

# NEW JERSEY REGISTER



THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 23 NUMBER 3  
 February 4, 1991 Indexed 23 N.J.R. 249-332  
 (Includes adopted rules filed through January 11, 1991)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 19, 1990  
 See the Register Index for Subsequent Rulemaking Activity.  
 NEXT UPDATE: SUPPLEMENT DECEMBER 17, 1990

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**Interested persons** may submit comments, information or arguments concerning any of the rule proposals in this issue until **March 6, 1991**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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## NEW JERSEY REGISTER

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

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The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, \$125 (\$215 by First Class Mail); back issues when available, \$15 each. Make checks payable to OAL Publications.

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

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

**EXECUTIVE ORDERS****(a)**

**OFFICE OF THE GOVERNOR**  
**Governor James J. Florio**  
**Executive Order No. 22(1990)**  
**Governor's Commission on Quality Education**  
**in New Jersey**

Issued: December 27, 1990.  
 Effective: December 27, 1990.  
 Expiration: December 31, 1992.

WHEREAS, providing our children with a quality education is important to the future of our State; and

WHEREAS, the Supreme Court in its decision known as *Abbott v. Burke* on June 5, 1990, mandated the State to correct the educational disparities which exist in the delivery of educational services and programs and provide an equitable distribution of State school aid to all school districts in New Jersey; and

WHEREAS, on July 3, 1990, the Quality Education Act of 1990 was signed into law as P.L.1990, c.52, to address, among other things, the disparities cited in the *Abbott v. Burke* decision; and

WHEREAS, the public interest of citizens of the State of New Jersey requires that the State undertake a thorough review and assessment of the progress of educational reform and improvement in New Jersey, including the Quality Education Act of 1990, and conduct a thorough review, assessment and analysis of current educational practices, programs and structure to determine what changes, if any, are required in order to ensure the delivery of a thorough and efficient education to the children of New Jersey;

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

1. There is hereby established the Governor's Commission on Quality Education in New Jersey.

2. The Commission shall consist of no more than 30 members. The Governor shall appoint two (2) members of the Commission and designate them as co-chairpersons of the Commission. The co-chairpersons shall select and appoint the remaining members of the Commission in consultation with the Commissioner of Education. The public members to be appointed shall be representatives of a broad cross-section of the citizens of the State of New Jersey, including, but not limited to, education, labor, business and community leaders. The co-chairpersons and public members shall serve at the pleasure of the Governor or until the life of the Commission expires by this order.

3. A Commission vacancy shall be filled by the Governor for the remainder of the unexpired term.

4. It shall be the charge and duty of the Governor's Commission on Quality Education to:

(a) identify the world class educational requirements that will address the needs of New Jersey's children, communities and businesses in the year 2000 and beyond;

(b) prepare a report(s) to the Governor that will outline specific, realistic recommendations that address the goals and objectives of a quality education for all the young people in New Jersey;

(c) conduct a thorough study and review of the Quality Education Act; and

(d) provide the opportunity for public input and discussion to identify the key issues surrounding the implementation of the Quality Education Act;

(e) provide the Governor with recommendations, based on that input, for modifications to and complements for the Quality Education Act consistent with the Supreme Court's decision in *Abbott v. Burke* on June 5, 1990 (119 N.J. 287 (1990)); and

(f) make recommendations for the creation of a permanent forum for continued public input, discussion and recommendations of policy options to the Governor, Legislature, the State Board of Education and Commissioner of Education for quality education in New Jersey.

5. The Commission is authorized to call upon any department, office, division, or agency of the State to supply such data, program reports and other information as it deems necessary and appropriate to discharge its responsibilities under this Order. Each department, office, division, or agency of the State is authorized and directed, to the extent not inconsis-

tent with law, to cooperate with the Commission and to furnish it with such information and assistance as is necessary to accomplish the purpose of this Order and the Commission.

6. The Commission may meet and hold hearings at the place it designates for these purposes, and shall issue interim reports, findings and recommendations as it shall determine to the Governor. The Commission shall issue its final report to the Governor on or before December 31, 1992.

7. The reports of the Commission shall be made available to all interested parties.

8. This Order shall take effect immediately, and shall expire on December 31, 1992.

**(b)**

**OFFICE OF THE GOVERNOR**  
**Governor James J. Florio**  
**Executive Order No. 23(1991)**  
**Limited State of Emergency**  
**December 28, 1990**

Issued: January 9, 1991.

WHEREAS, the storm which occurred on December 27 to December 28, 1990 created severe weather conditions, including snow, freezing rain and icing, which resulted in hazardous road conditions and which threatened life and property; and

WHEREAS, those weather conditions posed a threat and constituted a disaster from a natural cause which threatened and endangered the health, safety or resources of the residents of more than one municipality and county of this State; and which was in some parts of the State, and in other parts of the State, might have become too large in scope to be handled in its entirety by the normal municipal operating services; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-30 et seq.) and Laws of 1979, Chapter 240 (N.J.S.A. 38A:3-6.1) and the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers; and

WHEREAS, Acting Governor John A. Lynch, after consultation with and upon the recommendation of State Emergency Management Personnel, verbally declared that a Limited State of Emergency existed in the State on December 28, 1990; and

WHEREAS, in response to the State of Emergency, Acting Governor John A. Lynch authorized the Adjutant General of the Department of Defense and the New Jersey National Guard to take appropriate emergency action, if necessary, in accordance with the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4) and the Laws of 1979, Chapter 24 (N.J.S.A. 38A:3-6.1) as supplemented and amended, and in accordance with the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-30) as supplemented and amended, authorized the Superintendent of the Division of State Police, who is the State's Director of Emergency Management, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State highway, municipal or county road, that he, in his discretion, deemed necessary for the protection of the health, safety and welfare of the public; and

WHEREAS, the exigencies which required the declaration of the Limited State of Emergency on December 28, 1990 did not permit the preparation, in advance, of a written Executive Order declaring a Limited State of Emergency.

THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, ORDER and DIRECT:

(1) The verbal declaration by Acting Governor John A. Lynch of a Limited State of Emergency on December 28, 1990, is hereby ratified, and

(2) The severity of the weather conditions which necessitated the declaration of a State of Emergency having ceased by 12:00 midnight on December 28, 1990, the State of Emergency is hereby terminated effective 12:00 midnight on December 28, 1990.

I wish to express my gratitude to the people of New Jersey for the manner in which they cooperated during this Limited State of Emergency, and to law enforcement and emergency response personnel for their untiring efforts.

# RULE PROPOSALS

## AGRICULTURE

### (a)

#### DIVISION OF MARKETS

#### New Jersey Sire Stakes Program

#### Proposed Amendments: N.J.A.C. 2:32-2.3, 2.11, 2.22 and 2.27

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

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

Proposal Number: PRN 1991-61.

Submit comments by March 6, 1991 to:  
Bruce A. Stearns, Executive Director  
New Jersey Sire Stakes Program  
Department of Agriculture  
Division of Markets  
CN 330  
Trenton, New Jersey 08625  
Telephone: (609) 292-8830

The agency proposal follows:

#### Summary

N.J.A.C. 2:32-2 contains the majority of the New Jersey Sire Stakes conditions. The amendments proposed for these conditions are primarily technical and are merely designed to clarify existing substantive provisions. The only substantive changes effected by these amendments are the addition of a requalification requirement for horses which have broken stride in qualifying races or in purse races following a qualifying race, a requirement that both the qualifying standards of the Sire Stakes and the track where the race is held must be adhered to and the allowance of official workout times as qualifying times under specified circumstances. Further, the minimum \$10,000 purse for fair final races has been eliminated as the actual purse offered is usually considerably higher.

#### Social Impact

The Sire Stakes Board of Trustees perceives these modifications will have no social impact to participants as they merely entail minor changes to performance related qualifying requirements.

#### Economic Impact

The proposed amendments should cause little economic impact upon Sire Stakes participants because the few included substantive changes do not increase fees and only slightly modify conditions applicable to horses which participate in the Sire Stakes. Two of these changes make it slightly easier for horses to qualify, thus enhancing the prospect that owners of horses which benefit from these standards will obtain economic rewards for their horses' performance. One of these changes tightens qualification standards slightly, thereby slightly reducing affected owners' prospects of economic reward.

#### Regulatory Flexibility Analysis

Many of the participants in the Sire Stakes Program are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is appropriate.

The purpose of the Sire Stakes Program is to provide competitions for New Jersey-sired Standardbred horses that are, at once, challenging enough to improve the breed and open enough to encourage the maximum participation of Standardbreds, with economic incentives of sufficient magnitude to make participation worthwhile.

The Sire Stakes Board of Trustees is aware of the characteristics of the industry it regulates. The total value of the 16,000 plus Standardbred stallions and race horses in New Jersey exceeds \$360 million. Standardbred owners, breeders, and trainers add \$75 million to the State's economy each year and realize about \$75 million worth of revenue. Individually, it costs approximately \$20,000 per year to keep a race horse, but average purse revenues are only \$19,000.

The Sire Stakes Program, by providing 376 races at both pari-mutuel and fair tracks, provided nearly \$6.4 million in purse money and another \$3.9 million in restricted races for New Jersey sired performers. The

Program has continued to grow despite its funding problems. The number of small businesses participating in the Program has increased each year. Therefore, the Sire Stakes Board of Trustees believes the program beneficial to the small businesses of the Standardbred industry based on the continuing and increasing numbers of small business participants.

As stated above, the regulatory modification proposed here will have only a minor impact on small businesses. The changes in qualifying standards will make it slightly easier for some horses to qualify for ever and slightly more difficult for other horses. No new recordkeeping requirements are imposed.

In the interest of competitive fairness and to maintain the integrity of the program, no differing standards, based on business size, are offered.

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

#### 2:32-2.3 Registration of stallions

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

(c) The registration must be returned by December 1. The Certificate of Good Health must be completed by a licensed New Jersey veterinarian on the farm where the stallion is standing, between January 1 and January 21 of the year the stallion is registered and standing. The Certificate of Good Health, when signed by the veterinarian, is to be sent along with a copy of the EIA-AGID test chart to the [Director of Animal Health, New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625] **Standardbred Owners and Breeders Association, Inc., P.O. Box 839, Freehold, New Jersey 07728.**

(d)-(h) (No change.)

#### 2:32-2.11 Payment dates

(a) (No change.)

(b) In the Fair Division, the first sustaining payment on a two- or three-year-old must be made on or before January 15 of a year and the second sustaining payment on a two- or three-year-old must be made on or before March 15 of a year in order to remain eligible in that year. In the event that the 15th day of the aforementioned [month] **months** falls on a Saturday, Sunday, or holiday, the payment must be postmarked on or before the next business day following the 15th of that month.

#### 2:32-2.22 Qualifying standards

(a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the following qualifying standards and be eligible at time of entry.

1. **Horses making a break in a qualifying race or in the next purse race following a qualifying race must requalify with the exception of those horses who were not required to qualify.** All other qualifying standards in effect at the track where the race is being conducted must be adhered to.

2. (No change.)

3. If a horse initially [makes] **meets** the qualifying standards but then fails to meet qualifying standards in a subsequent event, it must then re-qualify to meet the standards [by] **of** the raceway at which the race is to be contested **and the New Jersey Sire Stakes.**

4. Official workouts [or time trials are not acceptable as a substitute for a qualifying racing line], **at the discretion of the judge: may be accepted as a substitute for a qualifying race for time standard only and will not be accepted for a horse on the stewards list for break: Time trials will not be accepted as a substitute for a qualifying mile.**

(b) (No change.)

#### 2:32-2.27 Final races

(a) There will be a two- and three-year-old "Final" race in each Pari-mutuel Division at the Pari-mutuel raceways as scheduled by the New Jersey Sire Stakes Board of Trustees. There will be [minimum \$10,000] Fair "Final" race in each Division for two- and three-year-olds. Consolation races in the Pari-mutuel program may be scheduled at the option of the tracks and shall be conducted under

rack rules. Horses eligible to race in the final events must race in the finals and not in the consolation events.

(b)-(j) (No change.)

## BANKING

### (a)

#### DIVISION OF REGULATORY AFFAIRS

#### Nonpublic Records

#### Proposed New Rule: N.J.A.C. 3:3-2

Authorized By: Jeff Connor, Commissioner, New Jersey

Department of Banking.

Authority: N.J.S.A. 17:1-8.1; 47:1A-2.

Proposal Number: PRN 1991-68.

Submit comments by March 6, 1991 to:

Robert M. Jaworski  
Assistant Commissioner  
Department of Banking  
CN-040  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

Pursuant to the "Right to Know Law," N.J.S.A. 47:1A-1 et seq., all public records which are required by law to be made, maintained or kept on file by a State agency are open to public inspection and copying unless designated as nonpublic by statute or regulation. These records must be disclosed under this law regardless of the purpose for which the records will be used. In order to protect confidential and other sensitive records from being disclosed to a person who will use these records for an improper purpose, the Department of Banking proposes to add a rule defining which records are not appropriate for disclosure under the Act.

The proposed rule first excludes from this mandatory disclosure all materials incident to an examination or audit of a financial institution. In addition, business plans, incorporators' financial statements and leeway investment applications are deemed to be nonpublic records. In order to properly audit or examine an institution or review an application, the Department needs access to sensitive business records of a financial institution, and the confidential records provided by consumers doing business with that institution. These records need to be excluded from the definition of public records to prevent competitors from having easy access. In addition, examination reports of depositories must remain confidential in order to maintain confidence in the industry. The Legislature agreed with this when it made examination reports of depositories confidential (see N.J.S.A. 17:9A-264; 17:12B-172).

The proposed rule next excludes complaint files maintained by the Department. This exclusion is proposed for the following reasons: (1) The public should be able to communicate to their officials in confidence; members of the public may have questions, complaints or just general information which they want to convey to their governmental representative without having it disclosed to anyone else in society; (2) To protect persons against whom a complaint has been filed from unsubstantiated and malicious allegations that are contained in some of these documents; (3) Complaint files contain confidential and personal financial information pertaining to complainants, which they expect will not be disseminated; and (4) the Department of Banking's ability to effectively supervise the industry is enhanced by a free flow of information to it, which would be impeded by knowledge that what someone tells the Department may be disseminated.

The next exception is for memoranda or other correspondence between the Department and the Office of the Attorney General, or memorandum within the Department regarding advice given by the Attorney General. Executive Order No. 6, which was signed by Governor Florio on March 14, 1990, reaffirmed the position of the Attorney General as the sole legal adviser or counsel for all Departments of State government. As a client of the Attorney General, it is necessary that the Department maintain a confidential relationship with that office. This exception is intended to foster that confidential relationship and to ensure that legal advice offered to the Department does not become public.

The next proposed exception is for documents obtained pursuant to an ongoing investigation. Any premature disclosure of such documents might compromise the ability of the Department to effectively complete

the investigation. Accordingly, consistent with N.J.S.A. 47:1A-3, the proposed rules exempt these files when disclosure would be inimical to the public interest.

The exception for memoranda of understanding is intended to facilitate the process whereby the Department seeks voluntary changes from institutions. Further, the Department is concerned that premature disclosure of this document might reduce confidence in that institution and financial institutions in general.

The Department occasionally conducts surveys to track industry trends or practices. To encourage institutions to candidly answer such surveys without fear of reprisal, this proposed rule would exempt all information obtained incident to such a survey.

Finally, the proposed rule would exempt all personnel and pension records of an individual, except the following: (1) An individual's name, title, position, salary, payroll record, length of service in the Department and in the government, date of separation from government service and the reason therefor, and the amount and type of pension he or she is receiving; and (2) Data which discloses conformity with specific experimental, educational or medical qualifications required for government employment or for receipt of a public pension, but in no event shall detailed medical or psychological information be released. This exception parallels the records outlined in Executive Order No. 11 (1974).

#### Social Impact

The proposed changes would enable the Department to maintain confidential information of the types specified in the proposal. As previously mentioned, the proposed rule would help to protect confidential and other sensitive records from being disclosed to a person who will use these records for an improper purpose.

#### Economic Impact

The rule may have a positive economic impact on licensees and depositories by shielding the confidential business practices such persons submit to the Department. The proposed rule would prevent competitors from having easy access to such records.

#### Regulatory Flexibility Statement

It is not anticipated that the proposed rules would impose any recordkeeping, reporting or compliance requirements on small businesses. Instead, it defines which documents the Department is not required to reveal incident to the Right to Know Law. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows:

### SUBCHAPTER 2. NONPUBLIC RECORDS

#### 3:3-2.1 Nonpublic records

(a) Throughout the Department of Banking, the following shall not be deemed to be public records pursuant to the Right to Know Law, N.J.S.A. 47:1A-1 et seq.:

1. Documents obtained or prepared incident to an examination or audit of a financial institution, and any examination or audit report;

2. Business plans and incorporators' financial statements filed in connection with a charter or license application, and all materials the Department receives or prepares incident to an application by a financial institution or other person to make a leeway or other investment;

3. Complaint files maintained by the Department;

4. Memoranda or other correspondence between the Department and the Office of the Attorney General, and all memoranda within the Department concerning advice given by the Office of the Attorney General;

5. Documents obtained pursuant to an ongoing investigation by the Department of a financial institution or other person, when disclosure would be inimical to the public interest;

6. Memoranda of understanding between the Department and a financial institution;

7. Information obtained pursuant to surveys conducted by the Department; and

8. Personnel or pension records of an individual, except that the following shall be deemed public records:

i. An individual's name, title, position, salary, payroll record, length of service in the Department and in the government, date of

separation from government service and the reason therefor, and the amount and type of pension he or she is receiving; and

ii. Data contained in information which discloses conformity with specific experimental, educational or medical qualifications required for government employment or for receipt of a public pension, but in no event shall detailed medical or psychological information be released.

(a)

## DIVISION OF REGULATORY AFFAIRS

### License Fees, Assessments and Examination Charges

**Proposed New Rules: N.J.A.C. 3:1-6.1, 6.6 and 7.6**

**Proposed Amendments: N.J.A.C. 3:1-6.1, 6.2, 7.4**

**and 7.6; 3:6-14.2; 3:18-10.1; 3:23-2.1; and 3:38-1.1**

**Proposed Repeal: N.J.A.C. 3:13-3.2**

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

Authority: N.J.S.A. 17:1-8 and 8.1; 17:9A-334, 335 and 375; 17:10-3, 9 and 23; 17:11A-38 and 45(g); 17:11B-5, 11 and 13; 17:12B-226; 17:15-1 and 4; 17:15A-4 and 26; 17:15B-7, 14 and 17; 17:16C-7, 8 and 82; 17:16D-4, 7 and 8; 45:22-4 and 11.

Proposal Number: PRN 1991-77.

Submit comments by March 6, 1991 to:

Robert M. Jaworski  
Assistant Commissioner  
Department of Banking  
CN 040  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Department of Banking proposes to amend and supplement its rules regarding the charging of fees to reflect increasing administrative costs and current fiscal restraints.

In particular, the Department proposes to increase the yearly assessment on banks, savings banks and savings and loan associations from 0.36 of one cent per \$100.00 of total assets to 0.44 of one cent per \$100.00 of total assets. Trust assets will be assessed at a reduced rate of 0.04 of one cent per \$100.00 of total assets.

The examination charge imposed by the Department is also increased. For banks, savings banks and savings and loan associations, trust companies and holding companies, the per diem per person examination charge is increased from \$260.00 to \$300.00. The rate for examination of a licensee or credit union is increased to \$325.00.

A new definition section is proposed at N.J.A.C. 3:1-6.6 which clarifies terms used in the subchapter.

In addition, the biannual license charge for the following licenses is increased from \$800.00 to \$1,000: (1) secondary mortgage loan licensee; (2) consumer loan licensees; (3) foreign money remitters; (4) sales finance companies; (5) insurance premium finance companies; and (6) mortgage bankers and brokers. The license fee for home financing agencies is increased from \$400.00 to \$600.00, and the fee for home repair salesmen is increased from \$50.00 to \$60.00.

Also proposed is the elimination of the \$75.00 charge imposed for change of addresses by motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies. However, a \$25.00 penalty is proposed on motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies which file renewal license applications after the expirations of their licenses. In addition, the proposed rules increase the fees charged a foreign bank for filing a copy of its certificate of incorporation and for substituting securities from \$50.00 to \$100.00.

#### Social Impact

These proposed changes will increase assessments, examination charges and license fees. This will shift the financial responsibility for the regulation of State-chartered financial institutions from the general taxpaying public to those who benefit financially from conducting these businesses in New Jersey.

