITY AFFAIRS—TITLE 5				
5:3	Department records	25 N.J.R. 2157(a)	R.1993 d.419	25 N.J.R. 4071(a)
5:5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA))	25 N.J.R. 1315(a)	R.1993 d.373	25 N.J.R. 3509(a)
5:10	Maintenance of hotels and multiple dwellings	25 N.J.R. 2627(a)	R.1993 d.464	25 N.J.R. 4482(a)
5:18-1.4, 1.5, 2.1, 2.3, 2.5, 2.6, 2.11, 2.14, 4.1, 4.3	Uniform Fire Code	25 N.J.R. 4363(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:18A-1.4, 2.2, 2.3, 2.5-2.11, 3.3, 3.4, 3.6, 4.2-4.6, 4.9, 4.10	Fire Code enforcement	25 N.J.R. 4363(a)		
5:18B-2.8	High level alarms	25 N.J.R. 4363(a)		
5:18C-1.4, 1.5, 1.7, 1.8, 1.9, 2.3	Fire service training and certification	25 N.J.R. 4363(a)		
5:18C-4.2, 5.2, 5.3, 5.4	Fire service training and certification	25 N.J.R. 1846(a)	R.1993 d.440	25 N.J.R. 4071(b)
5:23-1.4, 2.7, 2.17A	Uniform Construction Code: minor work; ordinary repairs	25 N.J.R. 3692(a)		
5:23-1.4, 2.16, 2.17	Uniform Construction Code: prior approvals; abandoned wells	25 N.J.R. 2158(a)	R.1993 d.420	25 N.J.R. 4072(a)
5:23-2.6, 2.14, 2.23, 3.2, 3.4, 3.8A, 3.11A, 3.14-3.18, 3.20, 3.20A, 3.21, 4.3A, 4A.8, 4A.11, 12.2	Uniform Construction Code: subcodes	25 N.J.R. 3891(a)		
5:23-2.7, 9.3	Uniform Construction Code: ordinary repairs; interpretation	25 N.J.R. 2159(a)	R.1993 d.487	25 N.J.R. 4592(a)
5:23-2.23	Uniform Construction Code: ventilation system requirements in Class I and II business and education buildings	25 N.J.R. 2161(a)	R.1993 d.421	25 N.J.R. 4073(a)
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-4.5	Uniform Construction Code: "Notice of Elevator Device Sealed Out of Operation"	25 N.J.R. 3693(a)		
5:26-8.2	Meetings of community associations	25 N.J.R. 3693(b)		
5:50	State Review Process for intergovernmental review of applications for Federal financial assistance and direct development activities	25 N.J.R. 3281(a)		
5:51	Handicapped persons recreational opportunities	25 N.J.R. 2633(a)	R.1993 d.436	25 N.J.R. 4074(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	25 N.J.R. 2634(a)	R.1993 d.437	25 N.J.R. 4075(a)
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:80-26.19	Housing and Mortgage Finance Agency: affordable housing controls	25 N.J.R. 4369(a)		
5:91-14	Council on Affordable Housing: interim procedures	25 N.J.R. 1118(a)	R.1993 d.407	25 N.J.R. 3753(a)
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
Most recent update to Title 5: TRANSMITTAL 1993-7 (supplement July 19, 1993)				
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:7-1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1317(a)		
Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)				
EDUCATION—TITLE 6				
6:1 et seq.	Title 6, New Jersey Administrative Code: opportunity for public comment	25 N.J.R. 4369(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:3-9	School Ethics Commission	25 N.J.R. 1924(a)	R.1993 d.394	25 N.J.R. 3511(a)
6:22A	School facility lease purchase agreements	25 N.J.R. 3588(a)		
6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1-4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.2, 11.4, 11.9	Special education	25 N.J.R. 1318(a)	R.1993 d.393	25 N.J.R. 3515(a)
6:78	Marie H. Katzenbach School for the Deaf	25 N.J.R. 3592(a)		
Most recent update to Title 6: TRANSMITTAL 1993-5 (supplement June 21, 1993)				
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:1D	Allocation of water supply costs for emergency water projects	25 N.J.R. 2635(a)	R.1993 d.497	25 N.J.R. 4595(a)
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1F-2.2, App. A	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)	R.1993 d.408	25 N.J.R. 3754(a)
7:1G-1-5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)		
7:1G-1.2, 6.1-6.11, 6.13-6.16	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)	R.1993 d.386	25 N.J.R. 3537(a)
7:1G-2.1, 6.4	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)		
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)		
7:2-2.20, 3.6, 6.4, 8.4, 8.6, 10.2, 16.5, 17.1, 17.3, 17.4, 17.5	State Park Service Code	25 N.J.R. 2799(b)		
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:7A-1.4, 2.7	Freshwater Wetlands Protection Act rules: definition of project	25 N.J.R. 1642(a)		
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		
7:9-4 (7:9B)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(a)	R.1993 d.415	25 N.J.R. 3755(a)
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-4.15	Water surface quality standards: Wallkill River	25 N.J.R. 3755(a)		
7:13-7.1	Delaware River, Pohatcong Township: flood plain redelineation	25 N.J.R. 4370(a)		
7:13-7.1	Overpeck Creek, Englewood: flood plain redelineation	25 N.J.R. 4371(a)		
7:13-7.1	Poplar Brook, Deal: flood plain redelineation	25 N.J.R. 4372(a)		
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A-1.8	NJPDES Program fees	25 N.J.R. 1358(a)	R.1993 d.477	25 N.J.R. 4486(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1-3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:20A	Water usage certifications for agricultural or horticultural purposes	25 N.J.R. 3956(a)		
7:22-9.1, 9.2, 9.4, 9.11-9.15, 10.1, 10.2, 10.4, 10.5, 10.6	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)	R.1993 d.409	25 N.J.R. 3760(a)
7:22A-1.4, 1.5, 1.7, 1.12, 1.15, 1.16, 2.4, 2.5, 2.6, 2.8, 3.4, 4.2, 4.5, 4.8, 4.11, 6.1-6.9, 6.11, 6.12, 6.14, 6.15, 7	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)	R.1993 d.409	25 N.J.R. 3760(a)
7:25-5	1993-94 Game Code	25 N.J.R. 1930(a)	R.1993 d.390	25 N.J.R. 3519(a)
7:25-6	1994-95 Fish Code	25 N.J.R. 3053(b)		
7:25-7.13, 14.1, 14.2, 14.4, 14.6, 14.7, 14.8, 14.11, 14.12, 14.13	Crab management	25 N.J.R. 1371(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-18.1	Marine fisheries: administrative correction	_____	_____	25 N.J.R. 4495(a)
7:25-18.1, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-1.9, 11.4, 12.9	Waste management: administrative corrections	_____	_____	25 N.J.R. 4595(b)
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16, 17.1, 17.3, 17.4, 23.1-23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)		
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)	R.1993 d.428	25 N.J.R. 4075(b)
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-21.1-21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3, 25.4, 25.9, 25.10, 25.11, 25.12	Oxygenated fuels program	25 N.J.R. 4039(a)		
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution civil administrative penalties	25 N.J.R. 3339(a)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Oxygenated fuels program penalties	25 N.J.R. 4039(a)		
7:27B-3.1, 3.10	Air pollution sampling and analytical procedures	25 N.J.R. 3339(a)		
7:27B-4.1, 4.5-4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations; extension of comment period	25 N.J.R. 1039(a)		
7:36	Green Acres Program: opportunity to review draft rule revisions	25 N.J.R. 1473(a)		