#### Economic Impact

The proposed amendments and new rules will have a negative economic impact on institutions regulated by the Department. In particular, it will increase per diem examination fees from \$260.00 to \$300.00 for banks, savings banks, savings and loan associations, trust companies and holding companies, and to \$325.00 for licensees and credit unions. Further, it will increase the assessments on banks, savings banks and savings and loan from 0.36 to 0.44 of one cent per \$100.00 of total assets. Trust assets will be assessed at the lower rate of 0.04 of one cent per \$100.00 of total assets. The examination fee is higher for licensees and credit unions because these institutions are not subject to an assessment based on their assets.

Further, the proposed amendments and new rules will increase the license fee imposed on licensees, and will impose a \$25.00 late filing penalty on motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies. The fees imposed on foreign banks for filing its certificate of incorporation and for substituting securities are increased from \$50.00 to \$100.00.

The proposed rules also eliminate the fee previously charged licensee under the Retail Installment Sales Act, N.J.S.A. 17:16C-1 et seq. for change of address, and this will have a marginal positive economic impact on these licensees.

#### Regulatory Flexibility Analysis

Most of the institutions affected by these proposed rules are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules increase the costs to these businesses and these increases are based on the services provided and not on the size of the business. The increases are necessary to reimburse the State for the costs associated with these services. Accordingly, the Department does not differentiate the fees based on the size of the business.

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

#### 3:1-6.1 Definitions

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

"Holding company" means a bank holding company or a savings and loan holding company under the supervision of the Department.

"Licensee" means a person other than a bank, savings bank, savings and loan association or credit union which is regulated or supervised by the Department.

"Trust assets" means assets held in trust, as reported to the Department in the report of trust assets.

"Trust company" means a New Jersey bank whose powers are limited by its certificate of incorporation to fiduciary and trust activities or which has represented to the Department that it will restrict its powers to fiduciary and trust activities.

#### 3:1-[6.1 Institutions to be assessed] 6.2 Assessments

(a) Every bank as defined in N.J.S.A. 17:9A-1(1), every saving bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of [0.36] **0.44** of one cent per \$100.00 of total assets, **except that trust assets shall be assessed a yearly fee of .04 of one cent per \$100.00 of total assets.**

#### [3:1-6.2 Assessed semiannually]

(b) The fee imposed on other than trust assets shall be assessed at a rate of [0.18] **0.22** of one cent per \$100.00 of total assets as of December 31 and a rate of [0.18] **0.22** of one cent per \$100.00 of total assets as of June 30 of each calendar year. **The fee imposed on trust assets shall be assessed at a rate of 0.02 of one cent per \$100.00 of total assets as of December 31 and a rate of 0.02 of one cent per \$100.00 of total assets as of June 30 of each calendar year.**

#### 3:1-6.6 Examination charge

(a) The individual per diem per person examination charge for an examination of a bank, savings bank, savings and loan association holding company or trust company shall be \$300.00.

(b) The individual per diem per person examination charge for an examination of a licensee, credit union or any person not specified in this section shall be \$325.00.

**PROPOSALS**

Interested Persons see Inside Front Cover

**BANKING**

1-7.4 Address change

Every licensee referenced in Schedule A or B which changes a licensed business address at any time shall, within 20 days of the change, submit information relative to the address change to the Commissioner, surrender the affected license or licenses for endorsement of the change; and pay to the Department an address change fee of \$75.00. **Motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies are exempt from the \$75.00 fee.**

1-7.6 Penalty for late filing

**Motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies which file renewal license applications after the expirations of their licenses shall be subject to a \$25.00 penalty. The imposition of this penalty shall not prevent the Department from imposing further penalties on the licensee for transacting business without a license.**

6-14.2 Miscellaneous fees

(a) A foreign bank shall pay to the Commissioner the following fees:

- 1. For filing a copy of its certificate of incorporation, or an amendment or change to the certificate..... [\$50.00] **\$100.00**
- 2.-3. (No change.)
- 4. For each substitution of securities, pursuant to N.J.S.A. 17:9A-320B..... [\$50.00] **\$100.00**

13-3.2 Per diem per person examination charge

The individual per diem per person examination charge or an examination of a company which controls a bank shall be \$260.00.]

18-10.1 Initial license requirements

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

(e) License and application fees are as follows:

1. The license fee is [~~\$800.00~~] **\$1,000** for each new corporate, partnership or sole proprietorship secondary mortgage loan licensee applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is [~~\$400.00~~] **\$500.00**. There shall also be a \$200.00 non-refundable processing fee due for each applicant at the time of application.

2. The license fee is [~~\$800.00~~] **\$1,000** for each new individual-secondary mortgage loan licensee applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is [~~\$400.00~~] **\$500.00**.

3. (No change.)

4. The license fee is [~~\$800.00~~] **\$1,000** for each new branch secondary mortgage loan license applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is [~~\$400.00~~] **\$500.00**. There shall also be a \$200.00 non-refundable processing fee due for each new applicant at the time of application.

5. (No change.)

23-2.1 Licensees

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

Licensees	STATUTORY		
	Maximum Biennial Fee	Biennial Fee	Annual Fee
Consumer Loan (N.J.S.A. 17:10-3 & 9)	\$1,000.00	[\$ 800.00] <b>\$1,000.00</b>	[\$400.00] <b>\$500.00</b>
Foreign Money Remitter (N.J.S.A. 17:15-1)	\$1,000.00	[\$ 800.00] <b>\$1,000.00</b>	[\$400.00] <b>\$500.00</b>
Check Cashier (N.J.S.A. 17:15A-4)	\$1,000.00	[\$ 800.00] <b>\$1,000.00</b>	[\$400.00] <b>\$500.00</b>
Check Seller [(N.J.S.A. 17:15A-7)] (N.J.S.A. 17:15B-7)	\$1,200.00	\$1,200.00	\$600.00
Retail Installment Sales			
(a) Sales Finance Company (N.J.S.A. 17:16C-7)	\$1,000.00	[\$ 800.00] <b>\$1,000.00</b>	[\$400.00] <b>\$500.00</b>
(b) Motor Vehicle Installment Seller (N.J.S.A. 17:16C-8)	\$ 300.00	\$ 150.00	\$ 75.00
(c) Home Financing Agency (N.J.S.A. 17:16C-82(a))	\$ 600.00	[\$400.00] <b>\$ 600.00</b>	[\$200.00] <b>\$300.00</b>
(d) Home Repair Contractor (N.J.S.A. 17:16C-82(b))	\$ 300.00	\$ 150.00	\$ 75.00
(e) Home Repair Salesman (N.J.S.A. 17-16C-82(c))	\$ 60.00	[\$ 50.00] <b>\$ 60.00</b>	[\$ 25.00] <b>\$ 30.00</b>
Insurance Premium Finance Company (N.J.S.A. 17:16D-4)	\$1,000.00	[\$ 800.00] <b>\$1,000.00</b>	[\$400.00] <b>\$500.00</b>
Pawnbroker (N.J.S.A. 45:22-4)	\$ 800.00	\$ 600.00	\$300.00

18-1.1 License requirements

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

(c) The license fee is [~~\$800.00~~] **\$1,000** for each mortgage banker or mortgage broker for each biennial license period, or any part

thereof provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee shall be [~~\$400.00~~] **\$500.00**.

(a)

**DIVISION OF SUPERVISION**  
**Home Repair Financing Act Regulations**  
**Proposed Readoption with Amendments: N.J.A.C.**  
**3:19**

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

Authority: N.J.S.A. 17:1-8.1.

Proposal Number: PRN 1991-76.

Submit comments by March 6, 1991 to:

Robert M. Jaworski, Assistant Commissioner  
Division of Regulatory Affairs  
Department of Banking, CN-040  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The rules at N.J.A.C. 3:19, Home Repair Financing Act Regulations, which expire March 17, 1991, are proposed for readoption in accordance with Executive Order No. 66(1978). They regulate various aspects of the home repair financing industry pursuant to the Home Repair Financing Act ("HRFA"), N.J.S.A. 17:16C-62 et seq. They clarify the jurisdictional reach of HRFA, set forth activities which are deemed to require licensure, exempt self-installations of goods, exempt those who participate in only one home repair contract per year, require separate listing of sales tax in statements of account, require licensees to indicate identifying numbers on contracts, and require home repair salesmen to notify the Department of Banking of changes in their employment. The Department concludes that the above rules have functioned well and have fulfilled the purposes for which they were promulgated. Therefore, the Department proposes to readopt them, making only the following amendments, mainly for purposes of clarification.

The proposed amendments to N.J.A.C. 3:19-1.2 combine and clarify paragraphs (a)1 and (a)2. They would expand the coverage of the current (a)2 to require that those who have home repair contracts solicited on their behalf and who assign them to others for performance are subject to licensure. The amendment to paragraph (a)3 clarifies that one who assumes responsibility for performing a home repair contract through performance is subject to the licensing requirements of the statute. The amendment to paragraph (b)1 removes superfluous languages and clarifies that a written document must be involved before one must be licensed as a home repair salesman.

The proposed amendment to N.J.A.C. 3:19-1.3 removes superfluous languages and changes the term "three months" to "90 days" to make the language in the regulation identical with the language in the statute (N.J.S.A. 17:16C-62).

The proposed amendment to N.J.A.C. 3:19-1.6 permits licensees to use their reference numbers (which is a permanent Departmental identification number) in lieu of their current license number (which changes biennially) on contracts, subcontracts, bids, and advertisements.

The proposed amendments to N.J.A.C. 3:19-1.7 change the existing language to reflect the correct name of the departmental form which must be submitted for a change of employment, and removes the requirement that a \$25.00 fee be submitted with the form.

**Social Impact**

The rules have been a valuable supplement to the HRFA in clarifying and elaborating certain statutory language. They have reduced misunderstandings by licensees and have thereby reduced the Department's regulatory burden.

The amendments will have no new social impact as they serve primarily to clarify the existing rules.

**Economic Impact**

The rules impose minor administrative costs by requiring licensees to enter sales tax separately on statements of account, by requiring contractors to indicate an identification number on contracts, bids, and advertising, and by requiring salesmen to notify the Department when they change employment. The cost resulting from complying with these provisions is negligible.

The amendments will result in the loss of the \$25.00 fee for notifying the Department of a change of employment. A small portion of this may

be recouped by the slightly expanded requirements for licensure which would be effected by the amendment to N.J.A.C. 3:19-1.2(a)1, describe above.

**Regulatory Flexibility Analysis**

The home repair contracting industry is made up overwhelmingly of small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rule at N.J.A.C. 3:19-1.4 decreases the burden on small businesses who participate in only one transaction per year by exempting them from licensure. Although there are small administrative costs associated with the reporting, record keeping and compliance requirements outlined in the economic impact statement, compliance is deemed to be essential to the Department's regulation of the industry. Therefore no separate or differing standards are established for small businesses.

The amendments will diminish the economic burden on employees of these small businesses by removing the \$25.00 fee requirement when they notify the Department of a change in employment. The amendment would slightly increase the numbers of those who are required to be licensed under the Act, but the Department concludes that the amendment of the rules is more in keeping with the letter and spirit of the statute than is the current language, and therefore, no differing standards based on business size is offered.

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:19.

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

3:19-1.2 Licensing requirement

(a) In the administration of sections (d) and 16(e) of chapter 41 P.L. 1960, the Home Repair Financing Act, the following will be deemed to require licensing as a "home repair contractor":

1. A person who, for his own account, solicits and procures the execution of a home repair contract by an owner, and who signs said home repair contract as a contractor, or who has such a home repair contract solicited and executed on his [behalf] **behalf** by his salesman, **whether or not such contract is subsequently assigned to, or performed by, another; and**

[2. A person who, for his own account, solicits and procures the execution of a home repair contract by an owner, and who signs said home repair contract as a contractor, and who subsequently assigns said home repair contract to another for its performance;]

[3.] **2.** A person who assumes, by assignment, **performance** or otherwise, the contractual responsibility to perform a home repair contract, and benefits thereunder.

(b) In the administration of section 1(n) and 16(a) of Chapter 41 P.L. 1960, the Home Repair Financing Act, the following will be deemed to require licensing as a "home repair salesman":

1. A person who contracts or who solicits, arranges, discusses or otherwise negotiates with an owner, directly or indirectly, [at the address of the owner, at the licensed address of the home repair contractor or at any other location,] and in so doing procures any **written** memorandum, agreement, estimate, contract or any other writing which subsequently results in the execution of a home repair contract between an owner and a home repair contractor.

3:19-1.3 Self-installation exemption

A contract of goods or services, whether contained in one or more documents, executed between an owner and the seller or supplier of goods or services to such owner will be deemed a home repair contract if it provides that the time sales price of said goods or services is to be paid in installments over a period of time greater than [three months] **90 days**; provided, however, that where such an installment contract for goods is made with the express understanding and representation that such goods will be utilized, installed or applied by the owner independently, and not directly or indirectly in connection with any written, oral or implied installment contract for services, such contract for goods will not be deemed to be a home repair contract.

3:19-1.6 License, **reference** or certificate number  
 (a) A home repair contractor shall indicate the current license, **reference**, or certificate number on all contracts, subcontracts, bids and all forms of advertising.  
 (b) (No change.)

3:19-1.7 Home repair salesmen; change of affiliation  
 A licensed home repair salesman must be employed by a licensed home repair contractor and may represent only that employer in the transaction of home repair financing business. A licensed home repair salesman who changes his or her employer shall, within 10 days of this change, submit to the Department a change [of employer request] **notification** form [along with a \$25.00 fee]. When submitting this form, the salesman shall surrender the license indicating the affiliation with his or her prior employer.

**COMMUNITY AFFAIRS**

**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Uniform Construction Code  
 Certificate of Occupancy Requirements**

**Proposed Amendment: N.J.A.C. 5:23-2.23**

Authorized By: Melvin R. Primas, Jr., Commissioner,  
 Department of Community Affairs.  
 Authority: N.J.S.A. 52:27D-124.  
 Proposal Number: PRN 1991-63.

Submit written comments by March 6, 1991 to:  
 Michael L. Ticktin, Esq.  
 Chief, Legislative Analysis  
 Department of Community Affairs  
 CN 802  
 Trenton, NJ 08625

The agency proposal follows:

**Summary**

Since the Uniform Fire Safety Act took effect, inspections of existing sprinkler systems, hazardous uses and places of assembly have been done by fire officials, pursuant to the Uniform Fire Codes, not by construction and subcode officials. It is therefore appropriate to delete the reference to construction and subcode officials being given approval under the Uniform Construction Code.

**Social Impact**

The amendment concerning approval of sprinklers, hazardous uses and places of assembly will eliminate a possible source of confusion over jurisdiction.

**Economic Impact**

This amendment may result in savings to property owners in those cases where both fire officials and construction officials are performing, and charging for, inspections.

**Regulatory Flexibility Statement**

The rule affects all owners of property subject to the requirements of N.J.A.C. 5:23, and specifies that certain equipment must be approved by specified officials. Equipment previously included in this category has been deleted, since fire officials have been providing the inspection and approval, rendering inspections by construction officials redundant. The proposed amendment will affect small businesses, in that it will eliminate the redundant requirement, thereby resulting in possible savings to such businesses. No requirements are imposed by this amendment on small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

5:23-2.23 Certificate of occupancy requirements  
 (a)-(h) (No change.)  
 (i) Limitations: Equipment herein below listed, having been determined to create a significant potential for hazard to public health and safety, shall be granted a certificate of approval by the ap-

propriate subcode official or other approved agency for the duration specified herein[.]

Such equipment shall be periodically reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of such certificate of approval, and any violations corrected before a new certificate may be issued. No such system or assembly shall continue in operation unless a valid certificate of approval has been reissued. It shall be a violation of the regulations for an owner to fail to provide for such periodic inspection and testing.

- 1.-6. (No change.)
- [7. Hazardous uses and places of assembly: three months;]
- [8.]7. Cross-connections and backflow preventers: three months;
- [9. Sprinklers: 12 months

10. Such equipment shall be periodically reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of such certificate of approval, and any violations corrected before a new certificate may be issued. No such system or assembly shall continue in operation unless a valid certificate of approval has been reissued. It shall be a violation of the regulations for an owner to fail to provide for such periodic inspection and testing.]

(j)-(k) (No change.)

**(b)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Uniform Construction Code**

**Fees**

**Proposed Amendments: N.J.A.C. 5:23-4.19, 4.20, 4.21, 4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18 and 8.19**

Authorized By: Melvin R. Primas, Jr., Commissioner,  
 Department of Community Affairs.  
 Authority: N.J.S.A. 52:27D-124.  
 Proposal Number: PRN 1991-64.

Submit comments by March 6, 1991 to:  
 Michael L. Ticktin, Esq.  
 Chief, Legislative Analysis  
 Department of Community Affairs  
 CN 802  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Department proposes to raise State of New Jersey training fees by approximately 15 percent and to raise fees for construction code enforcement by the Department, private enforcing agency authorization and reauthorization fees, industrialized/modular building and component labels and variations and authorizations for asbestos hazard abatement by approximately 30 percent, with allowance for rounding where appropriate. License and certification fees are increased by \$10.00. Department plan review surcharges are also increased.

The current fee schedule was established on July 3, 1989. The proposed increases are intended to cover the Department's increased cost of doing business since that time and those increases which can be anticipated through June 30, 1992, which is the end of Fiscal Year 1992. These increases can be estimated with considerable certainty because wages and benefits account for most of the Department's code enforcement costs. Increases in these areas are known because they have been set through three-year collective bargaining agreements. These increases will have amounted to 26 percent by the end of Fiscal Year 1992, with the last major increase being payable from July, 1991. Additionally, there has been an increase in charges paid to the Treasury for the cost of central services provided to the program. Non-salary costs also have increased proportionally. The proposed increases and adjustments to the fee schedule will increase the Department's construction code revenue base by 30 percent.

While the proposed fee increases will increase the revenue base by 30 percent, actual income is not anticipated to increase by 30 percent. Construction code fees are user fees and the amounts realized from them are related to the level of construction activity. The Department's need for staff, and, consequently, revenue, is also related to the level of construc-

tion activity. The Department has examined its staffing in relation to the level of construction activity. Staffing in the Department's construction code permitting and review functions has been reduced by between 10 and 20 percent, depending upon the particular type of function, since the peak workload year of 1988. At present, the number of applications for permits and other approvals remains at 1989 levels, suggesting the need to maintain present staff levels. In any event, the Department's fees are determined by the unit cost of inspection and review activity and not the level of activity. If activity does decline further during fiscal years 1991 and 1992, then the Department's need for staff will decline.

The proposed fee increases are not distributed uniformly across all the Department's construction code fees. An examination of the cost of different types of activities and the fees associated with those activities suggested that some adjustment in the degree to which different fees contribute to the Department's overall revenue would be appropriate. Accordingly, the proposed increase is 30 percent for general permit fees, manufactured housing fees and asbestos safety control authorization and reauthorization fees, 15 percent for the State training fee, and no increase for planned real estate fees. The Department's plan review surcharge fees are also proposed to be raised to more accurately reflect the higher cost of the Department's plan review activity in relation to its local permitting activity.

No increase is proposed in fees related to elevators and similar devices because the Department will soon propose major revisions to the rules governing elevators. That proposal will include adjustments to fees for the installation and inspection of elevators and similar devices.

#### Social Impact

The construction code enforcement program is fee supported. If it is adequately funded, it is able to provide prompt and efficient service that is beneficial both to the development community that requires their approvals in order to proceed with projects and to the public, who rely upon code enforcement officials and those responsible for planned real estate review for their protection.

#### Economic Impact

As a result of these amendments, there will be increases in the cost of the enumerated services and approvals obtained from the Department. The training fee, a portion of which can, by the Appropriations Act, be used for non-training purposes, is the Department's single broad-based construction fee, meaning that it applies to that major portion of construction that is inspected by local enforcing agencies, as well as to the small portion inspected by the Department in municipalities in which there is no local agency. Dividing a fee increase between the training fee and the fees paid only in those cases in which the Department is the enforcing agency is appropriate because the Department's code enforcement program provides services to all areas of the State, even those in which there is local enforcement.

The fees charged by private inspection agencies that provide subcode enforcement services to municipalities are statutorily linked to those of the Department. The proposed increases will therefore be reflected in their fees as well. Municipalities that have not already done so should review their fee ordinances to make sure that fees automatically include the amount paid to private enforcing agencies, so that they are not placed in the position of having to make up any difference between the fees that they collect and the amounts that they pay to private enforcing agencies.