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7:36	Green Acres Grant Program	25 N.J.R. 3405(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)	R.1993 d.385	25 N.J.R. 3534(a)
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8:2	Creation of birth record	24 N.J.R. 4325(a)	R.1993 d.397	25 N.J.R. 3771(a)
8:2	Creation of birth record: reopening of comment period	25 N.J.R. 660(a)		
8:2A-1	Access to death records	25 N.J.R. 3115(a)		
8:18	Catastrophic Illness in Children Relief Fund Program	25 N.J.R. 2169(a)	R.1993 d.438	25 N.J.R. 4128(a)
8:21-10.1, 10.2, 10.4, 10.6, 10.12	Milk and fluid milk products	25 N.J.R. 4373(a)		
8:23-6	Pilot low-cost spaying and neutering clinic surgery fees	25 N.J.R. 3116(a)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:31B	Hospital financing: correction to proposal	25 N.J.R. 3566(a)		
8:31B-1.1	Hospital financing	25 N.J.R. 3117(a)		
8:31B-3.41, 4.38, 4.39, 4.40, 7	Hospital reimbursement: uncompensated care	25 N.J.R. 3125(a)		
8:31B-4.41-4.41N	Hospital reimbursement: charity care audit functions	25 N.J.R. 3707(a)		
8:33	Certificate of Need: application and review process	25 N.J.R. 2171(a)	R.1993 d.442	25 N.J.R. 4129(a)
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:33A-1.10, 1.16, 1.29	Hospital Policy Manual: capital cap and review process	25 N.J.R. 3710(a)		
8:33E	Cardiac diagnostic facilities and surgery centers: certificate of need	25 N.J.R. 3712(a)		
8:33H	Long-term care services: certificate of need policy	25 N.J.R. 3719(a)		
8:33S	Surgical facilities: certificate of need	25 N.J.R. 2790(a)	R.1993 d.498	25 N.J.R. 4626(a)
8:34	Nursing home administrators: standards for licensing	25 N.J.R. 3727(a)		
8:36	Assisted living residences and comprehensive personal care homes: standards for licensure	25 N.J.R. 3734(a)		
8:40-1.1, 2.3, 2.7, 3.1, 4.12, 5.23, 6.26	Invalid coach and ambulance services: licensure; street EMS	25 N.J.R. 2663(a)		
8:41-4.1, 10.5-10.13, 11	Mobile intensive care programs: standing orders; paramedic clinical training objectives	25 N.J.R. 2665(a)		
8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)	R.1993 d.473	25 N.J.R. 4631(a)
8:43	Licensure of residential health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43A	Licensure of ambulatory care facilities	25 N.J.R. 757(b)	R.1993 d.443	25 N.J.R. 4140(a)
8:44	Operation of clinical laboratories	25 N.J.R. 3904(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.11	Clinical laboratories: reporting by supervisors	25 N.J.R. 3751(a)		
8:57-3.2	Physician reporting of occupational and environmental diseases and injuries	25 N.J.R. 2186(a)		
8:59-1, 2, 5, 6, 9, 11, 12	Worker and Community Right to Know Act rules	25 N.J.R. 864(a)	R.1993 d.384	25 N.J.R. 3543(a)
8:59-3.1, 3.2, 3.3, 3.5-3.9, 3.11, 3.13-3.17	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)	R.1993 d.386	25 N.J.R. 3537(a)
8:59-5.6	Worker and Community Right to Know: exclusions from labeling requirements	25 N.J.R. 3441(a)		
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b); 25 N.J.R. 582(a))	24 N.J.R. 1674(a)	R.1993 d.226	25 N.J.R. 1970(b)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)
8:71	Interchangeable drug products (see 25 N.J.R. 580(b), 2883(a))	24 N.J.R. 4009(a)	R.1993 d.468	25 N.J.R. 4497(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c), 2882(a))	25 N.J.R. 55(a)	R.1993 d.467	25 N.J.R. 4496(b)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b))	25 N.J.R. 875(a)	R.1993 d.469	25 N.J.R. 4497(b)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a))	25 N.J.R. 1814(b)	R.1993 d.466	25 N.J.R. 4496(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products	25 N.J.R. 2802(b)	R.1993 d.465	25 N.J.R. 4495(b)
8:71	Interchangeable drug products	25 N.J.R. 3906(a)		
8:71	List of Interchangeable Drug Products	25 N.J.R. 4377(a)		