#### Regulatory Flexibility Analysis

The proposed amendments raise fees paid to the Department for construction code enforcement and for training, based on services provided. The amendments apply to all individuals and businesses regulated by N.J.A.C. 5:23, some of which are small businesses, as defined by N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The number of small businesses affected cannot be estimated reliably. The amendments require that specified fees be paid for specified services, based upon the nature and the extent of the work that is done. Statutory requirements allow no exemptions based on business size. No differentiation based upon business size has been made in the rules, due to the need to protect the safety and welfare of the public through uniform application of inspection and training requirements, which are the basis of the fees paid.

Private enforcing agencies, whether "small businesses" or not, will pay higher authorization and reauthorization fees under the proposed amendments, but will, on balance, clearly benefit financially, since their fees are statutorily required to be the same as those of the Department.

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

#### 5:23-4.19 State of New Jersey training fees

(a) In order to provide for the training and certification and technical support programs required by the act [and] an enforcing agency, including the department when acting as the local agency, shall collect a surcharge fee to be based upon the volume of new construction within the municipality. Said fees shall be accounted for and forwarded to the Bureau of Housing Inspection in the manner herein provided.

(b) Amount: This fee shall be in the amount of [\$0.0014] **\$0.0016** per cubic foot volume of new construction. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28.

1. (No change.)

(c) (No change.)

#### 5:23-4.20 Departmental fees

(a) (No change.)

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a Departmental plan review surcharge in the amount of [30] **40** percent of each listed fee. When the Department performs plan review only, the plan review shall be in the amount of [20] **25** percent of the new construction permit fee which would be charged by the Department pursuant to these regulations. The minimum fee shall be [\$33.00] **\$43.00**.

(c) Departmental (enforcing agency) fees:

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 [\$33.00] **\$43.00**.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of [\$0.019] **\$0.025** per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be [\$0.011] **\$0.014** per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be [\$0.0005] **\$0.0007** per cubic foot for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), with the maximum fee for such structures on farms not to exceed [\$815.00] **\$1,060**.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of [\$17.00] **\$22.00** per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of [\$13.00] **\$17.00** per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of [\$11.00] **\$14.00** per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Department such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Department shall make the final decision regarding estimated cost.

(3)-(4) (No change.)

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) The fee shall be in the amount of [\$7.00] **\$9.00** per fixture connected to the plumbing system for all fixtures and appliances except as listed in (c)2ii(2) below.

(2) The fee shall be [\$46.00] **\$60.00** per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, back flow preventers, steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, gas service entrances, active solar systems, sewer pumps, interceptors and fuel oil piping.

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) For from one to 50 receptacles or fixtures, the fee shall be in the amount of [\$25.00] **\$33.00**; for each 25 receptacles or fixtures in

addition to this, the fee shall be in the amount of ~~[\$4.00]~~ **\$5.00**; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacles or similar fixtures, and motors or devices of [less than] one horsepower or one kilowatt or less.

(2) For each motor or electrical device greater than one horsepower and less than or equal to 10 horsepower, and for transformers and generators greater than [1] **one** kilowatt and less than or equal to 10 kilowatts, the fees shall be ~~[\$7.00]~~ **\$9.00**.

(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 transformers and generators greater than 10 kilowatts and less than or equal to 45 kilowatts, the fee shall be ~~[\$33.00]~~ **\$43.00**.

(4) For each motor or electrical device greater than 50 horsepower and less than or equal to 100 horsepower; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 1,000 amperes; and for each transformer or generator greater than 45 kilowatts and less than or equal to 112.5 kilowatts, the fee shall be ~~[\$65.00]~~ **\$85.00**.

(5) For each motor or electrical device greater than 100 horsepower; for each service panel, service entrance or sub panel greater than 1,000 amperes; and for each transformer or generator greater than 112.5 kilowatts, the fee shall be ~~[\$325.00]~~ **\$423.00**.

(6) (No change.)

iv. Fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums:

(1) The fee for 20 or fewer heads or detectors shall be ~~[\$46.00]~~ **\$60.00**; for 21 to and including 100 heads or detectors, the fee shall be ~~[\$85.00]~~ **\$111.00**; for 101 to and including 200 heads or detectors, the fee shall be ~~[\$163.00]~~ **\$212.00**; for 201 to and including 400 heads or detectors, the fee shall be ~~[\$423.00]~~ **\$550.00**; for 401 to and including 1,000 heads or detectors, the fee shall be ~~[\$585.00]~~ **\$761.00**; for over 1,000 heads or detectors, the fee shall be ~~[\$748.00]~~ **\$972.00**. In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.

(2) The fee for each standpipe shall be ~~[\$163.00]~~ **\$212.00**.

(3) The fee for each independent pre-engineered system shall be ~~[\$65.00]~~ **\$85.00**.

(4) The fee for each gas or oil fired appliance [which] **that** is not connected to the plumbing system shall be ~~[\$33.00]~~ **\$43.00**.

(5) The fee for each kitchen exhaust system [will] **shall** be ~~[\$33.00]~~ **\$43.00**.

(6) The fee for each incinerator shall be ~~[\$260.00]~~ **\$338.00**.

(7) The fee for each crematorium shall be ~~[\$260.00]~~ **\$338.00**.

3. (No change.)

4. Certificates and other permits: The fees are as follows:

i. The fee for a demolition or removal permit shall be ~~[\$46.00]~~ **\$60.00** for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building code), and structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), and ~~[\$85.00]~~ **\$111.00** for all other use groups.

ii. The fee for a permit to construct a sign shall be in the amount of ~~[\$0.85]~~ **\$1.11** per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be ~~[\$33.00]~~ **\$43.00**.

iii. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee [which] **that** would be charged by the Department pursuant to these regulations. The minimum fee shall be ~~[\$85.00]~~ **\$111.00**, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms, including commercial farm buildings subject to N.J.A.C. 5:23-3.2(d), for which the minimum fee shall be ~~[\$46.00]~~ **\$60.00**.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be ~~[\$124.00]~~ **\$161.00**.

v. The fee for a certificate of continued occupancy shall be ~~[\$85.00]~~ **\$111.00**.

vi. (No change.)

vii. The fee for a certificate of approval certifying that work done under a construction permit has been satisfactorily completed shall be ~~[\$20.00]~~ **\$26.00**.

viii. The fee for plan review of a building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode shall be ~~[\$195.00]~~ **\$254.00** for one and two-family homes (use group R-3 of the building subcode), and for light commercial structures having the indoor temperature controlled from a single point, and ~~[\$975.00]~~ **\$1,268** for all other structures.

ix. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be ~~[\$423.00]~~ **\$550.00** for class I structures and ~~[\$85.00]~~ **\$111.00** for class II and class III structures. The fee for resubmission of an application for a variation shall be ~~[\$163.00]~~ **\$212.00** for class I structures and ~~[\$46.00]~~ **\$60.00** for class II and class III structures.

5. Periodic inspections: Fees for the periodic Departmental reinspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:

i.-ii. (No change.)

iii. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be ~~[\$33.00]~~ **\$43.00** for each such device when they are tested (thrice annually) and ~~[\$85.00]~~ **\$111.00** for each device when they are broken down and tested (once annually).

6. Annual [permits:] **permit requirements are as follows:**

i. The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers who are employed by the facility, and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing.

ii. Fees for annual permits shall be as follows:

[i. 1-] (1) **One to 25 workers** (including foremen) ~~[\$475.00]~~ **\$618.00** /worker; each additional worker over 25, ~~[\$165.00]~~ **\$215.00**/worker.

[ii.] (2) Prior to the issuance of the annual permit, a training registration fee of ~~[\$100.00]~~ **\$130.00** per subcode shall be submitted by the applicant to the Department of Community Affairs, [Construction Code Element] **Bureau of Technical Assistance**, Training Section along with a copy of the construction permit (Form F-170A). Checks shall be made payable to "Treasurer, State of New Jersey."

5:23-4.21 Private enforcing agency authorization and reauthorization fees

(a) Authorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for approval as an inspection agency shall pay a fee of ~~[\$2,000]~~ **\$2,600** for each subcode for which authorization is sought.

(b) Reauthorization fee: [1.] Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for reapproval as an inspection agency shall pay a fee of ~~[\$1,000]~~ **\$1,300** for each subcode for which authorization is sought plus an amount equal to five percent of the gross revenue earned from State Uniform Construction Code enforcement activities during the previous 12-month period. This fee shall be paid to the Department in 12 equal installments, beginning with the month immediately following the end of the 12-month period from which the fee is calculated. Payment shall be made prior to the last business day of each month.

5:23-4.22 Building element and manufactured home add-on unit insignia of certification fees

(a) Building element insignia of certification fee: An inplant inspection agency requesting the Department to issue component insignia(s) of certification or building elements shall pay a fee of ~~[\$50.00]~~ **\$65.00** for each such insignia.

(b) Manufactured (Mobile) Home add-on unit insignia of certification fee: An inplant inspection agency requesting the Department to issue insignia(s) of certification for manufactured (mobile) home add-on units shall pay a fee of [\$50.00] **\$65.00** for each such insignia.

5:23-4A.12 Fees for labels: labels

(a) Fees for labels shall be as follows:

1. An approved evaluation and inspection agency requesting the Department to issue labels of certification for industrialized/modular buildings shall pay a fee of [\$100.00] **\$130.00** for each label.

2. An approved evaluation and inspection agency requesting the Department to issue component labels of certification for building components shall pay a fee of [\$50.00] **\$65.00** for each label.

3. (No change.)

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

5:23-5.21 Renewal of license

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

(d) Continuing education requirements are as follows:

1.-3. (No change.)

(e) Lapsed license renewal requirements are as follows:

1. Where the holder of a license has allowed the license to lapse by failing to renew the license as provided for in (b) [of this section] above, a new application and license shall be required. If such application is made within two years of the license having lapsed, then application may be made in the same manner as a renewal application.

2. The late renewal application shall be accompanied by the appropriate renewal fee and an additional late fee of [\$30.00] **\$40.00** per year or fraction thereof.

3. Additionally, the [license] licensee must make up or meet the annual continuing education training requirement for each active and expired year as specified herein.

4. Where a license has lapsed for a period exceeding two years, a new application shall be required in accordance with N.J.A.C. 5:23-5.5, and the applicant must meet all current licensure requirements.

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

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a fee as specified herein.

1. An application fee of [\$30.00] **\$40.00** shall be charged in each of the following instances:

i. Application for any one given technical license specialty, or for the Inplant Inspector or Facility Fire Protection Supervisor license.

ii. Application for any one given technical license specialty plus the related Subcode Official license, if both are applied for at the same time.

iii. Application for any one given technical license specialty plus the related Subcode Official license, as well as the Construction Official license, if all three are applied for at the same time.

2. An application fee of [\$10.00] **\$20.00** shall be charged for each administrative license applied for separately from a technical license.

3. (No change.)

4. Renewal fee: The two-year renewal application fee shall be [\$30.00] **\$40.00**.

5. Persons who have become ineligible for an administrative license by reason of failure to remove the provisional status of such license within the prescribed two-year period must submit a fee of [\$10.00] **\$20.00** for the restoration of each such administrative license.

6. (No change.)

5:23-8.6 Variations

(a) No variations from the requirements of this subchapter shall be made except upon written approval from the administrative authority having jurisdiction, after receiving a recommendation in writing from the asbestos safety control monitor firm. Any variation shall be consistent with N.J.A.C. 5:23-2.

1. Exception: When a building or part of a building is required to be occupied during an asbestos hazard abatement project, a written release shall be requested from the Department, and obtained

by the authorized asbestos safety control monitor firm. The Department of Community Affairs shall review the application and approve or deny it within 20 business days [from] of receipt of [the application] it. A copy of the plans and specifications must accompany the variation request from the authorized asbestos safety control monitor firm in the Department along with the number of intended occupants and their purpose, location within the building and the time of day the occupants will be in the building. A variation for occupancy shall not be required for maintenance or security personnel. In addition, a variation request for occupancy is not required for a cleared area in a multi-phase project [which] that has received a Temporary Certificate of Occupancy from the administrative authority having jurisdiction when such occupancy applies to contractors or related personnel involved with post-abatement activity.

i. The fee for an application for a variation for occupancy shall be [\$325.00] **\$432.00** and shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

(b) (No change.)

5:23-8.10 Fees

(a) The administrative authority having jurisdiction who issues the construction permit and the certificate of occupancy for an asbestos hazard abatement project shall establish by regulation[/] or ordinance the following flat fee schedule:

1. An administrative fee of [\$50.00] **\$65.00** for each construction permit issued for an asbestos hazard abatement project.

2. An administrative fee of [\$10.00] **\$13.00** for each certificate of occupancy issued following the successful completion of an asbestos hazard abatement project.

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

5:23-8.18 Asbestos safety control monitor

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

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the [department] Department under this subcode[,] for approval as an asbestos safety control monitor shall pay a fee of [\$2,500] **\$3,250** for the authorization [which] that is sought, plus an amount equal to [six] **eight** percent of the gross revenue earned from asbestos safety control monitor activities, payable quarterly. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

2. Reauthorization fee: Any asbestos safety control monitor submitting an application to the [department] Department under this subcode for reapproval as an asbestos safety control monitor shall pay a fee of [\$1,250] **\$1,625** plus an amount equal to [six] **eight** percent of the gross revenue of four consecutive quarters starting with the previous year's last quarter. The fee shall be paid quarterly with the first quarter due with the application. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

5:23-8.19 Asbestos safety technician: certification requirements

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

(i) No application for certification shall be acted upon unless said application is accompanied by a fee as follows:

1. An application fee shall be [\$30.00] **\$40.00**;

2. A renewal application fee shall be [\$30.00] **\$40.00**.

**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Uniform Construction Code**

**Barrier-Free Subcode**

**Platform Lifts**

**Proposed Amendment: N.J.A.C. 5:23-7:18**

Authorized By: Melvin R. Primas, Jr., Commissioner,  
Department of Community Affairs.

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

Proposal Number: PRN 1991-62.

Submit written comments by March 6, 1991 to:  
 Michael L. Ticktin, Esq.  
 Chief, Legislative Analysis  
 Department of Community Affairs  
 CN 802  
 Trenton, NJ 08625

The agency proposal follows:

**Summary**

A definition of "special purpose area" as an area within a larger room or space that is dedicated to a unique or particular function is added to N.J.A.C. 5:23-7.18(a)3ii concerning the use of platform lifts in new construction, as are specific requirements for platform lifts. These revisions require platform lifts to comply with the applicable technical standard (ANSI/ASME 17.1), to be operable with a universal key if they are key operated, and to be prominently labeled with the telephone numbers of the building owner, the enforcing agency, the manufacturer, the installer and the service contractor.

**Social Impact**

Defining "special use area" will avoid confusion and eliminate a source of potential disagreement. The requirements for lifts used in existing buildings will address some of the problems that persons having to use lifts have encountered.

**Economic Impact**

Requiring the use of lifts that conform to the applicable technical standard should not impose any undue burden on owners installing new lifts in existing buildings. Lifts using a universal key are available and the requirement to use them does not impose any burden. The labeling requirement should also prove not to be costly.

**Regulatory Flexibility Analysis**

The proposed amendments affect all owners of buildings regulated by N.J.A.C. 5:23-7, some of whom may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is not possible to quantify the number of such businesses. The amendments impose requirements on building owners regarding the construction and operation of platform lifts, in order to promote the safety and welfare of persons who must use platform lifts because of disability. The use of code-complying lifts, universal keys and labels does not impose any unreasonable burden on any owner. There are no differential requirements based on business size in the rules, due to the need to provide for the safety and welfare of the disabled individuals who use such facilities.

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

5:23-7.18 Accessible routes: change in level

(a) All changes in level or grade on accessible routes, walks, or floors shall comply with the following:

1.-2. (No change.)

3. Changes in level of greater than three-quarter inch are to be connected by ramp, curb ramp, elevator or platform lift meeting criteria of this subchapter. However, the maximum change in level within a building which may be bridged by a ramp shall be 60 inches.

i. (No change.)

ii. In new construction, platform lifts shall be utilized only for access to special purpose areas and shall not be used on accessible routes between major floor areas or accessible entrances.

(1) "Special purpose area" shall mean and include any area within a larger room or space dedicated to a unique or particular function, such as a stage in an auditorium, an altar platform in a house of worship, or an elevated computer work station within a laboratory. "Special purpose area" shall not include any building entrance or any portion of any accessible route of travel between major floor levels.

iii. Platform lifts shall comply with ANSI/ASME 17.1.

iv. If key operated, platform lifts shall use a universal key which shall be readily available upon request.

v. Platform lifts shall have a label attached which prominently displays the telephone numbers of the building owner, enforcing agency, manufacturer, installer, and service contractor.

4. (No change.)

(b) (No change.)

**ENVIRONMENTAL PROTECTION**

**(a)**

**DIVISION OF ENVIRONMENTAL QUALITY**

**Notice of Extension of Availability of Proposal Notice Copies**

**Control and Prohibition of Air Pollution by Vehicular Fuel**

**Proposed Amendments: N.J.A.C. 7:27-25.1, 25.2, and 25.5**

**Proposed New Rules: N.J.A.C. 7:25-25.7 and 25.8**

Take notice that the Department of Environmental Protection is extending the time period for availability for inspection of copies of the notice of proposal published in the January 7, 1991 New Jersey Register at 23 N.J.R. 45(b) from February 11, 1991 to February 25, 1991. The notice copies will be available at the eight locations as specified in the notice of proposal.

**HUMAN SERVICES**

**(b)**

**DIVISION OF MENTAL HEALTH AND HOSPITALS**

**Interim Assistance Procedures Manual**

**Proposed Readoption with Amendments: N.J.A.C. 10:38**

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

Authority: N.J.S.A. 30:4-27.19.

Proposal Number: PRN 1991-79.

Submit comments by March 6, 1991 to:

Robert P. Immordino, Assistant Director  
 Fiscal and Management Operations  
 Department of Human Services  
 Division of Mental Health and Hospitals  
 Capital Center—CN 727  
 Trenton, NJ 08625-0727

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:38, Interim Assistance Procedures Manual, expires on May 28, 1991. The Department of Human Services has reviewed these rules and has determined that they are necessary, reasonable and proper for the purposes for which they were originally promulgated, as required by the Executive Order.

The New Jersey Department of Human Services, in conjunction with the United States Department of Health and Human Services, developed the Interim Assistance Program. This program permits a State psychiatric hospital client who is clinically ready for discharge to receive financial assistance. That assistance will be for living expenses while waiting for the Social Security Administration (SSA) to process the client's application for Supplemental Security Income (SSI). Prior to the existence of the Interim Assistance Program, SSI-eligible clients would have had to remain hospitalized while awaiting SSA processing of the SSI application.

N.J.A.C. 10:38 became effective July 9, 1981 and was readopted pursuant to Executive Order No. 66(1978) effective May 28, 1986 with amendments effective July 7, 1986. N.J.A.C. 10:38 was then substantially recodified and Subchapter 5, Trial Placement Status, was repealed, effective August 6, 1990. Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:38 will expire on May 28, 1991.

The proposed readoption includes numerous changes in punctuation and language to promote clarity. There is also in N.J.A.C. 10:38-3.6(a)9 reference to a change in methodology for computing the amount due a client from his or her initial retroactive SSI check. Further, N.J.A.C. 10:38-3.8 is a new section outlining provider responsibilities. N.J.A.C. 10:38-4.3(e) and N.J.A.C. 10:38-7.4 refer to a proposed change in handling cases in which Interim Assistance clients have other income. Text at N.J.A.C. 10:38-6.9(e) has been revised to clarify divisional review by the Financial Entitlement Unit for appeals made by the client. Text has

been added at N.J.A.C. 10:38-6.9(d) to include Administrative Procedure Act and Uniform Administrative Procedure Rules citations. Appendices A through J already referenced in the rules, and proposed Appendix K, are also added to the code through this rulemaking.

A summary of the text of N.J.A.C. 10:38 follows:

N.J.A.C. 10:38-1, General Provisions, describes the program, its authority and its purpose.

N.J.A.C. 10:38-2, Interim Assistance Eligibility, provides criteria for determining client eligibility or ineligibility for the program.

N.J.A.C. 10:38-3, Interim Assistance Case Processing, allocates organizational roles and responsibilities.