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8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		
8:100	State Health Plan: invalidation of rules	_____	_____	25 N.J.R. 3772(a)

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9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)		
9:7-2.6	Student assistance programs: independent student status	25 N.J.R. 1945(a)	R.1993 d.388	25 N.J.R. 3464(a)
9:7-9	Paul Douglas Teacher Scholarship Program	25 N.J.R. 3594(a)		
9:9	NJHEAA student loan programs	25 N.J.R. 2187(a)	R.1993 d.441	25 N.J.R. 4079(a)
9:11-1.1, 1.2, 1.4, 1.6, 1.10, 1.22, 1.23	Educational Opportunity Fund: student eligibility for undergraduate grants	25 N.J.R. 1663(a)	R.1993 d.480	25 N.J.R. 4596(a)
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	25 N.J.R. 1946(a)	R.1993 d.479	25 N.J.R. 4597(a)

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10:3	Contract administration	25 N.J.R. 3694(b)		
10:4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(b)		
10:8	Patient advance directives; DNR orders; declaration of death	25 N.J.R. 2669(a)		
10:15-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)	R.1993 d.396	25 N.J.R. 3772(b)
10:15A-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)	R.1993 d.396	25 N.J.R. 3772(b)
10:15B-1.2, 2.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)	R.1993 d.396	25 N.J.R. 3772(b)
10:15C-1.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)	R.1993 d.396	25 N.J.R. 3772(b)
10:31-1.4, 2.1, 2.2, 2.3, 8.1, 9.1	Screening and Screening Outreach Programs: mental health services	25 N.J.R. 1324(a)		
10:37-5.37-5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:37-6.62-6.72, 6.92-6.98, 9, 10	Community mental health programs: quality assurance standards, site review and certification	25 N.J.R. 2193(a)	R.1993 d.412	25 N.J.R. 3782(a)
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
10:38-1.4, 2.1, 2.2, 3.3, 3.4, 3.6, 3.8, 4.3, 5.2, 7.2, 7.4, 7.5, App. C, E, G	Interim Assistance Program for discharged State psychiatric hospital clients	25 N.J.R. 3697(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:41-2.3, 2.8, 2.9	Division of Developmental Disabilities: access to client records and record confidentiality	25 N.J.R. 432(a)	R.1993 d.381	25 N.J.R. 3465(a)
10:44A	Licensed community residences to developmentally disabled	25 N.J.R. 4378(a)		
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)	R.1993 d.434	25 N.J.R. 4082(a)
10:51-5.6	Pharmaceutical services: income eligibility limits	25 N.J.R. 3407(a)		
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:60-1.1-1.17, 2.2, 2.4, 2.5, 2.8, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.3, 3.6, 4.2, 6, App. A, H	Home Care Services Manual	25 N.J.R. 2803(a)		
10:62	Vision care services	25 N.J.R. 3907(a)		
10:66	Independent clinic services: Medicaid program services	25 N.J.R. 4379(a)		
10:66-1.2, 1.6, 1.7	Independent clinic services: ambulatory care/family planning/surgical facility	25 N.J.R. 2683(a)	R.1993 d.444	25 N.J.R. 4104(a)
10:66-1.5, 1.6, 3	Independent mental health clinics: personal care assistant services	25 N.J.R. 3058(a)	R.1993 d.475	25 N.J.R. 4498(a)
10:69-5.1	HAAAD income eligibility limits	25 N.J.R. 3407(a)		

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10:69A-1.2, 6.2	PAAD income eligibility limits	25 N.J.R. 3407(a)		
10:69B	Lifeline Programs	25 N.J.R. 3701(a)		
10:69B-4.2	Lifeline programs: income eligibility limits	25 N.J.R. 3407(a)		
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only: eligibility computation amounts	25 N.J.R. 1818(a)	R.1993 d.402	25 N.J.R. 3786(a)
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-8.22	Medicaid eligibility of dependent child of adolescent parent	25 N.J.R. 2815(a)		
10:81-10.7, 10.8	Refugee Resettlement Program: eligibility limitations	25 N.J.R. 3919(a)		
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(a)		
10:81-11.7, 11.9	Non-AFDC child support orders	25 N.J.R. 2816(a)		
10:81-11.21	Review and adjustment of child support orders in AFDC, foster care, and Medicaid Only cases	25 N.J.R. 2818(a)		
10:81-14.18A	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:82-3.2	Assistance Standards Handbook: administrative correction regarding exempt resources			25 N.J.R. 4597(b)
10:82-3.14	Deeming income of parents or guardians of adolescent parent	25 N.J.R. 2819(a)		
10:82-5.3	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
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10:86-10.2, 10.6	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:121A-5.10	Requirements for adoption agencies: searches	25 N.J.R. 3415(a)		
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	25 N.J.R. 2684(a)	R.1993 d.489	25 N.J.R. 4598(a)
10:126	Family day care registration: manual of requirements	25 N.J.R. 3703(a)		
10:127	Residential child care facilities: manual of requirements	25 N.J.R. 1716(a)	R.1993 d.403	25 N.J.R. 3787(a)
10:133C-4	Division of Youth and Family Services: case goals	25 N.J.R. 1947(a)	R.1993 d.490	25 N.J.R. 4598(b)
10:133D-2	DYFS case management: case plan	25 N.J.R. 2209(a)		
10:133D-4	DYFS case management: in-person visits with clients and substitute care providers	25 N.J.R. 2210(a)		
10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		

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10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)		
10A:3-9.6	Recall of inmate to court	25 N.J.R. 2820(a)	R.1993 d.435	25 N.J.R. 4105(b)
10A:4-4.1	Inmate discipline: sexual assault	25 N.J.R. 3416(a)	R.1993 d.488	25 N.J.R. 4599(a)
10A:4-5.1, 5.2, 5.3	Sanctions for prohibited acts committed by inmates	25 N.J.R. 4435(a)		
10A:16-9.1	Blood donation by inmates: autologous donations	25 N.J.R. 3920(a)		
10A:71-3.2, 3.21	State Parole Board: calculation of parole eligibility terms	25 N.J.R. 1665(a)	R.1993 d.399	25 N.J.R. 3826(a)
10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)	R.1993 d.410	25 N.J.R. 3826(b)
10A:71-6.4, 7.3	State Parole Board: conditions of parole	25 N.J.R. 435(a)	R.1993 d.398	25 N.J.R. 3829(a)
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11:1-7	New Jersey Property-Liability Insurance Guaranty Association: plan of operation	25 N.J.R. 1045(a)		
11:1-31	Surplus lines insurer eligibility	25 N.J.R. 1819(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
11:1-32.4, 35	Insurance holding company systems	Emergency (expires 10-15-93)	R.1993 d.445	25 N.J.R. 4275(a)
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:1-36	Examination of insurers	Emergency (expires 10-15-93)	R.1993 d.446	25 N.J.R. 4284(a)
11:2-17.11	Payment of third-party claims: written notice by insurer to claimant	25 N.J.R. 3921(a)		