N.J.A.C. 10:38-4, Interim Assistance Payment Procedures, outlines procedures for authorizing and terminating payments.

N.J.A.C. 10:38-5, Medicaid Coverage for Interim Assistance Clients, describes the interaction between the Medicaid program and the Interim Assistance Program.

N.J.A.C. 10:38-6, Appeal Procedures, describes the various processes for seeking review of decisions.

N.J.A.C. 10:38-7, Client Income and Resource Monitoring, outlines procedures and responsibilities for monitoring client income and resources.

The proposed re-adoption of N.J.A.C. 10:38 also updates the chapter to reflect current organizational responsibilities.

#### Social Impact

Fundamental clinical and legal principles require that hospitals discharge clients as soon as clinically appropriate. It can take a substantial period of time between application for and receipt of SSI benefits. Many clients lack adequate finances to sustain themselves in the community while waiting for their SSI benefits to commence. The Interim Assistance Program is currently providing financial assistance to approximately 150 clients per month. Without this assistance, many clients would remain institutionalized longer than necessary. This would constitute an inappropriate delay in resumption of normal community life. Thus, the program provides a positive effect in the form of enhanced placement prospects.

#### Economic Impact

Psychiatric hospitals are the most expensive location for psychiatric treatment. Continuation of the Interim Assistance Program will reduce costs by enhancing clinically appropriate client discharges from State psychiatric hospitals into less expensive community settings.

Further, SSA has introduced a new methodology for calculating how much of the initial retroactive SSI check goes to the client. The new methodology is more favorable to the client, in that it enhances the chance that each client will in all cases receive the maximum amount due.

The program continues to provide for client reimbursement to the State from retroactive benefits. As a result, the State recovers approximately 75 percent of the program's costs. The change in handling cases in which Interim Assistance clients have other income may result in clients having less available funds. However, the change will assure that such clients live up to the terms agreed to in the signed Payee Agreement.

#### Regulatory Flexibility Analysis

The proposed re-adoption with amendments imposes certain reporting, recordkeeping or other compliance requirements on agencies under contract with the Division of Mental Health and Hospitals to provide residential services to clients needing these services. Some of these agencies may be considered small businesses as defined by the Regulatory Flexibility Act because they employ less than 100 full-time employees (see N.J.S.A. 52:14B-16 et seq.).

The proposed re-adoption with amendments establishes compliance requirements for the agencies providing residential services to Interim Assistance Program clients. N.J.A.C. 10:38-3.8(a)1 through 8 establish specific reporting, recordkeeping and compliance requirements for these provider agencies, including the requirement to notify the hospital which has placed a client with them in certain circumstances and also to refund payments to that hospital in certain circumstances. No capital costs are associated with these requirements and no additional professional services will be needed for compliance. These compliance requirements are necessary and standards are uniformly applied regardless of the size of the provider agencies in order to ensure the safety and well-being of the clients involved and the financial integrity of the Interim Assistance Program.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:38.

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

#### 10:38-1.1 Program description

(a) Interim Assistance (IA) is a payment procedure developed by the State of New Jersey and the Federal Department of Health and Human Services. [which] It permits a client who has been released from a State psychiatric hospital and who has applied for Federal Supplemental Security Income (SSI) benefits to receive State funds while his or her SSI claim is being evaluated. Through this process, the client shall receive a Personal Needs Allowance and have his or her initial maintenance costs paid by the Division of Mental Health and Hospitals upon release from the hospital. The Division, in turn, may directly receive the client's retroactive SSI payment from the Social Security Administration, may recoup Interim Assistance expenditures made and shall deposit this reimbursement in the hospital Interim Assistance **appropriation** account.

#### 10:38-1.4 Definitions

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

"Boarding [house] **home**" means a building containing two or more units of dwelling space arranged or intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement. **Such facilities shall be licensed by the State Department of Community Affairs, pursuant to P.L. 1979 c.496 (Rooming House/Boarding House Act of 1979).**

"Financial Entitlement Unit or its equivalent" means that institutional unit within the Division of Mental Health and Hospitals which processes Interim Assistance, [Supplemental Security Income] SSI and General Assistance applications for State psychiatric hospital clients who are being prepared for release.

"Representative payee" means a person[,] selected by the client and appointed by the Social Security Administration[, who]. **The representative payee** receives a client's [Supplemental Security Income] SSI payments and disburses them for the benefit of the client in accordance with Social Security Administration regulations.

"Retroactive SSI payment" means the initial payment[,] following a client's [Supplemental Security Income] SSI benefit approval[, which]. **It** includes the amount due for the current month plus payments retroactive to the day of the client's application or formal inquiry to the Social Security Administration.

"**Supplemental Security Income (SSI)**" means the Federal assistance program authorized under Title XVI of the Social Security Act.

#### 10:38-2.1 Clients eligible for Interim Assistance

(a) To be determined eligible for Interim Assistance (IA), a client shall:

- 1.-2. (No change.)
3. Have been evaluated by the Interdisciplinary Treatment Team as ready for release to one of the following:
  - i. Residential health care facility;
  - ii. **Boarding [house] home**;
  - iii. Rooming house; or
  - iv. Transitional residence; and
4. Have applied for [Supplemental Security Income (SSI)] SSI benefits.

#### 10:38-2.2 Clients ineligible for Interim Assistance

(a) A client in a State psychiatric hospital is not eligible for Interim Assistance when any of the following conditions [exist] **exists**:

- 1.-4. (No change.)
5. The client is on the active SSI rolls (**receiving a monthly Federal PNA stipend**).

0:38-2.3 Selection criteria

- (a) (No change.)
- (b) When choices must be made among Interim Assistance applicants, the following selection criteria shall be used:
  - 1. (No change.)
  - 2. The potential eligibility of the client for [Supplemental Security Income] SSI. There should be evidence that the client meets SSI income, resource, citizenship and disability criteria.

0:38-3.3 The hospital social service staff or designee

- (a) The Discharge Oriented Service Plan shall establish the client's need for assistance in financial planning and placement needs. If such financial need is evident and the client appears to meet Interim Assistance eligibility criteria, the hospital social service staff or designee shall:
  - 1. [Provide] **Whenever assigned client placement responsibility, provide** the client or family with a description of the Interim Assistance Program, its requirements and the client's or family's rights and obligations under the program[, if assigned client placement responsibility];
  - 2. [Obtain] **Whenever assigned client placement responsibility and he client expresses an interest in the program, obtain** the client's signature [if he or she expresses an interest in the program,] on an Interim Assistance Statement and form MH-30 (Appendix B) [if assigned client placement responsibility];
  - 3.-7. (No change.)

10:38-3.4 Responsibilities of the Discharge and/or Financial Unit[s]

- (a) The Discharge or Financial Unit shall play a major role in several areas, specifically:
  - 1.-2. (No change.)
  - 3. Assemble the necessary information and documents for [Supplemental Security Income (SSI)] SSI applications, forward this material to the Social Security Administration, and monitor the SSI application process;
  - 4.-7. (No change.)
  - 8. [Terminate] **Notify the business manager to terminate** Interim Assistance payments when eligibility or ineligibility for [Supplemental Security Income] SSI benefits is established.
- (b) The Discharge or Financial Unit shall maintain a record of each referral received and processed. This record shall contain the dates when:
  - 1.-5. (No change.)
  - 6. [A Supplemental Security Income] **An SSI** application is forwarded to the Social Security Administration District Office;
  - 7. An approval or denial of the [Supplemental Security Income] SSI application is received; and
  - 8. (No change.)
- (c) The Financial Entitlement Unit shall, within five working days of receipt of a referral:
  - 1. (No change.)
  - 2. Obtain from hospital social service staff form SSA-787, Medical Officer's Statement (**Appendix K**);
  - 3. Make an assessment of the client's potential [Supplemental Security Income] SSI eligibility based on available documents and information. This evaluation shall result in one of the following decisions:
    - i. The client is eligible for Interim Assistance payments because he or she meets the eligibility criteria of the Interim Assistance Program and appears to be potentially eligible for [Supplemental Security Income] SSI benefits; or
    - ii. The client is ineligible for Interim Assistance payments because he or she does not meet Interim Assistance eligibility criteria and/or does not appear to be potentially eligible for [Supplemental Security Income] SSI benefits.
  - (d) The Financial Entitlement Unit shall, for a client assessed as eligible for Interim Assistance:
    - 1. Obtain from the client a signed [Supplemental Security Income] SSI application and a Payee Agreement (Appendix E);
    - 2.-4. (No change.)

5. For clients not on the active SSI rolls (within the past year), forward a completed [Supplemental Security Income] SSI referral packet[, containing]. **This packet shall contain** all required hospital forms and reports, necessary [Supplemental Security Income] SSI application and supporting documents, and a copy of the court order of discharge, if applicable[.]. **The packet should be forwarded** to the Social Security Administration District Office within 15 calendar days of submission of the signed form MH-30 to [that office] **the Financial Entitlement Unit; and**

- 6. (No change.)
- (e) The Discharge Unit shall:
  - 1. (No change.)
  - 2. The placement [Social Worker] **social worker** shall visit the selected site with the client and, if the client finds it acceptable:
    - i.-iii. (No change.)
  - (f) The financial coordinator shall:
    - 1.-3. (No change.)
    - 4. Notify the hospital business manager of the client's [Supplemental Security Income] SSI approval;
    - 5. Notify the client and the hospital business manager[,] in writing[,] when Interim Assistance payments are terminated; and
    - 6. (No change.)
    - (g) [The Financial Entitlement Unit shall, for] **For** a client who has been found eligible for Interim Assistance and is subsequently denied SSI benefits **the Financial Entitlement Unit shall:**
      - 1. [Continue] **If the client files an appeal with the Social Security Administration, continue** Interim Assistance payments upon authorization by the Financial Coordinator[, if the client files an appeal with the Social Security Administration,] during the period of the SSI reconsideration and the hearing at the Administrative Law level;
        - 2. (No change.)
        - 3. Assist the client in obtaining legal representation from the Community Health Law Project[,] or local legal services corporation, as appropriate;
        - 4. Continue Interim Assistance until the [Supplemental Security Income] SSI retroactive check is received in cases where the appeal to the Social Security Administration is successful;
        - 5. (No change.)
        - 6. Monitor the processing of the General Assistance application[,] and notify the hospital business manager when the initial general assistance payment is received by the client; and
        - 7. (No change.)
      - (h) The Financial Entitlement Unit shall, for a client assessed as ineligible for Interim Assistance:
        - 1. Notify the client and the hospital social worker[,] in writing[,] of the client's ineligibility for Interim Assistance;
        - 2.-4. (No change.)

10:38-3.5 The Office of Fiscal and Management Operations of the Division of Mental Health and Hospitals

- (a) The role of the Office of Fiscal and Management Operations of the Division of Mental Health and Hospitals shall be to:
  - 1. Receive from the Social Security Administration retroactive [Supplemental Security Income] SSI checks for Interim Assistance clients;
  - 2.-4. (No change.)

10:38-3.6 Responsibilities of the hospital business office

- (a) The hospital business office shall be responsible for all fiscal matters relating to the Interim Assistance program other than those described in previous and succeeding sections. Business office staff's specific responsibilities shall be to:
  - 1.-7. (No change.)
  - 8. Receive a client's initial retroactive [Supplemental Security Income] SSI check from the Office of Fiscal and Management Operations and deposit it into the client's account, and notify the Financial Entitlement Unit that the check has been received;
  - 9. Compute the amount due from the client's initial retroactive [Supplemental Security Income] SSI check as reimbursement for Interim Assistance expenditures **using approved methodology as outlined in the Interim Assistance Reimbursement State Handbook,**

withdraw this sum from the client's account and deposit it into the Interim Assistance account;

10.-14. (No change.)

15. Terminate Interim Assistance as of the day following the last day of the period covered by the client's retroactive [Supplemental Security Income] SSI check.

10:38-3.7 Action by the Social Security Administration

(a) The Social Security Administration [will] **should**:

1.-2. (No change.)

3. Direct retroactive [Supplemental Security Income] SSI checks to the Division of Mental Health and Hospitals in accordance with the Interim Assistance agreement;

4. Notify the Financial Entitlement Unit of approvals and denials of [Supplemental Security Income] SSI applications;

5. (No change.)

6. Notify clients and/or representative payees that initial [Supplemental Security Income] SSI retroactive checks shall be forwarded to the Division of Mental Health and Hospitals; and

7. Hear client appeals regarding the amount of [Supplemental Security Income] SSI payments and other adverse (financial and medical) actions.

**10:38-3.8 Responsibilities of the congregate housing provider**

(a) **The congregate housing provider shall sign a contract for Interim Assistance agreeing to:**

1. **Accept the client for placement;**

2. **Furnish the client with food, lodging, and necessary incidentals;**

3. **Accept an agreed upon per diem as compensation;**

4. **Contact the hospital and designated emergency screening service in the event the client needs emergency medical or psychiatric care. The provider shall furnish details as to the patient's condition and shall abide by such directions as are given. In the event of a serious medical or psychiatric emergency, the provider shall arrange for immediate care and then notify the hospital and emergency screening service;**

5. **Provide 30 calendar days' written notice of his or her intent to terminate the contract agreement;**

6. **Notify the hospital should the provider become aware that the client directly received the initial retroactive SSI check;**

7. **Refund to the hospital any Interim Assistance payments received after the initial SSI check or any payments which represent duplicate compensation to the provider for the time period beginning with the placement and ending with receipt of the initial SSI check; and**

8. **Notify the hospital immediately in the event the client terminates residence at the home.**

10:38-4.3 Business office payment procedures

(a) (No change.)

(b) The client's initial Personal Needs Allowance payment shall be issued in the following manner:

1.-2. (No change.)

3. If the client has [personal funds] **other income**, such funds shall be utilized instead of Interim Assistance; and

4. (No change.)

(c) (No change.)

(d) The business manager, or his or her designee, shall mail Personal Needs Allowance checks, at the per diem rate and covering a full calendar month, to the client at the community placement address [on] **no later than** the first working day of each month.

(e) The client's Interim Assistance maintenance payment shall be calculated and disbursed as follows:

1. (No change.)

2. The invoice shall be compared for accuracy with the signed Contract for Interim Assistance and the Financial Entitlement Unit's Interim Assistance maintenance report, if utilized; [and]

3. Validated payments **to the housing provider** from the Interim Assistance account shall be [made to the housing provider] **processed** by the 10th calendar day of the following month at the established maintenance rate. This is a per diem rate based on the current SSI payment; **and**

4. **If the client has other Federal annuity income in addition to SSI, the housing provider shall collect payments directly from the client. If**

**so, this shall be noted on the invoice. The hospital shall reduce its payment to the provider accordingly.**

10:38-4.4 Termination of payments

(a) Interim Assistance payments shall be terminated for an eligible client:

1. As of the day after the last day of the period covered by a retroactive [Supplemental Security Income] SSI check received by the hospital business manager; or

2. When a client has been formally determined to be ineligible for [Supplemental Security Income] SSI benefits by the Social Security Administration. This shall be interpreted to mean that Interim Assistance payments may continue through the SSI reconsideration and the hearing at the Administrative Law level if approved by the Financial Coordinator.

(b) Retroactive county billing shall be pursued by the hospital business office[,] utilizing form 1113, Billing Classification Report (Appendix I), in a case where a client is denied [Supplemental Security Income] SSI benefits, or when the initial SSI check is less than the amount of **recoverable** Interim Assistance advanced.

(c) [The client shall be notified of Interim Assistance termination by the] **The Financial Entitlement Unit shall notify the client of Interim Assistance termination.**

10:38-5.1 Institutional Medicaid Coverage

An Interim Assistance recipient shall be eligible for institutional Medicaid coverage until his or her [Supplemental Security Income] SSI application is processed and he or she is discharged.

10:38-5.2 Procedures

(a) To ensure continued institutional Medicaid coverage for an Interim Assistance client, the following procedures shall be followed:

1. (No change.)

2. Form FD-34, Medicaid validation, shall be completed by the designated hospital representative on the date of placement[,] and on the first of each month thereafter [, and forwarded]. **The representative shall forward the form** to the appropriate congregate facility including, but not limited to, boarding homes and group homes; and

3. (No change.)

10:38-5.3 Termination of institutional Medicaid coverage

(a) Upon notification by the Financial Entitlement Unit of the client's approval for [Supplemental Security Income] SSI benefits and community Medicaid, the hospital shall list the client as "Discharged" on the daily population movement report.

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

10:38-6.1 Right to appeal

(a) An Interim Assistance client shall have the right to appeal an adverse eligibility decision in the following situations:

1. The client has been denied Interim Assistance by the Financial Entitlement Unit and he or she has filed an application for [Supplemental Security Income] SSI benefits; or

2. The client has been found eligible for Interim Assistance [and] **but** has subsequently been terminated from the Interim Assistance program for reasons other than the receipt of [Supplemental Security Income] SSI benefits.

10:38-6.2 Notice of decision and right of appeal

(a) The Financial Entitlement Unit shall, within five working days of an adverse eligibility decision, notify the client[,] in writing[,] of such decision and shall furnish him or her with a summary statement giving the factual and/or legal basis upon which such decision was based.

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

10:38-6.3 Procedure for filing appeal

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

(d) A request for appeal received after the time period specified shall be denied[,] unless an unusual situation, such as client illness, exists. In such a case[,] an additional 10 calendar days may be allowed by the Financial Coordinator for providing notice of intention to appeal.

(e) (No change.)

## 10:38-6.5 Financial Entitlement Unit's review

(a) The review shall be conducted by an employee[,] at the supervisory level or above[,] designated as a reviewing officer, other than the person who made the original eligibility determination. Such reviewing officer shall be thoroughly familiar with the requirements of the Interim Assistance program and relevant Social Security Administration regulations.

(b) The review shall be conducted in an informal manner[,] and shall be limited to the development of facts relating to the appeal.

(c)-(g) (No change.)

10:38-6.6 Results of the [financial entitlement unit's] **Financial Entitlement Unit's** review

(a) If the reviewing officer concludes[,] after hearing all the evidence[,] that the client is eligible for Interim Assistance, he or she shall[,] within five calendar days of the review[,] notify the client and his or her representative to that effect [and]. **The reviewing officer shall also advise the Financial Entitlement Unit's staff person who made the original eligibility determination that Interim Assistance must be provided to the client effective the date of his or her placement in a community setting.**

(b) If the reviewing officer concludes[,] after hearing all the evidence[,] that the client is ineligible for Interim Assistance, [the reviewing officer] **he or she shall**[,] within five calendar days of the review[,] notify the client, his or her representative and the Financial Entitlement Unit of the decision. The reviewing officer shall advise the client and his or her representative of the client's right to have the decision reviewed at the [Divisional] **Division** level.

(c) [The] **Based on the evidence presented** the reviewing officer shall prepare a written report of his or her findings [, based on the evidence presented], summarizing what transpired at the review. Copies of this report shall be provided to the client, his or her representative, the Financial Entitlement Unit, the Chief Executive Officer of the hospital, and to the Assistant Director, Office of Fiscal and Management Operations, within five calendar days of the review.

(d) (No change.)

## 10:38-6.7 Effect of determination by the Social Security Administration

(a) If[,] prior to the review date[,] the Social Security Administration determines that the client is eligible for [Supplemental Security Income] **SSI** benefits, then the client, if he or she meets all eligibility requirements, shall be eligible for Interim Assistance from the date of his or her placement in a community setting until he or she begins to receive [Supplemental Security Income] **SSI** benefits.

(b) If, prior to the review date[,] the Social Security Administration determines that the client is ineligible for [Supplemental Security Income] **SSI** benefits, then the client's sole recourse shall be through the Social Security Administration and his or her Interim Assistance appeal shall be denied.

## 10:38-6.8 Divisional review

(a) (No change.)

(b) A divisional review must be requested[,] in writing[,] within 10 calendar days of issuance of the Financial Entitlement Unit's reviewing officer's decision [, and]. **It must be submitted to the Assistant Director, Office of Fiscal and Management Operations, Division of Mental Health and Hospitals.**

(c) [An extension of time may be granted, by the Assistant Director, Office of Fiscal and Management Operations, not to exceed 10 calendar days, in] **In an unusual situation, [e.g.] for example, client illness, the Assistant Director, Office of Fiscal and Management Operations, may grant an extension of time not to exceed 10 calendar days** or submitting a request for divisional review.

(d)-(f) (No change.)

## 10:38-6.9 Results of divisional review

(a) (No change.)