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11:2-28	Credit for reinsurance	Emergency (expires 10-15-93)	R.1993 d.448	25 N.J.R. 4289(a)
11:2-33.4	Workers' compensation self-insurance: administrative correction	_____	_____	25 N.J.R. 4179(a)
11:2-34	Surplus lines: allocation of premium tax and surcharge	25 N.J.R. 1827(a)		
11:2-36	Risk retention groups and purchasing groups	Emergency (expires 10-15-93)	R.1993 d.449	25 N.J.R. 4298(a)
11:2-37	Producer-controlled insurers	Emergency (expires 10-15-93)	R.1993 d.450	25 N.J.R. 4304(a)
11:2-38	Increase in property and casualty capital and surplus requirements	Emergency (expires 10-15-93)	R.1993 d.451	25 N.J.R. 4306(a)
11:2-39	Increase in capital and surplus requirements for life and health insurers	Emergency (expires 10-15-93)	R.1993 d.452	25 N.J.R. 4309(a)
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11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.10	Private passenger automobile insurance: rate filing requirements	25 N.J.R. 4436(a)		
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11:3-29.2, 29.4, 29.6	Automobile insurance PIP coverage: medical fee schedules	25 N.J.R. 229(b)	R.1993 d.395	25 N.J.R. 3466(b)
11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)	Expired	
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)		
11:5	Real Estate Commission rules	25 N.J.R. 3597(b)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:13-8	Commercial lines: prospective loss costs filing procedures	25 N.J.R. 1047(a)	R.1993 d.411	25 N.J.R. 3829(b)
11:17-1.2, 2.3-2.15, 5.1-5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17-6	Managing general agents	Emergency (expires 10-15-93)	R.1993 d.454	25 N.J.R. 4318(a)
11:17-7	Reinsurance intermediaries	Emergency (expires 10-15-93)	R.1993 d.455	25 N.J.R. 4323(a)
11:17A-1.5	Activities for which licensure as insurance producer not required: administrative correction	_____	_____	25 N.J.R. 4179(b)
11:19-2.2, 2.3, 2.5, App. B	Data submission requirements for all domestic insurers	25 N.J.R. 2820(b)		
11:20	Individual Health Coverage Program	25 N.J.R. 2945(a)	R.1993 d.439	25 N.J.R. 4180(a)
11:21	Small Employer Health Benefits Program	25 N.J.R. 3599(a)		
11:21-1.3, 1.4, 1.5, 6, 7, 7A, 17, 18, App. Exh. N-T	Small Employer Health Benefits Program	25 N.J.R. 4437(a)		
11:21-App. Exh. E	Small Employer Health Benefits Program: correction to proposed Appendix Exhibit E and extension of comment period	25 N.J.R. 4458(a)		

Most recent update to Title 11: TRANSMITTAL 1993-7 (supplement July 19, 1993)

LABOR—TITLE 12

12:5	Department audit resolution procedures	25 N.J.R. 3417(a)		
12:6	Petitions for rulemaking	25 N.J.R. 3682(a)		
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1334(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA): extension of comment period	25 N.J.R. 2216(a)		
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment Compensation and Temporary Disability: 1994 maximum benefit rates, taxable wage base, government entity contribution rate, base week, and alternative earnings test	25 N.J.R. 3922(a)		
12:17-11.2	Offset of unemployment benefits by retirement and pension income	25 N.J.R. 3923(a)		
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program	25 N.J.R. 1515(c)		
12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)		
12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)		
12:45	Vocational Rehabilitation Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2216(b)		
12:112	Occupational Safety and Health Review Commission	25 N.J.R. 3059(a)	R.1993 d.474	25 N.J.R. 4498(b)
12:195-2.1, 3.22, 6.1, 7	Carnival and amusement rides: bungee jumping	25 N.J.R. 2128(a)	R.1993 d.374	25 N.J.R. 3500(a)
12:235-1.6	Workers' Compensation: 1994 maximum benefit rate	25 N.J.R. 3925(a)		

Most recent update to Title 12: TRANSMITTAL 1993-6 (supplement July 19, 1993)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1335(b)		
12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		
12A:120	Urban Enterprise Zone Program and business certification	25 N.J.R. 2645(b)	R.1993 d.416	25 N.J.R. 3837(a)

Most recent update to Title 12A: TRANSMITTAL 1993-3 (supplement June 21, 1993)

LAW AND PUBLIC SAFETY—TITLE 13

13:1-7.2	Police Training Commission rules: administrative correction	_____	_____	25 N.J.R. 4106(a)
13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)		
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)		
13:19-1.1, 1.7	Driver Control Service: administrative hearings applicability	25 N.J.R. 893(a)	R.1993 d.389	25 N.J.R. 3503(a)
13:19-10.1	Operating motorcycle or motorized bicycle without protective helmet	25 N.J.R. 2646(a)	R.1993 d.486	25 N.J.R. 4599(b)
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:20-38	Dimensional standards for automobile transporters	25 N.J.R. 1342(a)	R.1993 d.380	25 N.J.R. 3504(a)
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:26	Transportation of bulk commodities	25 N.J.R. 1343(a)	R.1993 d.418	25 N.J.R. 4106(b)
13:27-5.8	Board of Architects: examination fees	25 N.J.R. 3704(a)		
13:29-1.13	Board of Accountancy: biennial renewal fee for inactive or retired licensees	25 N.J.R. 1665(b)		
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:30-8.1	Board of Dentistry: fee schedules	25 N.J.R. 3927(a)		
13:30-8.6	Board of Dentistry: professional advertising	25 N.J.R. 2823(a)		
13:30-8.7	Board of Dentistry: patient records	25 N.J.R. 1833(a)		
13:30-8.18	Continuing dental education	25 N.J.R. 1344(a)	R.1993 d.413	25 N.J.R. 3837(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.J.R. 4010(a)		
13:34	Board of Marriage Counselor Examiners rules	25 N.J.R. 3060(a)		
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)		
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)		
13:37-12.1	Board of Nursing: fee schedule	25 N.J.R. 3928(a)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:39-1.3	Board of Pharmacy: fee schedule	25 N.J.R. 1666(a)	R.1993 d.414	25 N.J.R. 3839(a)
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
13:39A-2.5	Board of Physical Therapy: referral of patients from chiropractors	25 N.J.R. 3938(a)		
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)		
13:42	Board of Psychological Examiners rules	25 N.J.R. 3062(a)		
13:42-1.2	Board of Psychological Examiners: written examination fee	25 N.J.R. 3929(a)		
13:43	State Board of Shorthand Reporting rules	25 N.J.R. 3079(a)	R.1993 d.471	25 N.J.R. 4499(a)
13:44-1.2, 1.3, 1.4, 2.9	Board of Veterinary Medical Examiners: examinations	25 N.J.R. 3930(a)		
13:44C	Audio and Speech-Language Pathology Advisory Committee rules	25 N.J.R. 1668(a)	R.1993 d.383	25 N.J.R. 3504(b)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late renewal and reinstatement fee timeframes	25 N.J.R. 3931(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.9	Board of Chiropractic Examiners: notification of change of address; service of process	25 N.J.R. 3936(a)		
13:44E-2.10, 2.11	Board of Chiropractic Examiners: display of license; right to licensure hearing	25 N.J.R. 3936(b)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization of services; excessive fees	25 N.J.R. 3937(a)		
13:44E-2.14	Board of Chiropractic Examiners: referral of patients to physical therapists	25 N.J.R. 3938(a)		
13:44G-1-5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)		
13:45A-12.3	Sale of animals: administrative correction	25 N.J.R. 3086(a)		25 N.J.R. 4600(a)
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)		
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)		
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)	R.1993 d.460	25 N.J.R. 4499(b)
13:60	Motor carrier safety	25 N.J.R. 3091(a)	R.1993 d.472	25 N.J.R. 4501(a)
13:70-1.31	Thoroughbred racing: prohibited services by Racing Commission employees and appointees	25 N.J.R. 4458(b)		
13:70-3.40	Thoroughbred racing: minimum age for admittance to racetrack	25 N.J.R. 2647(a)	R.1993 d.483	25 N.J.R. 4600(b)
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)		
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)		
13:70-29.53	Thoroughbred racing: trifecta	25 N.J.R. 3103(a)		
13:71-1.26	Harness racing: prohibited services by Racing Commission employees and appointees	25 N.J.R. 4459(a)		
13:71-2.3	Harness racing: suspension from driving	25 N.J.R. 2647(b)	R.1993 d.484	25 N.J.R. 4600(c)
13:71-5.18	Harness racing: minimum age for admittance to racetrack	25 N.J.R. 2648(a)	R.1993 d.485	25 N.J.R. 4600(d)
13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:71-23.3B, 23.3C	Harness racing: pre-race blood gas analyzing machine testing program	25 N.J.R. 3427(a)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)		
13:71-27.50	Harness racing: trifecta	25 N.J.R. 3106(a)		
13:71-27.56	Harness racing: the Pick (N)	25 N.J.R. 3705(a)		
13:79	Safe and Secure Communities Program	Emergency (expires 10-26-93)	R.1993 d.476	25 N.J.R. 4511(a)

Most recent update to Title 13: TRANSMITTAL 1993-7 (supplement July 19, 1993)

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14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)	Expired	
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)		
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)		
14:11-8	Natural gas pipelines	25 N.J.R. 897(a)	R.1993 d.361	25 N.J.R. 4106(c)
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		

Most recent update to Title 14: TRANSMITTAL 1993-4 (supplement July 19, 1993)