(b) The Assistant Director, Office of Fiscal and Management Operations, shall[,] within 10 calendar days of receipt of the client's request for review[,] notify the client, his or her representative and the Financial Entitlement Unit of the results of the [Divisional] **Divisional** review.

(c) If the Financial Entitlement Unit's reviewing officer's decision is affirmed, such decision shall be treated and recognized as the final [administrative decision] **divisional determination** of the client's claim for Interim Assistance. The client, his or her representative and the Financial Entitlement Unit shall be so advised.

(d) The client shall have the right to request a hearing before an Administrative Law Judge if he/she is dissatisfied with the Assistant Director's decision. Such request must be submitted to the Assistant Director within 10 calendar days of issuance of the Assistant Director's decision. Upon receipt of such request, the Assistant Director shall immediately refer the matter to the Office of Administrative Law for a hearing before an Administrative Law Judge[,] , **in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules at N.J.A.C. 17:27.**

(e) If the Financial Entitlement Unit's reviewing officer's decision is rejected[,] the client shall be declared eligible for Interim Assistance benefits from the date of his or her community placement [and the]. **The client, his or her representative and the Financial Entitlement Unit shall be so advised.**

## 10:38-6.10 Appeal to the hospital business manager of computation of net payment

(a) The Interim Assistance client shall have the right to appeal to the hospital business manager regarding procedures used to compute the net payment from his or her retroactive [Supplemental Security Income] **SSI** check.

(b) [The client, shall within five working days of receipt of his or her retroactive Supplemental Security Income check by the hospital, be provided with a statement by the hospital business manager or designee] **Within five working days of receipt of the retroactive SSI check by the hospital, the business manager or designee shall provide the client with a statement** detailing the manner in which the net payment was computed. The client shall also be provided with a written statement regarding his or her right to appeal such computation.

(c) The client shall[,] within 20 calendar days of mailing of the above statement[,] be required to serve written or oral notice upon the hospital business manager of his or her dissatisfaction with the computation and of his or her intention to appeal.

(d) (No change.)

## 10:38-6.11 Business manager's review

(a) (No change.)

(b) The business manager, or his or her designee, shall meet with the client as scheduled and explain to him or her the procedures used to compute the net payment from the client's retroactive [Supplemental Security Income] **SSI** check.

(c) The business manager, or his or her designee, shall [recompute] **recheck computation** of the amount of the net payment.

(d)-(g) (No change.)

## 10:38-6.12 Results of business manager's review

(a) The business manager shall advise the client and the client's representative[,] **of his or her decision** in writing[,] within five calendar days of the review [of his or her decision]. Copies of this notice shall also be provided to the Discharge or Financial Entitlement Unit, the Chief Executive Officer of the hospital, and the Assistant Director, Office of Fiscal and Management Operations.

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

## 10:38-6.13 Divisional review

(a) The client shall have the right to a divisional review of the procedures used by the business manager in computing the client's net payment from his or her retroactive [Supplemental Security Income] **SSI** check.

(b) A divisional review must be requested[,] in writing[,] within 10 calendar days of issuance of the business manager's decision and must be submitted to the Assistant Director, Office of Fiscal and Management Operations.

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

## 10:38-6.14 Results of divisional review

(a) (No change.)

(b) The Assistant Director, Office of Fiscal and Management Operations shall[,] within 10 calendar days of receipt of the client's request for a review[,] notify the client, his or her representative, the business manager and the Financial Entitlement Unit of the results of the divisional review.

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

(e) If the business manager's computation is rejected[,] the Assistant Director, Office of Fiscal and Management Operations shall direct the business manager to issue a corrected payment to the client. Such payment shall be issued within five calendar days of issuance of the Assistant Director's decision.

## 10:38-7.2 Responsibilities of the hospital business manager

(a) The hospital business manager shall be responsible for recouping [the total amount of] Interim Assistance payments made, first from the client's retroactive [Supplemental Security Income] SSI check, then from the client's personal funds and finally from the client's other resources.

(b) The net balance of **the client's Federal annuity** funds controlled by the hospital shall be directed **with SSA approval** to the client upon his or her discharge.

## 10:38-7.3 Chief Executive Officer as representative payee for client income

(a) (No change.)

(b) [The client shall be notified by the business manager, in writing] **The business manager shall notify the client in writing** that recoveries may be made in this manner.

## 10:38-7.4 Client or non-institutional agent as payee for available client income

(a) When an Interim Assistance client receives or has available income directed to a payee other than the Chief Executive Officer of the hospital, the business manager shall bill the client and/or the payee on a monthly basis or at the end of placement, in accordance with the Payee Agreement. **If the client has made payments directly to the housing provider, such billing shall be reduced or eliminated accordingly.**

(b) (No change.)

(c) When the Financial Inquiry form is returned to the hospital business manager showing additional available **Federal annuity income**, the business manager shall direct the client and/or payee[,] in

writing[,] to make payments from the additional income [to the hospital] **directly to the housing provider** in accordance with the Payee Agreement. **Should the client agree to pay the provider directly and then fail to do so, the business manager shall calculate and disburse the maintenance payment in accordance with N.J.A.C. 10:38-4.3(e)**

## 10:38-7.5 Client or non-institutional agent as payee for anticipated income

(a) (No change.)

(b) When the Financial Inquiry form[, which indicates] **indicating** available income[,] is returned to the business manager, he or she shall direct the client and/or payee to make payments to the hospital in accordance with the Payee Agreement, **or directly to the housing provider at the provider's option.**

## 10:38-7.6 Refusal to honor payee agreement—client

(a) When an Interim Assistance client refuses to honor the Payee Agreement, the following procedures shall be followed:

1. (No change.)

2. A representative of the Discharge or Financial Entitlement Unit shall[,] within five working days[,] visit the client and review the Payee Agreement with him or her;

3.-4. (No change.)

## 10:38-7.7 Refusal to honor payee agreement—representative payee

(a) When a representative payee refuses to honor the Payee Agreement or questions any of its stipulations, the following procedure shall be followed:

1. (No change.)

2. The Financial Entitlement Unit shall[,] within 10 working days[,] contact the representative payee, clarify the situation and encourage him or her to comply with the Payee Agreement;

3.-5. (No change.)

## 10:38-7.8 Termination of Interim Assistance

(a) When notified by the Financial Entitlement Unit that the client's Interim Assistance has been terminated, the business manager shall:

1. (No change.)

2. Refer to the Discharge or Financial Entitlement Unit[,] within 30 calendar days after mailing of the bill instances of failure by the client and/or representative payee to make payment [to the hospital of any outstanding balance **to the hospital**];

3.-4. (No change.)

**APPENDIX A**

**INTERIM ASSISTANCE STATEMENT**

**I have been made aware of the Interim Assistance Program and its requirements, and understand my rights and responsibilities as a recipient of Interim Assistance.**

**I am \_\_\_\_\_ am not \_\_\_\_\_ interested in applying for Interim Assistance.**

**Signature: \_\_\_\_\_**

**Witness: \_\_\_\_\_**

**Date: \_\_\_\_\_**

**Sample Form  
Distribution:  
Financial Coordinator (original)  
Client  
Hospital Social Worker**

APPENDIX B

AUTHORIZATION FOR REIMBURSEMENT OF INITIAL SUPPLEMENTAL SECURITY INCOME (SSI)  
PAYMENT OR INITIAL SSI POSTELIGIBILITY PAYMENT (MH-30)—COMMUNITY PLACEMENTS

GR CODE \_\_\_\_\_

\_\_\_\_\_  
(APPLICANT'S NAME)

\_\_\_\_\_  
(SOCIAL SECURITY NUMBER)

\_\_\_\_\_  
(MAILING ADDRESS)

\_\_\_\_\_  
(HOSPITAL)

I understand and authorize that:

For Interim Assistance to be granted to me, and upon the approval for Supplemental Security Income benefits, the Secretary of Health and Human Services will forward to the New Jersey Division of Mental Health and Hospitals my (check one):

- \_\_\_\_\_ initial SSI(payment.
- \_\_\_\_\_ initial SSI posteligibility payment.

A check in the same amount will be sent to the Business Manager of the hospital specified above. I further authorize said Business Manager to deduct from my (check one):

- \_\_\_\_\_ initial SSI payment as reimbursement an amount equal to the total amount of Interim Assistance which I received from this hospital (not including assistance payments financed wholly or partially with federal funds) from the date I filed an application for SSI and became eligible for benefits through the month in which my SSI benefits begin.
- \_\_\_\_\_ initial posteligibility payment as reimbursement an amount equal to the total amount of Interim Assistance I received from this hospital (not including assistance payments financed wholly or partially with federal funds) from the date my SSI benefits are subsequently reinstated after a period of suspense or termination and ending with and including the month my SSI benefits resume.

However, if the hospital has prepared and cannot stop delivery of its last assistance payment when it receives my retroactive SSI benefit payment from the Social Security Administration, that payment is included as Interim Assistance to be reimbursed.

I understand that the payment to me and a written explanation showing how the balance was calculated will be made within five working days after the Business Manager receives the Supplemental Security Income check.

I further understand that if I disagree with the amount of the deduction made by the Business Manager, I have the right to an administrative review by the NJ Division of Mental Health and Hospitals. I must make the request for a review through the Department of Human Services, Division of Mental Health and Hospitals, CN-727, Trenton, NJ 08625.

I understand that this signed authorization is effective for (1) one year from the date it is received by the above Agency and it will cease to have effect at the end of one year unless:

- I file for SSI on or before that time, or my case is completely decided, or the above Agency and I mutually agree to terminate this authorization, or
- I appeal my suspension or termination on or before that time, or my SSI case is completely decided, or the above Agency and I mutually agree to terminate this authorization.

In addition, I understand that signing this authorization form means I want to file for SSI benefits. I also understand that I must file an SSI application with a social security office for the Social Security Administration to decide if I am eligible for SSI benefits. I understand that if I am found eligible for SSI benefits that my eligibility for SSI can begin as early as the date the Hospital receives this signed authorization, but only if I file the SSI application within 60 days from the date the above agency receives this signed authorization.

DATE \_\_\_\_\_ SIGNED \_\_\_\_\_

ADDRESS \_\_\_\_\_

NEW JERSEY DEPARTMENT OF HUMAN SERVICES, DIVISION OF MENTAL HEALTH AND HOSPITALS

**NEW JERSEY DEPARTMENT OF HUMAN SERVICES, DIVISION OF MENTAL HEALTH AND HOSPITALS  
STATEMENT BY HOSPITAL BUSINESS MANAGER**

\_\_\_\_\_  
(Name of Business Manager)

\_\_\_\_\_  
(Hospital)

As Business Manager of the above Hospital, I agree to provide necessary assistance to or on behalf of the stated individual who is a bonafide SSI applicant for those goods and services required during the period while the application for SSI is being investigated.

The original copy of this completed form will be sent within 24 hours to the local Social Security District Office.

If a check is received from the Social Security Administration via the Treasurer, State of New Jersey on behalf of the applicant, I will make certain that I will deduct from such check an amount equal to the total assistance granted during this period, and I will pay the balance, if any, within five working days of receipt of the check to the applicant with a completed copy of the Form FS-9 explaining how the amount was computed.

All accounts and records dealing with this activity will be available for examination by duly authorized State and/or Federal representatives.

The retroactive SSI check, payable to "Treasurer, State of New Jersey", is to be mailed to the Division of Mental Health and Hospitals at the following address:

**NJ Division of Mental Health and Hospitals  
Fiscal and Management Operations  
Capital Center CN-727  
Trenton, NJ 08625**

\_\_\_\_\_  
Hospital Business Manager's Signature

\_\_\_\_\_  
Date

- Distribution
- SSA (original)
- Business Manager
- Client
- Financial Coordinator

APPENDIX C

NEW JERSEY DEPARTMENT OF HUMAN SERVICES
Division of Mental Health and Hospitals
CONTRACT FOR INTERIM ASSISTANCE

THIS AGREEMENT made on this \_\_\_\_\_ day of \_\_\_\_\_ in the year of one thousand nine hundred and \_\_\_\_\_ :

WITNESSETH, that I, \_\_\_\_\_ the undersigned, for and in consideration of payments to be made to me as provided herein, do hereby covenant and agree as follows:

1. I AGREE to accept into my home \_\_\_\_\_ from the \_\_\_\_\_ (Hospital Name)

New Jersey and agree to furnish said individual with food, lodging, and other usual and necessary incidentals for the proper maintenance of the said individual and his well being.

2. I AGREE to accept the sum of \$ \_\_\_\_\_ per day from the \_\_\_\_\_ (Rate) at \_\_\_\_\_ (Hospital) \_\_\_\_\_ (Location)

as full compensation for maintenance that I shall furnish the said individual. I further understand that the above agreed upon daily compensation rate is established at rates determined by the Social Security Administration in conjunction with the Commissioner of the Department of Human Services (hereafter known as the Commissioner).

3. I AGREE to immediately contact the \_\_\_\_\_ (Designated Emergency Screening Service)

by telephone in the event of need for emergency medical or psychiatric care, notifying them of the full details of the said individual's condition and to abide by such directions as shall be given. In the event of serious emergency medical or psychiatric care, I will

contact the \_\_\_\_\_ (Designated Emergency Screening Service)

immediately by telephone, after care has been given, notifying them of the full details.

4. I AGREE to give the \_\_\_\_\_ (Designated Emergency Screening Service)

at \_\_\_\_\_ (Location)

thirty (30) calendar days notice in writing of my intention to terminate this contract; otherwise it shall continue in full force and effect as long as the said individual is under my care, or subject to termination notice if standards are not maintained.

IN WITNESS WHEREOF, I have hereunto set my hand the year and day first written above.

(Signature of Home Operator and/or Responsible Family Member)

Signed and delivered in the presence of

\_\_\_\_\_  
Witness

CERTIFICATION NOTE:

An Interim Assistance Payee is not entitled to receive dual payments for care provided. A sponsor must, therefore: 1) notify the hospital as soon as a resident receives his first SSI or other payment and also provide the effective date of such payment; 2) refund the hospital any Interim Assistance payments received after the first SSI or other payment is received; 3) refund the hospital the amount of Interim Assistance funds from the retroactive SSI payment, which represents a duplicate payment for the time period from SSI application to receipt of funds; 4) notify the hospital immediately should the client terminate residence at the home.

**APPENDIX D  
STATEMENT OF BUSINESS MANAGER  
STATE PSYCHIATRIC HOSPITAL**

(Hospital)	(Client Name)
(Business Manager)	(Client Social Security #)

**As Business Manager of the above-named State Psychiatric Hospital, I agree to authorize commitment of funds for Interim Assistance to, or on behalf of, the stated client. The client must be a bonafide SSI applicant for those goods and services required during the period while the application for SSI is being investigated.**

**The original copy of this completed form will be sent to the local Social Security Administration (SSA) District Office. One copy will go to the Discharge/Financial Coordinator or equivalent at the above-noted hospital.**

**If an SSI check is received from the SSA on behalf of the applicant (client), I will arrange to deposit it into the client's patient trust account. I will arrange to pay to the hospital's Interim Assistance account an amount equal to the total recoverable assistance granted during this period. The hospital will pay to the applicant the balance, if any, within five (5) business days from the date of receipt of the check by the office cited below. The payment will be accompanied by a completed copy of Form FS-9, explaining how the hospital computed the amount.**

**All accounts and records dealing with this activity shall be available for examination by duly authorized State and/or Federal representatives.**

**Under the Interim Assistance Placement procedure funded through the Division of Mental Health and Hospitals, recipient's first check should go to:**

**Treasurer, State of New Jersey  
Division of Mental Health and Hospitals  
c/o Robert P. Immordino, Assistant Director  
Fiscal and Management Operations  
CN 727  
Trenton, New Jersey 08625-0727**

(Date)	(Signature of Business Manager)
--------	---------------------------------

**Distribution:  
SSA/DO—Original      Discharge/Financial Coordinator  
Business Manager**

**Form FS-10 (Revised—January, 1991)**

APPENDIX E
PAYEE AGREEMENT

I understand that I, as an Interim Assistance recipient, will have my community maintenance paid in full by the Division of Mental Health and Hospitals until a determination of my SSI claim is made. The Division will also supplement my personal needs expenses, when necessary.

I also understand that income available to me or my representative payee while I am an Interim Assistance recipient must be forwarded as received to the Business Manager, \_\_\_\_\_ Psychiatric Hospital, as partial reimbursement of Interim Assistance expenditures.

I therefore agree:

- 1. To notify the Business Manager, \_\_\_\_\_ Psychiatric Hospital, when income or resources from any source becomes available to me or my representative payee; and
2. To send all income or resources received by me (but not exceeding my Interim Assistance indebtedness) to the Business Manager, \_\_\_\_\_ Psychiatric Hospital, until Interim Assistance is terminated.
3. That, if there are insufficient funds available from the initial SSI retroactive check for full reimbursement of Interim Assistance funds granted, the balance owing may be recovered by the hospital business office from other sources of funds available to me.

In the event that a representative payee selected by me fails to abide by the terms of this agreement, I will take the necessary steps to have a new representative payee appointed.

Witness: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

I, \_\_\_\_\_, agree to the terms stated above and will send, when billed, all funds received by me on behalf of \_\_\_\_\_ (client) to the Business Manager, \_\_\_\_\_ Psychiatric Hospital.

I understand that these funds will be used as partial reimbursement for Interim Assistance granted to \_\_\_\_\_ (client).

This agreement will remain in effect until such time as I am notified by the Business Manager, \_\_\_\_\_ Psychiatric Hospital, to redirect these payments.

Witness: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Sample Form
Distribution:
Business Manager—original
Client
Representative Payee
Financial Coordinator



APPENDIX G  
BUSINESS MANAGER'S FINANCIAL INQUIRY

re: \_\_\_\_\_ (Client)

Dear \_\_\_\_\_

Please respond to the following questions and return this form to me within 5 days of receipt.

Has the above named client received:

	YES	NO
Supplemental Security Income payment?	<input type="checkbox"/>	<input type="checkbox"/>
A Social Security benefit?	<input type="checkbox"/>	<input type="checkbox"/>
Any other type of payment (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is "yes" to any of these questions, please provide the following information:

Date Payment was received \_\_\_\_\_

Type of Payment \_\_\_\_\_

Amount of Check(s) \_\_\_\_\_

Check issued to (name) \_\_\_\_\_

Sample Form  
Distribution:  
Client—Original  
Housing Provider  
Business Manager

\_\_\_\_\_  
Business Manager

APPENDIX H

BUSINESS MANAGER'S STATEMENT TO SSI RECIPIENT

\_\_\_\_\_  
(Client's Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_

\_\_\_\_\_  
(Hospital)

\_\_\_\_\_  
(Client's Address)

The Social Security Administration has sent us a check representing your retroactive and initial benefits from the SSI Program.

According to the authorization you gave us on Form MH-30 (Payee Agreement), we have applied to that check an amount equal to the amount of recoverable assistance we gave you while your application for SSI was being processed or your SSI payment was suspended or terminated, as follows:

- 1. Amount of Interim Assistance provided \$ \_\_\_\_\_
- 2. Amount of SSI check \$ \_\_\_\_\_
- 3. Patient Trust Fund balance \$ \_\_\_\_\_
- 4. Total available resources (2 + 3) \$ \_\_\_\_\_
- 5. Amount of assistance hospital can recover \$ \_\_\_\_\_
- 6. Amount of assistance given to you by county/local welfare agencies \$ \_\_\_\_\_
- 7. Amount of assistance recovered from PTF balance \$ \_\_\_\_\_
- 8. Net amount due you (4-5-6-7) (check enclosed) \$ \_\_\_\_\_
- 9. Net amount due State Treasurer (1-5-7) (bill enclosed) \$ \_\_\_\_\_

If you disagree with this computation, you have the right to come to this office to discuss the matter. If after such discussion you are not satisfied, you may contact the State Division of Mental Health and Hospitals to request an administrative review. You should make the request through the Department of Human Services, Division of Mental Health and Hospitals, CN 727, Trenton, New Jersey 08625-0727.