ENERGY—TITLE 14A

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STATE—TITLE 15

15:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1347(a)		
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Most recent update to Title 15: TRANSMITTAL 1993-2 (supplement May 17, 1993)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:1B	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1478(a)		
16:25	Utility accommodation	25 N.J.R. 2217(a)	R.1993 d.433	25 N.J.R. 4111(a)
16:28-1.6, 1.56, 1.111	Speed limit zones along U.S. 40, U.S. 40 and 322, and Route 87 in Atlantic County	25 N.J.R. 3942(a)		
16:28-1.33	Speed limit zones along Route 41 in Gloucester, Camden, and Burlington counties	25 N.J.R. 2833(a)	R.1993 d.456	25 N.J.R. 4507(a)
16:28-1.48, 1.93	Speed rates along Route 167 in Port Republic and Route 44 in Greenwich and West Deptford	25 N.J.R. 2225(a)	R.1993 d.400	25 N.J.R. 3841(a)
16:28-1.92	Speed limit zones along Route 169 in Bayonne and Jersey City	25 N.J.R. 2834(a)	R.1993 d.457	25 N.J.R. 4507(b)
16:28-1.125	Speed limits along Route 67 in Fort Lee	25 N.J.R. 3442(a)	R.1993 d.500	25 N.J.R. 4601(a)
16:28A-1.1, 1.7, 1.17, 1.23, 1.32, 1.36	Restricted parking and stopping along U.S. 1 Business in Mercer County, U.S. 9 in Ocean and Monmouth counties, Routes 26 and 33 in Middlesex County, U.S. 46 in Warren and Morris counties, and Route 57 in Warren County	25 N.J.R. 2226(a)	R.1993 d.401	25 N.J.R. 3841(b)
16:28A-1.2, 1.31, 1.36, 1.44	Parking restrictions along U.S. 1 and 9 in Elizabeth, Route 45 in Woodbury, Route 57 in Washington Borough, Route 88 in Lakewood and Brick Township	25 N.J.R. 3443(a)	R.1993 d.499	25 N.J.R. 4601(b)
16:28A-1.6, 1.7, 1.33, 1.41, 1.52, 1.57	Restricted parking and stopping on Route 7 in Nutley, U.S. 9 in Galloway Township, Route 47 in Vineland, Route 77 in Bridgeton, Route 173 in Bethlehem, and U.S. 206 in Lawrence Township	25 N.J.R. 2649(a)	R.1993 d.426	25 N.J.R. 4118(a)
16:28A-1.19	Parking restrictions along Route 28 in Bound Brook	25 N.J.R. 3943(a)		
16:28A-1.19, 1.57	Parking restrictions along Route 28 in Bound Brook and U.S. 206 in Hamilton Township	25 N.J.R. 4459(b)		
16:28A-1.20, 1.25, 1.31, 1.41	Restricted parking and stopping along Route 29 in Lambertville, Route 35 in Berkeley Township, Route 45 in Woodbury, and Route 77 in Bridgeton	25 N.J.R. 3127(a)	R.1993 d.501	25 N.J.R. 4602(a)
16:28A-1.36	Restricted parking along Route 57 in Washington Borough	25 N.J.R. 2834(b)	R.1993 d.458	25 N.J.R. 4507(c)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.41	Restricted parking along Route 77 in Bridgeton	25 N.J.R. 3944(b)		
16:28A-1.41	Time limit parking in Bridgeton	25 N.J.R. 4118(a)		
16:30-3.8	Shoulder use lane along I-195 in Millstone Township	25 N.J.R. 2651(a)	R.1993 d.427	25 N.J.R. 4117(a)
16:30-6.1	Weight limit on Edison Bridge along U.S. 9 over Raritan River	Emergency (expires 9-27-93)	R.1993 d.417	25 N.J.R. 3863(a)
16:30-10.15	Midblock crosswalk along Route 27 in Franklin Township and North Brunswick	25 N.J.R. 3128(a)	R.1993 d.502	25 N.J.R. 4603(a)
16:30-10.16	Midblock crosswalk on Route 71 in Belmar	25 N.J.R. 3683(a)		
16:31-1.10	Left turn prohibition along U.S. 30 in Magnolia Borough	25 N.J.R. 3445(a)	R.1993 d.503	25 N.J.R. 4603(b)
16:31-1.10, 1.17, 1.22, 1.32	Turn restrictions along U.S. 30 in Waterford Township, Route 73 in Winslow Township, U.S. 130 in Mercer County, and Route 36 in Sea Bright	25 N.J.R. 2835(a)	R.1993 d.459	25 N.J.R. 4508(a)
16:31-1.32	U turn prohibition along Route 36 in Sea Bright	25 N.J.R. 4460(b)		
16:31-1.33	U turn prohibition along Route 12 in Flemington and Raritan Township	25 N.J.R. 4460(a)		
16:41D	Motorist service signs on non-urban interstate and limited access highways	25 N.J.R. 2836(a)		
16:44	Construction services	25 N.J.R. 1954(a)		
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:47-1.1, 4.1, 4.3-4.6, 4.13, 4.32, 4.35, App. B	State Highway Access Management Code	25 N.J.R. 3129(a)		
16:47-8.5	State Highway Access Management Code: access classifications	25 N.J.R. 3945(a)		
16:50	Employer Trip Reduction Program (ETRP)	25 N.J.R. 3132(a)		
16:53D-1.1	Zone of rate freedom for regular route private autobus carriers: 1994 percentage maximum	25 N.J.R. 3684(a)		
16:80	NJ TRANSIT: Section 16(b)(2) Capital Assistance Program	25 N.J.R. 3142(a)		
16:81	NJ TRANSIT: Small Urban and Rural Area Public Transportation Program	25 N.J.R. 3144(a)		
16:84	NJ TRANSIT: disability discrimination complaint procedure	25 N.J.R. 3445(b)		
16:85	NJ TRANSIT: contracting policies and procedures	25 N.J.R. 3450(a)		

Most recent update to Title 16: TRANSMITTAL 1993-7 (supplement July 19, 1993)

TREASURY-GENERAL—TITLE 17

17:1	Division of Pensions and Benefits: administration of public employee retirement systems and benefit programs	25 N.J.R. 1955(a)	R.1993 d.376	25 N.J.R. 3506(a)
17:1-10, 11	State Prescription Drug Program; Dental Expenses Program (recodify to 17:9-8, 9)	25 N.J.R. 675(b)	R.1993 d.268	25 N.J.R. 3506(b)
17:3	Teachers' Pension and Annuity Fund	25 N.J.R. 4461(a)		
17:6	Consolidated Police and Firemen's Pension Fund	25 N.J.R. 3946(a)		
17:9	State Health Benefits Program	25 N.J.R. 2651(b)	R.1993 d.463	25 N.J.R. 4508(b)
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer" eligibility	24 N.J.R. 3493(a)		
17:10	Judicial Retirement System	25 N.J.R. 1956(a)	R.1993 d.375	25 N.J.R. 3507(a)
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
17:16-61.5	State Investment Council: Cash Management Fund investments	25 N.J.R. 2839(a)	R.1993 d.425	25 N.J.R. 4119(a)
17:27	Affirmative action rules	25 N.J.R. 3706(a)		

Most recent update to Title 17: TRANSMITTAL 1993-7 (supplement July 19, 1993)

TREASURY-TAXATION—TITLE 18

18:2	Division of Taxation policies and procedures	25 N.J.R. 3107(a)		
18:2-3	Payment of taxes by electronic funds transfer	25 N.J.R. 1078(a)		
18:7-13.8	Corporation Business Tax: claims for refund	25 N.J.R. 1842(a)		
18:12	Local property tax rules: preparation of tax lists; revaluation; appeals; homestead rebate; exemptions	25 N.J.R. 2652(a)	R.1993 d.482	25 N.J.R. 4604(a)
18:12-10.1, 10.2, 10.3	Local property tax: classification of real and personal property	25 N.J.R. 61(a)		
18:12A-18:17	Local property taxation: county boards; senior citizens' deduction; farmland assessment; realty transfer fee; assessor qualification	25 N.J.R. 2653(a)	R.1993 d.481	25 N.J.R. 4604(b)
18:35-1.14, 1.25	Gross Income Tax: partnerships; net profits from business	25 N.J.R. 677(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:35-1.17	Gross income tax: Health Care Subsidy Fund withholding	25 N.J.R. 1957(a)		
Most recent update to Title 18: TRANSMITTAL 1993-4 (supplement July 19, 1993)				
TITLE 19—OTHER AGENCIES				
19:3A-3	HMDC: Disability discrimination grievance procedure	25 N.J.R. 3946(b)		
19:4-2.2, 4.23A, 4.30, 4.39, 4.49, 4.59, 4.69, 4.88, 4.98, 4.107, 4.117, 4.129, 4.152	HMDC: District zoning rules	25 N.J.R. 3949(a)		
19:4-6.28	Official Zoning Map: rezoning of site in Kearny	25 N.J.R. 3429(a)		
19:4A-3.1, 4.4, 5.3, 5.7, 6.2	HMDC: District zoning rules	25 N.J.R. 3949(a)		
19:9	Turnpike Authority rules	25 N.J.R. 2839(b)	R.1993 d.496	25 N.J.R. 4605(a)
19:9	Turnpike Authority rules: extension of comment period	25 N.J.R. 3685(a)		
19:25	ELEC: Establishment of committees; reporting requirements	25 N.J.R. 3429(b)		
19:31-8	Economic Development Authority: Hazardous Discharge Site Remediation Fund	25 N.J.R. 4468(a)		
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TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-2.1	Organization of Commission	Exempt	R.1993 d.404	25 N.J.R. 3842(a)
19:40-2.5	Delegation of Commission authority	24 N.J.R. 2348(a)	R.1993 d.409	25 N.J.R. 3737(b)
19:40-6	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1503(a)		
19:41-5, 7.14	Applicant disclosure forms	25 N.J.R. 2655(a)	R.1993 d.429	25 N.J.R. 4120(a)
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