\_\_\_\_\_  
(Hospital)

\_\_\_\_\_  
(Name, Title)

Distribution:

Client—Original  
Business Manager  
Division Fiscal Officer

Social Service Director  
Placement/Financial Coordinator

**APPENDIX I**

**STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES**

**BILLING CLASSIFICATION REPORT**

**INSTITUTION** \_\_\_\_\_

**EFFECTIVE DATE** \_\_\_\_\_

PART I NAME OF PATIENT	LAST	FIRST	MIDDLE	SERIAL NO.	SEX
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**A— Type of Entry**

- 1  By court order
- 2  In residence over 90 days
- 3  Amended court order
- 4  Other
- 5  Certification (M.A.A.)
- 6  Amended certification (M.A.A.)
- 7  Certification M.A. (MEDICAID)
- 8  Amended certification M.A. (MEDICAID)
- 9  Certification M.A. (MEDICAID UNDER 21)
- 0  Amended certification M.A. (MEDICAID UNDER 21)

**B— Type of Billing Status**

- 1  County regular
- 2  County regular with contributions
- 3  County criminal
- 4  County criminal with contributions
- 5  Private
- 6  State indigent
- 7  State indigent with contributions
- 8  Sex offender
- 9  No charge, special cases or other
- 0  M.A.A. (Medical Assistance to the Aged)
- X  M.A. (MEDICAID)
- Y  Excess contributions
- Z  M.A. (MEDICAID UNDER 21)

**C— For Patients With Contributions Only  
Rates Per Court Order**

- 1 \$ \_\_\_\_\_ Daily
- 2 \$ \_\_\_\_\_ Weekly
- 3 \$ \_\_\_\_\_ Monthly

**D— County of Charge** \_\_\_\_\_  
**County of Commitment** \_\_\_\_\_

PART II	DESCRIPTION	Prior Month or Prior Year Charges (see instructions)	NO. OF DAYS	RATE	AMOUNT
X	Prior month charges—M.A. (MEDICAID)	_____			
Y	Prior month charges—Excess contributions	_____			
Z	Prior month charges—M.A. (MEDICAID UNDER 21)	_____			
0	Prior month charges—M.A.A.	_____			
1	Prior month charges—County regular billing	_____			
2	Prior year charges—County separate billing	_____			
5	Prior charges—Private	_____			
6	Prior charges—State contributing	_____			

**PART III Payer's Name and Address for Private or State Contributory Accounts**

First Line \_\_\_\_\_ Fourth Line \_\_\_\_\_  
 Second Line \_\_\_\_\_ Fifth Line \_\_\_\_\_  
 Third Line \_\_\_\_\_ Sixth Line \_\_\_\_\_

FORM 1113

Number \_\_\_\_\_

## APPENDIX J

**SOCIAL SECURITY ADMINISTRATION  
Supplemental Security Income  
Notice of Interim Assistance Reimbursement**

229

Date: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

GR Code: \_\_\_\_\_

**ACTION REQUIRED BY THE STATE**

Complete the State's Accountability Report using the information in the "PAYMENT SUMMARY". Return all but this page of the notice to the Social Security Administration within 30 days of receipt of the Interim Assistance Reimbursement check.

**THINGS TO REMEMBER WHEN DETERMINING YOUR AMOUNT OF REIMBURSEMENT**

- Federally Reimbursable IA is assistance from State or local funds to an individual for meeting basic needs either during the period beginning with the first day for which such individual was eligible for SSI benefits; or, beginning with the first day for which the individual's benefits were suspended or terminated, if the individual was subsequently found to have been eligible for such benefits, and ending with (and including) the month payment is made.
- You may recoup interim assistance you paid for any month in a period as defined above. You may not recoup for any months prior to the month for which you began paying interim assistance in this period. If a month is not listed in the "Payment Summary" you cannot recoup the assistance you paid for that month.
- In cases where SSI payments were prorated, you must prorate the amount you recover for that month. You cannot recover the difference you paid for a prorated month from any other month. You can determine that a month's payment was prorated if the day is other than the first of the month.
- Assistance payments financed in whole or part from Federal funds (e.g., AFDC) do not come within the meaning of interim assistance.
- Excess IAR payments are to be made to the individual within 10 working days of receipt of the reimbursement check.

SSA-L8125



APPENDIX K

Social Security Administration

TOE 250

Form Approved  
OMB No. 0960

**PHYSICIAN'S/MEDICAL OFFICER'S STATEMENT OF PATIENT'S CAPABILITY TO MANAGE BENEFITS**

This report is authorized by sections 205(a) and 205(j) of the Social Security Act, as amended (42 U.S.C. 405(a) and 405(j)). While you are not required to respond, your cooperation will help us decide whether any Social Security benefits that may be due should be paid directly to the patient or to someone else on the patient's behalf. Your cooperation in completing and returning this statement will be appreciated. **TIME IT TAKES TO COMPLETE THIS FORM** We estimated that it will take you about 5 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have comments or suggestions on this estimate, or on any other aspect of this form, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1-A-21 Operations Bldg., Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0680 0024), Washington, D.C. 20503. Do not send complete form or information concerning any claim to these offices.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it. These and other reasons why information about you may be used or given out are explained in the Federal Register. If you want to learn more about this, contact any Social Security Office.

In replying, use this address:  
**SOCIAL SECURITY ADMINISTRATION**

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TELEPHONE NUMBER (Include Area Code)  
 ( \_\_\_\_\_ ) - \_\_\_\_\_ - \_\_\_\_\_

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DATE

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SSA CONTACT

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IDENTIFYING INFORMATION (SSA Only)

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

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SOCIAL SECURITY NUMBER

\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**Your Help Is Needed**

The patient shown on the back of this form has filed for or is receiving Social Security or Supplemental Security Income checks. We need you to complete this form and return it to us in the enclosed envelope to help us decide if we should pay this person directly or if he or she needs a representative payee to handle the funds. Please Note: This determination affects how benefits are paid and has no bearing on disability determinations. Thank you for your help.

**Who Is A Representative Payee**

A representative payee is someone who manages the patient's money to make sure that his or her needs are met. The payee has a strong and continuing interest in the patient's well-being and is usually a family member or close friend.

**Who Needs A Representative Payee**

Some individuals age 18 or older are not capable of handling their funds or directing others how to handle them to meet their basic needs, so we select a representative payee to receive their checks. People may be incapable because of impairments such as senility, severe brain damage or chronic schizophrenia. People who have physical impairments or mental impairments may need help with bill paying, etc., but that does not necessarily mean they are incapable of managing their own money.

**PLEASE COMPLETE THE INFORMATION ON THE REVERSE OF THIS FORM**

<b>PATIENT'S NAME</b> <i>(If different from wage earner or self-employed person)</i>		<b>PATIENT'S ADDRESS</b> <i>(Number and street, City, State, and ZIP code)</i>
<b>PATIENT'S SOCIAL SECURITY NUMBER</b> ____ / ____ / _____	<b>PATIENT'S DATE OF BIRTH</b> _____	

1. Date you last examined the patient \_\_\_\_\_.
2. Do you believe the patient is able to manage or direct the management of benefits in his or her own best interest?

By this we mean:

- Can the patient understand and act on the ordinary affairs of life, such as providing for own adequate food, housing, clothing, etc.?
- Does the patient have severe physical impairments that prevent him or her from not only managing funds, but also directing others as to how to manage them?

Yes
                         
  No
                         
  Unsure

Note: If "Yes", please omit question 3, but be sure to sign and date the form. If "No", please provide a brief summary of the findings that led to this conclusion. Also, complete question 3. If "unsure", please explain.

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3. Do you expect the patient to be able to manage funds in the future (for example, if the patient is temporarily unconscious)?

Yes
                         
  No

If yes, please explain.

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I HEREBY CERTIFY THAT THE ABOVE STATEMENTS AND ANSWERS ARE TRUE TO THE BEST OF MY KNOWLEDGE.

<b>NAME OF PHYSICIAN/MEDICAL OFFICER</b> <i>(Please Print)</i>	<b>TITLE</b>
<b>ADDRESS</b> <i>(Number and street, City, State and ZIP code)</i>	<b>TELEPHONE NUMBER</b> <i>(Include Area Code)</i> ( ____ ) ____ - _____
<b>SIGNATURE OF PHYSICIAN/MEDICAL OFFICER</b>	<b>DATE</b>

(a)

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Bundled Drug Services****Pharmacy Manual, Manual for Hospital Services, Manual for Special Hospital Services, Manual for Physician's Services, Manual for Dental Services, Podiatry Services Manual, Independent Clinic Manual****Proposed Amendments: N.J.A.C. 10:51-1.1, 1.14, 3.3 and 3.12; 10:52-1.1; 10:53-1.1; 10:54-1.1 and 1.16; 10:56-1.1 and 1.4; 10:57-1.1 and 1.18; and 10:66-1.2****Proposed New Rules: N.J.A.C. 10:52-1.22; 10:53-1.17; and 10:66-1.10**

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

Authority: N.J.S.A. 30:4D-6a(1)(2)(3)(5)b(3)(6)(8), 7, 7a, b, and c; N.J.S.A. 30:4D-12; 42 CFR 440.120.

Agency Control Number: 90-P-19.

Proposal Number: PRN 1991-80.

Submit comments by March 6, 1991 to:

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

A copy of the proposed amendments and new rules are available for public review at any of the 17 Medicaid District Offices or at the 21 county welfare agencies.

The agency proposal follows:

**Summary**

The proposed amendments and new rules concern reimbursement for pharmaceutical services in the Medicaid (Title XIX) Program. A notice of the agency's intention to rulemake appeared in the October 15, 1990 issue of the New Jersey Register at 22 N.J.R. 3258(a). The proposal does not apply to The Pharmaceutical Assistance to the Aged and Disabled Program since the policy is still under review.

Comments were submitted by the New Jersey Pharmaceutical Association, the New Jersey Department of the Public Advocate, the New Jersey Alliance for the Mentally Ill, Bergen Pines County Hospital, and Sandoz Pharmaceuticals. The commenters' concerns have been reviewed and considered prior to the promulgation of these proposed amendments.

The proposed amendments and new rules concern bundled drug services. A bundled drug is one that is marketed or distributed by the manufacturer or distributor as a combined package, which includes not only the cost of the drug but also ancillary services, such as case management and laboratory testing.

In general, the proposed amendments and new rules enable the Commissioner to deny payment for a bundled drug service, with certain exceptions. The Commissioner has the authority to waive the prohibition on payment for bundled drugs if the service is less than or equal to the total cost of the unbundled components if reimbursed separately. Reference is made to Section 4401 of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, codified as 1927(d)(2)(H), 42 U.S.C.A. 1396s.

Manufacturers or distributors need to submit cost data to the Division if they wish to qualify under the waiver provision.

The proposed amendments and new rules also enable the Commissioner to waive the prohibition based upon medical necessity. Medical necessity for bundled drug services is determined by certain controlling factors as indicated in the text of the rules. In those instances where discontinuance, withdrawal, or termination of the bundled drug service would result in a recipient being deprived of a life-saving or life-prolonging benefit, or if there exists a potential harm or serious exacerbation of the illness being treated, then the bundled drug service may be continued. This situation applies to a recipient who is already receiving a bundled drug service.

In other instances where the use of bundled drug service has shown marked improvement in the recipient's clinical status reflected in the

alleviation of symptoms and elevation of level of function and independence, the bundled drug service can be continued. This situation would also apply to a recipient who is receiving a bundled drug service.

The determination to continue or not to continue bundled drug services shall be made by Division medical personnel based upon documentation and clinical data submitted. However, bundled drug services will not be covered by Medicaid in those instances where the patient has not already been receiving these services. This policy will apply regardless of the date Medicaid eligibility is established.

Therefore, any Medicaid recipients who are currently receiving bundled drug services can continue to receive these services provided they obtain prior authorization from the Division and meet the criteria for medical necessity as discussed above and as it appears in the several sections of the text below.

Also, persons currently receiving bundled drug services could continue to receive these services if they establish eligibility for Medicaid after the effective date of these amendments and new rules and follow the procedures for prior authorization and demonstrate medical necessity as indicated previously. Persons who establish eligibility for Medicaid and who are not receiving a bundled drug service will not be covered for bundled drug services.

**Social Impact**

The proposed amendments and new rules do not impact upon the vast majority of Medicaid recipients, or pharmaceutical providers participating in the New Jersey Medicaid Program, because drugs are not usually dispensed as bundled drug services. However, in those instances where Medicaid recipients are receiving bundled drug services, they may continue to receive them so long as they meet the criteria described previously in the Summary.

Medicaid recipients not receiving a bundled drug service will not be able to receive this service.

While the proposed amendments could impact generally upon all manufacturers and/or distributors of drugs and drug products, its applicability would probably be limited to specific products for specific intervals of time.

**Economic Impact**

Medicaid recipients are not required to pay towards the cost of prescription drugs. The economic impact of the proposed amendments on manufacturers or distributors would vary, depending on whether the Department chose to deny payment for the bundled drug or pay for said drug via a negotiated rate.

The estimated cost to the Department of Human Services is between 12 to 27 million dollars annually. The costs attributable to Title XIX/Medicaid would be subject to federal matching funds. The reason for the wide range is that the number of clients who would qualify for treatment is unknown.

**Regulatory Flexibility Analysis**

There may be some manufacturers or distributors of bundled drugs that might be considered small businesses under the terms of the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.). The rule would apply equally to all businesses. There would be no differentiation based upon size. The rationale for this statement is that the procedures for filing a new drug application with the Federal Food and Drug Administration (FDA) are the same for all manufacturers or distributors regardless of the size of the company. The amendments and new rule would give the Commissioner the authority to require manufacturers or distributors to submit cost information of the component parts of the bundled drug in order to determine accurate reimbursement, and to insure the Medicaid Program is reimbursing only for covered services.

The proposed amendments impose reporting, record keeping, and compliance requirements for manufacturers and distributors of bundled drugs who are required, in order to determine eligibility for reimbursement, to submit complete product information, including cost data and a cost benefit analysis.

These businesses would need accountants and other professional staff to comply with the rule. In all probability, the cost of the bundled drug was determined by professional staff in the employ of, or under contract with, manufacturers and/or distributors of the drug. The Department is asking for the individualized costs in order to determine accurate reimbursement.

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

10:51-1.1 [Scope] Introduction

(a) This subchapter gives information relative to providing pharmaceutical services to all Medicaid [eligible] recipients except those who are patient/residents in [long-term care] nursing facilities. For regulations concerning provision of services to Medicaid recipients in [long-term care] nursing facilities, refer to N.J.A.C. 10:51-3.

(b) "Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing. (Reference is made to N.J.A.C. 10:51-1.14(a)17.)

10:51-1.14 Services not eligible for reimbursement

(a) (No change.)

1.-16. (No change.)

17. Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

i. This provision may be waived at the discretion of the Commissioner if he/she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

ii. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug and in accordance with terms approved by the Department as follows:

(1) Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

(2) Those instances where use of the bundled drug has resulted in or produced marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

iii. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

iv. If the Commissioner determines that a bundled drug is eligible for reimbursement under 10:51-1.14(a)17, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services. Mail all the information to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

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

10:51-3.3 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

10:51-3.12 Services not eligible for reimbursement

(a) The following classes of prescription drugs are not eligible for reimbursement:

1.-13. (No change.)

14. Radiopaque contrast materials ([i.e.] that is, Telepaque)[.];

15. Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

i. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

ii. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug and in accordance with terms approved by the Department as follows:

(1) Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

(2) Those instances where use of the bundled drug has resulted in or produced marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

iii. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

iv. If the Commissioner determines that a bundled drug is eligible for reimbursement under this paragraph, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug service, and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

10:52-1.1 Definitions

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

...

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost, the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

10:52-1.22 Bundled drug services

(a) Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

1. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has resulted in or produced marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

(b) In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled

drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

(c) If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services, and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

#### 10:53-1.1 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost, the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

#### 10:53-1.17 Bundled drug services

(a) Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

1. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has resulted in or produced marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

(b) In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

(c) If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services, and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

#### 10:54-1.1 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

#### 10:54-1.16 Pharmaceutical services not eligible for payment

(a) The following classes of prescription drugs will not be honored for payment:

1.-17. (No change.)

18. Radiopaque contrast material (Telepaque)[.];

19. Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

i. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has shown marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

iii. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

iv. If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients who were already receiving a bundled drug service prior to the effective date of this rule, shall continue to be eligible for this treatment if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to support the need for treatment, and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

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

#### 10:56-1.1 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

#### 10:56-1.4 Noncovered services

(a) A noncovered service is that procedure which is primarily for cosmetic purposes or for which dental necessity cannot be demonstrated.

(b) Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

1. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has shown marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

3. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

4. If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

#### 10:57-1.1 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

...

#### 10:57-1.18 Pharmaceutical services not eligible for payment

(a) Pharmaceutical services not eligible for payment include:

1.-14. (No change.)

15. Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

i. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

ii. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

(1) Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

(2) Those instances where use of the bundled drug has shown marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

iii. In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested

by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

iv. If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug services and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

#### 10:66-1.2 Definitions

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

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost, the drug product and ancillary services such as, but not limited to, case management services and laboratory testing.

#### 10:66-1.10 Bundled drug services

(a) Any bundled drug service shall not be eligible for reimbursement by the New Jersey Medicaid Program.

1. This provision may be waived at the discretion of the Commissioner if he or she determines that a bundled drug service is less than or equal to the total cost of the unbundled components if reimbursed separately; or

2. The Commissioner may waive the provisions for reasons of medical necessity for a bundled drug or in accordance with terms approved by the Department as follows:

i. Those instances where discontinuation, withdrawal, or elimination of the use of the bundled drug in someone who has been receiving bundled drug would result in deprivation of life saving or life prolonging benefits of the drug or would cause potential harm or serious exacerbation of the illness being treated; or

ii. Those instances where use of the bundled drug has shown marked improvement in the recipients clinical status reflected in alleviation of symptoms, and elevation of level of function and independence.

(b) In order to determine eligibility for reimbursement, manufacturers or distributors of a bundled drug service shall submit complete product information, including the cost to the Program of the total bundled drug service, discrete costs of each component of the bundled drug service, cost benefit analyses, and other information as requested by the Department, to the Chief Pharmaceutical Consultant, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

(c) If the Commissioner determines that a bundled drug is eligible for reimbursement under this section, New Jersey Medicaid recipients shall be eligible for the bundled drug service if prior authorization is requested and approved. Prior authorization shall be obtained by completing the appropriate "Request for Authorization Form" requesting medication management authorization and providing sufficient documentation to establish that it is medically necessary to continue the bundled drug service and mailing the completed form and documentation to:

Medical Director  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, NJ 08625-0712

(a)

**DIVISION OF ECONOMIC ASSISTANCE**

**Aid to Families with Dependent Children Standard of Need**

**Proposed New Rule: N.J.A.C. 10:82-1.1A**

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

Authority: N.J.S.A. 44:10-3.

Proposal Number: PRN 1991-75.

Submit comments by March 6, 1991 to:

Marion E. Reitz, Director  
 Division of Economic Assistance  
 CN 716  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

In December of 1985 a Petition for Rulemaking was filed with the New Jersey Department of Human Services (DHS) that sought establishment of standards of need for the Aid to Families with Dependent Children (AFDC) and General Assistance (GA) programs. The standard of need is the amount of money deemed sufficient to maintain a safe and decent life. The Supreme Court of New Jersey (*In the Matter of Petitions of Rulemaking, N.J.A.C. 10:82-1.2 and 10:85-4.1*, 117 N.J. 311 (1989)), in affirming the Appellate Division's opinion, ruled in December 1989 that the Commissioner, DHS, has a statutory obligation to establish standards of need based upon the actual cost of basic necessities. The Department had already undertaken the formation of a Standard of Need Advisory Committee in advance of the high court's decision. The mission of the Committee was to advise the Commissioner of DHS on its opinion of what items should be considered in developing the standards and how much these items actually cost.

Using Rutgers University School of Social Work as consultants, a broadly representative group of experts in the fields of nutrition, housing, law, children's issues, social welfare and health were asked to sit on the Committee. The 23 invitees were selected on the basis of: area of expertise, client population serviced and area of the state where they practice. Technical assistance to the Committee was provided by Rutgers.

The participants were divided into three subcommittees: food, housing, and family and children. The last was charged with examining what components, other than food and housing, should be considered in examining the standards of need.

The Food and Nutrition subcommittee utilized a marketbasket built around the United States Department of Agriculture's (USDA) Low Cost Food Plan. There are four USDA food plans: Thrifty, Low Cost, Moderate and Liberal (listed in order of increasing cost). Nutrition experts argue that the Low Cost Food Plan better meets the needs of low-income families than the Thrifty Food Plan. Food stamp redemption data was used to select stores in seven areas of the State. The marketbasket was priced in three different types of stores (supermarkets, independent grocers, and "mom and pop" stores or bodegas) to ensure that a representative range of possible food sale points were taken into consideration.

In its report to the Commissioner of DHS, the Committee acknowledged a dearth of current housing cost data, and noted that it had addressed this area of need by using the Fair Market Rentals (FMRs) published by the Federal Department of Housing and Urban Development (HUD). FMRs are based on housing units rented within the past two years and reflect costs at the 45th percentile of the cost distribution. On reviewing the Report, the Commissioner of DHS determined that additional housing information was necessary to augment that provided by the Committee. Mathematica Policy Research, Inc. (MPR) was commissioned to provide additional data on the actual housing costs of low income working families and individuals in New Jersey. MPR based its analysis on the American Housing Survey, which permits relating housing costs to household size and income. This data source is more comprehensive than FMRs supporting detail available from HUD. However, more current costs will become available when results of the 1990 U.S. Census are released, probably sometime in late 1992. When census data are available, the standards of need will be revisited and updated to reflect this more reliable data source.

Other components included transportation, personal care, household supplies, and apparel and upkeep. These items were priced using available

data from a 1980 survey based on the United States Bureau of Labor and Statistics Low Urban Budgets. Utilizing the Consumer Price Index, each category was brought up to December 1989 costs.

The proposed new rule at N.J.A.C. 10:82-1.1A serves to comply with the court decision and to begin the process to formally promulgate New Jersey's standard of need for the AFDC program. The setting of monthly standards of need by family size is not synonymous with changing the welfare grant payment levels. By promulgating these standards, the Commissioner is stating what it costs for families to live safely and decently in New Jersey. The responsibility for setting public assistance payment levels is a separate and distinct decision which is part of the State appropriations process, and is subject to many considerations, including the availability of resources and the competing demands on those resources.

**Social Impact**

The standards developed are understood as adequate to permit the maintenance of a "safe and decent" life for families, not as minimum levels of physical subsistence. The Department intends to revisit the standard of need every three years as now required by Federal law.

The standard of need, when revised periodically to reflect actual living costs, serves as a benchmark against which the Legislature can decide on appropriations for funding payment levels in the AFDC program.

**Economic Impact**

Since the standard of need has no direct effect on the level of payments made in the AFDC program, there is no direct economic impact associated with this rule.

If, as a result of this rule, the Legislature funds the AFDC program at a higher level permitting an increase in the payment standards and that funding is approved by the Governor, then an increase in expenditures would result. However, it is not possible to determine at this time whether or not this rule will precipitate enhanced Legislative appropriations.

**Regulatory Flexibility Statement**

The proposed new rule has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

Full text of the proposal follows:

10:82-1.1A Standard of Need

New Jersey has established the following standards needed to maintain a safe and decent life. The Standard of Need specified below only serves as a benchmark set by the Commissioner, Department of Human Services, against which appropriations for funding the payment levels in the AFDC program may be determined.

Standard of Need	
Number in Family	Monthly Standard
1	\$ 410
2	\$ 819
3	\$ 985
4	\$1,127
5	\$1,260
6	\$1,386
7	\$1,505
8	\$1,617
more than 8	add \$112 each person

(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Program  
Standard of Need

Proposed Amendment: N.J.A.C. 10:85-4.1

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

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1991-74.

Submit comments by March 6, 1991 to:  
Marion E. Reitz, Director  
Division of Economic Assistance  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In December of 1985 a Petition for Rulemaking was filed with the New Jersey Department of Human Services (DHS) that sought establishment of standards of need for the Aid to Families with Dependent Children (AFDC) and General Assistance (GA) programs. The standard of need is the amount of money deemed sufficient to maintain a safe and decent life. The Supreme Court of New Jersey (*In the Matter of Petitions for Rulemaking, N.J.A.C. 10:82-1.2 and 10:85-4.1*, 117 N.J. 331 (1989)), in affirming the Appellate Division's opinion, ruled in December 1989 that the Commissioner, DHS, has a statutory obligation to establish standards of need based upon the actual cost of basic necessities. The Department had already undertaken the formation of a Standard of Need Advisory Committee in advance of the high court's decision. The mission of the Committee was to advise the Commissioner of DHS on its opinion of what items should be considered in developing the standards and how much these items actually cost.

Using Rutgers University School of Social Work as consultants, a broadly representative group of experts in the fields of nutrition, housing, law, children's issues, social welfare and health were asked to sit on the Committee. The 23 invitees were selected on the basis of: area of expertise, client population serviced and area of the state where they practice. Technical assistance to the Committee was provided by Rutgers.

The participants were divided into three subcommittees; food, housing, and family and children. The last was charged with examining what components, other than food and housing, should be considered in examining the standards of need.

The Food and Nutrition subcommittee utilized a marketbasket built around the United States Department of Agriculture's (USDA) Low Cost Food Plan. There are four USDA food plans, Thrifty, Low Cost, Moderate and Liberal (listed in order of increasing cost). Nutrition experts argue that the Low Cost Food Plan better meets the needs of low-income families than the Thrifty Food Plan. Food stamp redemption data was used to select stores in seven areas of the State. The marketbasket was priced in three different types of stores (supermarkets, independent grocers, and "mom and pop" stores or bodegas) to ensure that a representative range of possible food sales points were taken into consideration.

In its report to the Commissioner of DHS, the Committee acknowledged a dearth of current housing cost data, and noted that it had addressed this area of need by using the Fair Market Rentals (FMRs) published by the Federal Department of Housing and Urban Development (HUD). FMRs are based on housing units rented within the past two years and reflect costs at the 45th percentile of the cost distribution. On reviewing the Report, the Commissioner of DHS determined that additional housing information was necessary to augment that provided by the Committee. Mathematica Policy Research, Inc. (MPR) was commissioned to provide additional data on the actual housing costs of low income working families and individuals in New Jersey. MPR based its analysis on the American Housing Survey, which permits relating housing costs to household size and income. This data source is more comprehensive than FMRs supporting detail available from HUD. However, more current costs will become available when results of the 1990 U.S. Census are released, probably sometime in late 1992. When census data are available, the standards of need will be revisited and updated to reflect this more reliable data source.

Other components included transportation, personal care, household supplies, and apparel and upkeep. These items were priced using available data from a 1980 survey based on the United States Bureau of Labor and Statistics Low Urban Budgets. Utilizing the Consumer Price Index, each category was brought up to December 1989 costs.

The proposed amendment at N.J.A.C. 10:85-4.1(d) serves to comply with the court decision and to begin the process to formally promulgate New Jersey's standard of need for the GA program. The setting of monthly standards of need by the number of persons in the eligible unit is not synonymous with changing the welfare grant payment levels. By promulgating these standards, the Commissioner is stating what it costs for individuals to live safely and decently in New Jersey. The responsibility for setting public assistance payment levels is a separate and distinct decision which is part of the State appropriations process, and is subject to many considerations, including the availability of resources and the competing demands on those resources.

Social Impact

The standards developed are understood as adequate to permit the maintenance of a "safe and decent" life for individuals, not as minimum levels of physical subsistence. The Department intends to revisit the standard of need every three years.

The standard of need, when revised periodically to reflect actual living costs, serves as a benchmark against which the Legislature can decide on appropriations for funding payment levels in the GA program.

Economic Impact

Since the standard of need has no direct effect on the level of payments made in the GA program, there is no direct economic impact associated with this rule. If, as a result of this rule, the Legislature funds the GA program at a higher level permitting an increase in the payment standards and that funding is approved by the Governor, then an increase in expenditures would result. However, it is not possible to determine at this time whether or not this rule will precipitate enhanced Legislative appropriations.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the General Assistance Program to a low-income population by a governmental agency rather than a private business establishment.

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

10:85-4.1 State and local responsibilities

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

**(d) New Jersey has established the following standards needed to maintain a safe and decent life. The Standard of Need specified below only serves as a benchmark set by the Commissioner, Department of Human Services, against which appropriations for funding the payment levels in the GA program may be determined.**

Standard of Need	
Number of persons	Monthly Standard
1	\$582
2	\$739

**INSURANCE**

**(a)**

**DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION**

**Insurance Producer Licensing Professional Qualifications**

**Proposed Amendment: N.J.A.C. 11:17-3.4**

Authorized By: Samuel F. Fortunato, Commissioner,  
Department of Insurance.  
Authority: N.J.S.A. 17:1-8.1, 17:1C-6, 17:22A-1 et seq.,  
17:22A-4(c) and 24.  
Proposal Number: PRN 1991-73.

Submit comments by March 6, 1991 to:  
Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
20 W. State Street  
Trenton, NJ 08625-0325

The agency proposal follows:

**Summary**

N.J.A.C. 11:17-3.4(c)4 provides for the approval of continuing education courses "which are administered in connection with the issuance or annual maintenance of a professional designation approved in at least one-third of the states requiring continuing education as a condition of licensure . . .".

When this language was proposed in the June 6, 1988 issue of the New Jersey Register, the Summary accompanying the proposal contained the following statement at 20 N.J.R. 1154:

This provision will permit trade associations or insurance education institutes who issue certain designations that require continuing education to obtain a blanket approval for an annual array of courses. For example, the Certified Insurance Counselor (CIC) designation requires a number of courses to be taken each year to obtain and maintain the designation. This provision allows it, and similar programs, to have their courses certified and reported as a package so that those who obtain and maintain the designation will have satisfied the continuing education requirement.

The purpose of the current proposed amendment is to give the Certified Insurance Counselor program and others like it greater prominence by placing the example in the rule itself.

**Social Impact**

Specific reference in the rule to the Certified Insurance Counselor program will further the Insurance Department's objective of encouraging producers to pursue this and other similar programs as a means of satisfying the State's continuing education requirements while, at the same time, moving toward the desired designation.

**Economic Impact**

No particular economic impact is expected to result from the proposed amendment other than the fact that the increased prominence of the Certified Insurance Counselor program and others like it will result in greater utilization of those programs. Individual producers will incur the costs of taking the courses offered.

**Regulatory Flexibility Statement**

Since the proposed amendment does not impose any reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment provides an example for one aspect of continuing education credit certification.

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

- 11:17-3.4 Continuing education
- (a)-(b) (No change.)
- (c) Continuing education credits shall be certified in accordance with the following:
  - 1.-3. (No change.)

4. Each series of courses submitted as a single unit by an approved education program, and which are administered in connection with the issuance or annual maintenance of a professional designation approved in at least one-third of the states requiring continuing education as a condition of licensure, shall be worth up to 12 continuing education credits based upon the length of the courses and the level of difficulty of the subject matter. **For example, annual maintenance of the certified insurance counselor designation shall, upon approval of the program, satisfy the continuing education requirements of this paragraph.**

(d)-(h) (No change.)

**LAW AND PUBLIC SAFETY**

**(b)**

**BOARD OF DENTISTRY**

**Duties of a Registered Dental Assistant Laboratory Fabrication of Athletic Mouthguards**

**Proposed Amendment: N.J.A.C. 13:30-2.6**

Authorized By: New Jersey Board of Dentistry, Samuel Furman, D.D.S., President.  
Authority: N.J.S.A. 45:6-3.  
Proposal Number: PRN 1991-71.

Submit comments by March 6, 1991 to:  
William Gutman, Executive Director  
Board of Dentistry  
1207 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The Board of Dentistry is proposing to amend N.J.A.C. 13:30-2.6, Duties of a registered dental assistant, to include laboratory fabrication of athletic mouthguards.

Effective March 12, 1990, at 22 N.J.R. 1145(a), the Board of Dentistry readopted its entire set of rules as amended (N.J.A.C. 13:30). At that time, the Board noted that it would refer to the appropriate Board committee for consideration a request it received from the New Jersey Dental Assistants' Association (inadvertently referred to in the Register as a request from the New Jersey Dental Hygienists' Association) to expand the list of duties of a registered dental assistant to include the following: stabilization of arch wires, placement of elastic separators, fabrication of mouthguards, application of pit and fissure sealants, removal of temporary restorations, application of cavity liners and bases and carving of amalgam restorations. The Association also requested the Board to permit one registered dental assistant to serve as a full voting board member. The Board referred these requests to its Auxiliary Committee for further study and recommendation to the full Board.

Based upon a June 6, 1990 Committee report and upon further consideration, the Board denied the Association's request to have a dental assistant serve on the Board and further determined that, except for fabrication of athletic mouthguards, the specified tasks should not be delegated to dental assistants. The Board's reasons for its denial of these requests are as follows:

The Board does not have statutory authority to appoint a dental assistant to the Board. Under N.J.S.A. 45:6-1, the New Jersey Legislature has determined that the State Board of Dentistry shall consist of two public members, eight dentists and one dental hygienist. Any changes in Board composition can be made only by the Legislature.

The Board denied the Association's request to add to the list of duties which may be delegated to dental assistants the stabilization of arch wires and placement of elastic separators because these functions are not taught to clinical competence in accredited dental assisting programs within the State. The application of pit and fissure sealants and removal of temporary restorations are not taught in accredited dental assisting programs within the State and therefore these functions are beyond the scope of duties of a dental assistant. While application of cavity liners and bases and carving of amalgam restorations are reversible functions, the skill required to properly perform these functions renders these procedures beyond the scope of a dental assistant. Serious consequences may result if these procedures are not performed properly. Additionally, delegation

of these duties increases the time required to provide treatment to the patient. Therefore, for the protection and convenience of the patient, the Board has determined that the dentist should perform these tasks.

Since fabrication of athletic mouthguards is performed outside the oral cavity, in a dental office, and is reasonably within the abilities of a dental assistant, the Board is proposing to permit dental assistants to perform this function.

#### Social Impact

The proposed amendment will have no impact upon the consumer of dental services, since it merely permits a dental assistant to fabricate athletic mouthguards, a task previously limited solely to dentists. The safety of the consumer is assured because the dentist must provide direct supervision to the dental assistant performing this task. Dentists may benefit by having more time in which to perform other professional services.

#### Economic Impact

The proposed amendment, which would permit dental assistants to fabricate athletic mouthguards, may result in a decrease in the cost of this function because the dentist's fees for his or her own time may be reduced.

The dentist who delegates this duty to a dental assistant may realize the economic benefits associated with having more time in which to render other professional services.

#### Regulatory Flexibility Statement

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., dentists are deemed "small businesses" within the meaning of the statute, the following statement is applicable.

Active Board licenses include approximately 7,300 dentists, 1,100 registered dental assistants and 3,500 dental hygienists. The proposed amendment will affect all dentists who choose to delegate to a registered dental assistant the fabrication of athletic mouthguards. There are no initial capital costs nor does the amendment establish reporting or recordkeeping requirements. The only compliance requirement is that the delegating dentist provide direct supervision to the dental assistant in the performance of this task. There will be no annual costs of compliance, nor will licensees require professional services in order to comply. In any event, because the requirement of direct supervision is designed to protect the public health and safety, no exemption is possible regardless of the size of the practice.

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

13:30-2.6 Duties of a registered dental assistant

(a) A registered dental assistant may perform the following duties under the direct supervision of a licensed dentist:

1.-13. (No change.)

14. Remove arch wires and ligature wires; [and]

**15. Take impressions for and perform laboratory fabrication of athletic mouthguards not to include insertion of the appliance; and**

[15.] **16. Perform all those duties delegable to the dental assistant as defined in (b) below.**

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

(a)

## BOARD OF EXAMINERS OF MASTER PLUMBERS

### Licensing Examination

#### Proposed Amendment: N.J.A.C. 13:32-1.3

Authorized By: Board of Examiners of Master Plumbers,

Christine DeGregorio, Executive Director.

Authority: N.J.S.A. 45:14C-7.

Proposal Number: PRN 1991-72.

Submit comments by March 6, 1991 to:

Christine DeGregorio, Executive Director  
Board of Examiners of Master Plumbers  
1207 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

This proposed amendment results from recognition by the Board of Examiners of Master Plumbers that licensees frequently do not understand the laws and regulations affecting their occupation. To alleviate this situation, the Board is proposing an amendment to N.J.A.C. 13:32-1.3 which would change the licensing examination from being a two-part test to becoming a three-part test, the third portion covering the laws and regulations concerning plumbing.

#### Social Impact

The proposed amendment would help assure that new licensees are familiar with the laws and regulations governing their occupation. This in turn will benefit the health, safety and welfare of the public in that licensees will not only have a certain level of occupational competence but also an understanding of their obligations under the law. The section of the licensing examination dealing with the relevant laws and regulations will be designed to show familiarity with the laws and regulations but is not intended to present difficult legal questions which would prevent an otherwise qualified individual from obtaining a license.

#### Economic Impact

The Board believes that there will be no adverse economic impact upon the licensee or the consumer.

#### Regulatory Flexibility Statement

Since the proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon small businesses, the analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is not required. The proposed amendment applies to individuals who are applicants for licensure.

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

13:32-1.3 Examinations

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

(c) Examinations may consist of [two] **three** parts:

1. Written examination based on the National Standard Plumbing Code as adopted by the State of New Jersey pursuant to the Uniform Construction Act[.];

2. Practical by actual demonstration or oral examination[.]; **and**

3. **Written examination of laws and regulations governing the occupation and business of plumbing.**

## STATE

(b)

### DIVISION OF ELECTIONS

#### Election Rules

#### Proposed Readoption: N.J.A.C. 15:10

Authorized By: Joan Haberle, Secretary of State.

Authority: N.J.S.A. 19:23-45 et seq., 19:4-10 et seq. and 19:31-6 et seq.

Proposal Number: PRN 1991-70.

Submit comments by March 6, 1991 to:

Joan Haberle  
Secretary of State  
Department of State  
CN 300  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

Pursuant to the requirements and criteria of Executive Order 66(1978), N.J.A.C. 15:10, which concerns voter registration by mail, voter declaration of political party, election district maps, absentee ballots, definition of county voter registration officials and voting accessibility for the elderly and handicapped, expires on February 18, 1991. The Division of Elections, Department of State has reviewed these rules and deemed them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

N.J.A.C. 15:10-1.1 addresses the availability of forms and quantities to be supplied for bona fide organizations, candidates and individuals.

N.J.A.C. 15:10-1.2 sets forth a minimum quantity of forms to have on hand in each county and the procedure to follow for reordering.

N.J.A.C. 15:10-1.3 defines the acceptance requirements for registration forms which have been photocopied or duplicated.

N.J.A.C. 15:10-1.4 addresses the acceptance of registration forms received after the 29th day before any election.

N.J.A.C. 15:10-1.5 details the items required on voter registration forms in order for the registrant to be considered validly registered.

N.J.A.C. 15:10-1.6 describes the procedure county voter registration officials must follow in accepting or rejecting voter registration forms.

N.J.A.C. 15:10-1.7 explains the matching of signatures before a registrant is allowed to vote.

N.J.A.C. 15:10-1.8 provides for sample and instructional ballots to be printed bilingually in election districts where the primary language of registered voters is Spanish and the availability of these forms.

N.J.A.C. 15:10-1.9 defines the term "out-of-office" registration and the procedure for notifying the public of these offices when designated by a county registration official, individual or organization.

N.J.A.C. 15:10-1.10 designates the Secretary of State as an agent of each county voter registration official for the purpose of mail registration and that forms will immediately be forwarded to appropriate counties.

N.J.A.C. 15:10-2.1 explains the ways a voter becomes a member of a political party.

N.J.A.C. 15:10-2.2 details who must file declarations.

N.J.A.C. 15:10-2.3 addresses the duties and responsibilities of municipal clerks in regard to voter declarations.

N.J.A.C. 15:10-2.4 addresses the duties and responsibilities of county election officers in regard to voter declarations.

N.J.A.C. 15:10-2.5 sets forth the results of voting in a primary regarding voter declaration for those not required to file a declaration card.

N.J.A.C. 15:10-2.6 describes methods of filing declarations of political party memberships.

N.J.A.C. 15:10-2.7 sets forth the effects of prior registration and voting in regard to party declarations.

N.J.A.C. 15:10-2.8 addresses the availability of declaration forms.

N.J.A.C. 15:10-3.1 details the responsibilities of county boards of election regarding election district maps and boundary color requirements for acceptance by the Secretary of State.

N.J.A.C. 15:10-3.2 describes the required specifications for county maps.

N.J.A.C. 15:10-3.3 describes the required specifications for municipal maps.

N.J.A.C. 15:10-3.4 describes the required specifications for congressional, legislative and freeholder maps.

N.J.A.C. 15:10-4.1 sets forth the responsibilities of the Secretary of State and county clerks in the printing of absentee ballot applications.

N.J.A.C. 15:10-4.2 sets forth the completion requirements and deadlines for absentee civilian ballots.

N.J.A.C. 15:10-5.1 defines county voter registration official.

N.J.A.C. 15:10-6.1 defines the purpose of Public Law 98-435, the Voting Accessibility for the Elderly and Handicapped Act.

N.J.A.C. 15:10-6.2 states that the county election boards are responsible for enacting this law.

N.J.A.C. 15:10-6.3 defines the following terms (when used in this subchapter): accessible, accessible route, act, barrier-free, curb ramp, elderly, election aids, federal election, handicapped, physically handicapped, polling location, polling place, polling place accessibility checklist, polling place accessibility report, polling place accessibility waiver, ramp, Secretary of State, temporary, and voting accessibility advisory committee.

N.J.A.C. 15:10-6.4 details the exceptions to Public Law 98-435.

N.J.A.C. 15:10-6.5 sets a deadline for the Secretary of State in reporting the number of accessible polling locations and reasons for any inaccessibilities.

N.J.A.C. 15:10-6.6 sets forth those who may institute an action for enforcement of this law.

N.J.A.C. 15:10-6.7 concerns the establishment of a Voting Accessibility Advisory Committee in each county board of elections for the implementation of Public Law 98-435.

N.J.A.C. 15:10-6.8 addresses polling place accessibility standards.

N.J.A.C. 15:10-6.9 details voting aids which shall be provided.

N.J.A.C. 15:10-6.10 addresses the reporting by county boards of elections of accessibility waivers.

#### Social Impact

The proposed readoption of the rules will continue the Division's goal of an open and efficient elections system. The social effect will be a continuation of the Division's desire to make voter registration and accessibility easier. These rules affect all eligible voters in this State. The Division has not experienced any negative social impact since the adoption of the rules and does not anticipate any as a result of readoption.

#### Economic Impact

Readoption of these election rules will have little economic impact on the general public or any public agency. The Division of Elections, Department of State will continue to incur expenses in connection with printing and mailing voter registration forms. These rules do not impose any fees on the general public. The Department of State does not expect to be economically affected by the proposed readoption. Rules regarding polling place accessibility may have some minimal economic impact on local election boards and official offices. These rules implement polling place accessibility required by Federal legislation. The Division has not received reports of significant economic impact or problems with compliance.

#### Regulatory Flexibility Statement

These rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose requirements on individuals and governmental entities concerning the conduct of elections.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 15:10.

## TRANSPORTATION

### (a)

#### DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF AVIATION

#### Licensing of Aeronautical Facilities

#### Proposed Readoption with Amendment: N.J.A.C. 16:54

Authorized By: Robert A. Innocenzi, Deputy Commissioner  
(State Transportation Engineer), Department of  
Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29 and 6:1-44.

Proposal Number: PRN 1990-536.

Submit comments by March 6, 1991 to:

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

The agency proposal follows:

#### Summary

Under the "sunset" and other provisions of Executive Order No. 66 (1978), N.J.A.C. 16:54, Licensing of Aeronautical Facilities, will expire on April 7, 1991. These rules were originally proposed as new rules at 18 N.J.R. 403(a) on February 18, 1986, and adopted at 18 N.J.R. 998(b) on April 7, 1986. The chapter was subsequently amended at 21 N.J.R. 173(a) on January 17, 1989, to establish the requirement for persons proposing to operate a new aeronautical facility to advertise same through at least two local newspapers which serve the municipality in which the facility is being proposed, thus relieving the Department of this financial burden.

In compliance with the intent of Executive Order No. 66 (1978), the Office of Aviation has reviewed the current chapter and has determined that it is adequate, reasonable and necessary for the purposes for which it was originally promulgated, that is, the implementation and regulation of aeronautical facilities in the State of New Jersey.

The purpose of these rules is to bring the State of New Jersey fixed wing, rotary wing, lighter than air, parachute, and other aeronautical

facility standards into basic conformance with national standards as defined in applicable Federal Aviation Regulations, Code of Federal Regulations (CFR Title 14). The proposed readoption with amendment will continue the enhancement of flight safety and encourage existing aeronautical facility operators to comply with the standards. Over the past five years the rules met and served the purpose for which they were promulgated.

The Department is proposing to amend the rules to conform with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Administrative Procedure Rules, N.J.A.C. 1:1, concerning contested cases.

The chapter is summarized as follows:

N.J.A.C. 16:54-1 outlines the scope and general provisions of the rules, defines those aeronautical facilities which are licensed in the State of New Jersey; outlines the procedures for obtaining license(s); specifies the licensing requirements which applicants must meet; specifies the liability and penalty for failure to observe the requirements; establishes the requirement for a hearing prior to suspension or revocation of a license; and describes the procedure for requesting exemption.

This chapter is being amended on readoption. The Department believes the current text of the chapter, and the proposed amendment, are sufficient for the purposes of administering the licensing of aeronautical facilities and proposes to readopt N.J.A.C. 16:54, with an amendment.

#### Social Impact

The proposed readoption will have no additional or significant social impact on owners of aeronautical facilities, since the current procedures are not being changed and the proposed amendment does not change the purpose of the rule. Additionally, these rules will continue the procedure to be followed in the licensing of all aeronautical facilities within the State of New Jersey, and assure that the requirements for, and the interest of public safety at aeronautical facilities is protected. Without said rules being in place, the standards required for aeronautical facilities would be lacking and unenforceable.

#### Economic Impact

The proposed readoption will not have any new or additional impact on those persons presently operating aeronautical facilities licensed with the Department. The rules are being proposed with change, not affecting the purpose for which the rule was promulgated. However, persons proposing a new aeronautical facility will incur costs involved in the start-up process, the procurement of scaled drawings, the legal description of premises by a certified land surveyor or professional engineer, the applicable application fees, and the publication of legal notices in at least two newspapers serving the municipality. Those persons found to be in violation of these rules will pay the appropriate fines and penalties prescribed in N.J.S.A. 6:1 et seq. The Department will incur cost for the administration of these rules.

#### Regulatory Flexibility Analysis

The proposed readoption with amendments will continue its effect of N.J.A.C. 16:54 on aeronautical facilities, which might be considered small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because some may employ less than 100 full-time employees. The requirements contained in this chapter apply equally to all aeronautical facilities within the State of New Jersey. These facilities are required to maintain certain records pertaining to their operations in the application for licensing or to demolish or modify an existing facility. Additionally, they are required to meet specific standards and comply with the requirements for maintenance of safety and operational needs outlined in the applicable Federal Regulations. The proposed amendment, which grants a right to a hearing, does not impose any additional reporting, recordkeeping, or other compliance requirements.

No differentiation in requirements based on business size has been made in these rules because the records which these facilities are required to maintain are necessary for operation of the facility. Additionally, aeronautical facilities are required by law to maintain sufficient records to fully document their operations.

**Full text** of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 16:54.

**Full text** of the proposed amendment follows (additions indicated in boldface **thus**).

16:54-1.9 Liability and penalty

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

(c) **Prior to the suspension or revocation of a license, the licensee shall have the right to request a hearing pursuant to the Administrative**

(CITE 23 N.J.R. 290)

**Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

(a)

### NEW JERSEY TRANSIT CORPORATION Procurement Policies and Procedures Proposed Readoption: N.J.A.C. 16:72

Authorized By: New Jersey Transit Corporation,

Shirley A. DiLibero, Executive Director.

Authority: N.J.S.A. 27:25-5.

Proposal Number: PRN 1991-81.

Submit comments by March 6, 1991 to:

Albert R. Hasbrouk, III

Assistant Executive Director

New Jersey Transit Corporation

P.O. Box 10009

Newark, N.J. 07101

The agency proposal follows:

#### Summary

In accordance with the sunset provisions of Executive Order No. 66(1978), N.J.A.C. 16:72, Procurement Policies and Procedures, will expire on March 31, 1991. The New Jersey Transit Corporation (NJ TRANSIT) has evaluated the rules and has found that the rules, as amended by R.1990 d.539 (see 22 N.J.R. 2460(a), 23 N.J.R. 119(b)), continue to be reasonable, necessary and appropriate for the purpose for which they were promulgated. The recent amendments conformed the rules to the requirements of Executive Order No. 189(1988), as well as making several other changes for the purpose of making competition for contracts with the agency easier.

N.J.A.C. 16:72 contains the requirements governing the procurement by NJ TRANSIT of goods and services, as well as the debarment, suspension and disqualification of persons from doing business with NJ TRANSIT. The rules require all purchases, whether made as a result of formal advertising, or otherwise, to be made on a competitive basis, to the maximum practicable extent, and implement the procurement requirements set forth in N.J.S.A. 27:25-1 et seq.

Subchapter 1 describes the general provisions, applicable to all procurements, including the method of procurement and the means by which the public may secure information about the bidding process conducted by NJ TRANSIT.

Subchapter 2 describes bidding procedures.

Subchapter 3 describes the procedure to be used in the request for proposal process.

Subchapter 4 describes the process for debarment, suspension and disqualification.

#### Social Impact

The rules proposed for readoption have affected, and will continue to affect, NJ TRANSIT's ability to provide Statewide transit services to the public on a daily basis and to continue NJ TRANSIT's capital improvement program, resulting in a better quality of services to the public and the maintenance of the infrastructure for the public's use in the future. The procedures delineated in the rules provide protection of the interests of the general public and of the individual bidders.

#### Economic Impact

NJ TRANSIT has expended \$378.7 million in 1989 and \$222.3 million in 1990 in the procurement of goods and services for the maintenance and capital improvement of the NJ TRANSIT system, and has been budgeted \$267 million for 1991. The continued utilization of a competitive bidding system can be expected to provide economies to the State which are not available without such a system. Bonding is required of certain bidders, based upon the specific contract.

#### Regulatory Flexibility Analysis

The rules proposed for readoption apply to all entities wishing to do business with NJ TRANSIT, some of which may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and to the Division of Procurement and Contract Administration within NJ TRANSIT. The rules require that bids be submitted in a specified manner, accompanied by bonds, in certain cases, and that debarment occur in specified situations. Provisions in the rules

allow for amendment and negotiation of bids, but no differential treatment has been specifically provided for small businesses. The rules provide for equal treatment of businesses in the bidding process, whether large or small, in the interest of public safety and fairness to all bidders. The professional services required to complete the bidding process are those services ordinarily required for the completion of any capital project, for example, engineering and design services. Other professional services would vary, depending upon the specifications of the individual request for proposals.

Full text of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:72.

## TREASURY-GENERAL

### (a)

#### OFFICE OF THE TREASURER

#### Nonpublic Records

#### Proposed New Rules: N.J.A.C. 17:34

Authorized By: Douglas C. Berman, State Treasurer

Authority: N.J.S.A. 47:1A-2; N.J.S.A. 52:18A-30; Governor's

Executive Order Number 9 (1963).

Proposal Number: PRN 1991-59.

Submit comments by March 6, 1991 to:

Stephen M. Sylvester, Manager  
Debt Service  
Department of the Treasury  
CN 214  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Under N.J.S.A. 47:1A-2 of the Public Right to Know Law, N.J.S.A. 47:1A-1 et seq., records which are required by law to be made, maintained or kept on file are deemed to be public records available for examination, inspection and copying. The statutes also provide that records otherwise deemed to be public records under the statute may be excluded therefrom upon the adoption of regulations setting forth which records shall not be considered public records. Proposed new rules N.J.A.C. 17:34 set forth that the Registered Bondholder Listing and related records are deemed nonpublic and shall be considered "confidential" documents.

#### Social Impact

Providing the information in the Registered Bondholder Listing to the general public would result in disclosure of financial information relating to the investment holdings of the bondholders of the State's general obligation bonds that may have been unanticipated by the bondholders at the time of purchase. It may also result in the bondholders being subjected to unsolicited phone calls and/or being placed on mailing lists. Releasing the names of bondholders to the general public could result in an adverse effect on prospective bondholders in purchasing bonds.

#### Economic Impact

The disclosure of the names of bondholders might result in prospective bondholders being less inclined to participate in purchasing general obligation bonds, which may result in a higher cost of capital to the State.

#### Regulatory Flexibility Statement

The proposed new rules do not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules exclude Registered Bond holder listings from the category of records considered open to the public.

Full text of the proposed new rules follows:

### CHAPTER 34 NONPUBLIC RECORDS REGISTERED BONDHOLDER LISTING

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 17:1-1.1 Purpose and scope

(a) The purpose of this chapter is to deem the Registered Bondholder Listing as a nonpublic record. This chapter also establishes that these records henceforth shall not be accessible to the general public and shall be treated as confidential documents.

(b) The individuals affected by this chapter include the general public and/or agencies who deal with the Department regarding registered bonds.

##### 17:1-1.2 Definitions

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

"Authorized agent" means the contracted vendor acting as paying agent, registrar and transfer agent for the bonds.

"Department" means the New Jersey Department of the Treasury.

"Public records" means all records as defined in N.J.S.A. 47:1A-2.

"Registered Bondholder Listing" means data relating to bondholders of the State's general obligation bonds including, but not limited to, the following: name and address of the bond owner, tax identification number, social security number, certificate number, face value of bond, interest rate, maturity date, issue date, and account number of the holders of State of New Jersey general obligation bonds.

"Related records" means all reports, correspondence and other documents originating from the Registered Bondholder Listing.

#### SUBCHAPTER 2. REGISTERED BONDHOLDER LISTING AS NONPUBLIC RECORDS; CONFIDENTIALITY

##### 17:1-2.1 Registered Bondholder Listing; nonpublic record

The Registered Bondholder Listing and related records under the jurisdiction of the Department shall not be deemed to be public records pursuant to N.J.S.A. 47:1A-1 et seq. Accordingly, the Registered Bondholder Listing shall not be available for inspection, examination or duplication by members of the public. The Registered Bondholder Listing and related records shall be entitled to confidential treatment.

##### 17:1-2.2 Confidentiality

(a) Unless specifically provided by Federal law, State law, court order, or applicable court rule, no person shall have access to the Registered Bondholder Listing which has been determined to be entitled to confidential treatment other than the designated Department officials and personnel, or authorized agents of the Department.

(b) Any Department officer or employee or officer or employee of an authorized agent who has custody or possession of the Registered Bondholder Listing shall take appropriate measures to properly safeguard the information and to protect against its improper disclosure.

(c) No Department officer or employee or officer or employee of an authorized agent may disclose, or use for his or her private gain or advantage, the Registered Bondholder Listing which came into his or her possession or to which he or she gained access, by virtue of his or her position of employment.

(d) If the Department finds that any person has violated any requirement or provision of this chapter, the Department may:

1. Initiate civil action in Superior court for a restraining order and injunction preventing that person from further disclosure of confidential information; and

2. Pursue any other legal remedy available to it by law.

(e) Additionally, violation of this chapter by any Department officer or employee shall constitute grounds for dismissal, suspension, fine or other personnel action against the appropriate individual.

## OTHER AGENCIES

### (a)

#### ELECTION LAW ENFORCEMENT COMMISSION

##### Definition of a Political Committee Copying Fees

##### Proposed Amendments: N.J.A.C. 19:25-1.7 and 2.4

Authorized By: The Election Law Enforcement Commission,

Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1991-69.

Submit comments by March 6, 1991 to:

Gregory E. Nagy, Legal Director

Election Law Enforcement Commission

CN 185

Trenton, New Jersey 08625-0185

The agency proposal follows:

#### Summary

The Election Law Enforcement Commission (hereafter, the Commission) proposes to amend N.J.A.C. 19:25-1.7, Definitions, and N.J.A.C. 19:25-2.4, Copies of documents; fees.

The Commission proposes to amend its definition of the term "political committee" to exclude from its scope appointed public officials. The current text excludes only elected public officials. The Commission believes that appointed, as well as elected, public officials should be permitted to communicate their views to their constituents on public questions without incurring campaign reporting responsibilities as a "political committee." Therefore, expenditures of public funds by such appointed officials or bodies that are reasonably related to their duties are not deemed campaign expenditures.

The Commission also proposes to increase its photocopying fees to reflect costs incurred by the Commission in producing photocopies. The Commission experience with photocopying has been that the costs of labor, equipment and materials are 52 cents per page. This proposal raises copying fees from 15 cents per page to 50 cents per page for pages one through 10, and to 25 cents per page for pages 11 through 20. There is no increase for photocopying after 20 pages, the fee remaining at the current 15 cents per page.

#### Social Impact

The exclusion of appointed public officials from the definition of "political committee" effectuates what has been the Commission's long-standing view that elected or appointed public governmental bodies are not intended to be subject to campaign reporting statutes. The Commission further believes that expenditures from public funds to communicate to constituents concerning public question elections are normally disclosed in the appropriation process of public bodies; see Advisory Opinion No. 05-1990 in which the Commission advised a New Jersey township council that it did not acquire campaign reporting responsibilities for an appropriation to spend public funds to encourage adoption of a public question.

The increase in copying fees will cause additional expense to the persons requiring photocopies, but failure to pass along copying costs to the users could result in deterioration of this service and lengthy delays.

#### Economic Impact

The Commission is not aware of any significant economic impact of its proposal to amend its "political committee" definition other than

sparing governmental entities consisting of appointed officials expenses of reporting. The increase in copying fees will increase costs of this service, but the increase is relatively modest when calculated on a per use basis. The increase will result in a maximum of only \$4.50 of additional fees for any single copying request over the current charges, as follows: For pages one through 10 the increase is 35 cents per page (total, \$3.50) and for pages 11 through 20 the increase is 10 cents per page (total, \$1.00). There is no increase for copying after the first 20 pages.

#### Regulatory Flexibility Statement

The proposed amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule changes affect appointed public officials and users of photocopying services.

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

#### 19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings, unless a different meaning clearly appears from the context.

...  
 "Political committee" means any group of two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to or does aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does aid or promote the passage or defeat of a public question in any election. A club organized to promote the candidacy of one or more candidates or aid or defeat the passage of a public question, without a term of existence substantially longer than the campaign, is a political committee[.]. Political committee does not include:

1.-3. (No change.)

4. Except as set forth in paragraph 5 below of this definition, no person or persons holding elected **or appointed** public office in this State or any political subdivision thereof shall be deemed to be a political committee with respect to any public question by virtue of communication with their constituents or with public officials of the Federal government or of this or any other state or political subdivision thereof, or with the general public reasonably related to the duties of his or her public office.

5. Elected **or appointed** public officials, boards and commissions, and the members thereof, may become political committees with respect to a public question by virtue of fund raising or other election-related activities respecting such public questions.

#### 19:25-2.4 Copies of documents; fees

(a) Photocopies of documents maintained by the Commission pursuant to N.J.A.C. 19:25-2.3 shall be provided at a fee of [\$0.15 per page.] **\$0.50 per page for the first 10 pages, \$0.25 per page for the eleventh through the twentieth pages, and \$0.15 per page for all pages over 20 pages,** and for purposes of establishing fees under this section a two-sided photocopy shall be deemed as two pages.

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

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### Uniform Administrative Procedure Rules

#### Special Hearing Rules

#### Adjournments; Motions; Conclusion of Hearing; Exceptions; Withdrawals

#### Adopted Amendments: N.J.A.C. 1:1-9.6, 12.1, 14.7, 18.4 and 19.2; 1:10-18.2 and 1:10B-18.2

Proposed: November 5, 1990 at 22 N.J.R. 3278(b).

Adopted: January 2, 1991 by Jaynee LaVecchia, Director,  
Office of Administrative Law.

Filed: January 3, 1991 as R.1991 d.44, with a technical change  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3) and with portions of the proposed  
amendments and the new rule not adopted.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: February 4, 1991.

Expiration Date: May 4, 1992, N.J.A.C. 1:1; May 4, 1992,  
N.J.A.C. 1:10; October 6, 1991, N.J.A.C. 1:10B.

#### Summary of Public Comments and Agency Responses:

The OAL received comments on the proposed amendments from the Department of Personnel, the Department of Human Services and the Middlesex Water Company. After considering these comments, the OAL has decided to adopt the following amendments as proposed, with one change not requiring reproposal: N.J.A.C. 1:1-9.6 (adjournments); 1:1-12.1 (motions); 1:1-14.7 (conclusion of hearing); 1:1-18.4 (exceptions); 1:1-19.2 (withdrawals) and 1:10-18.2 and 1:10B-18.2 (exceptions—Special Hearing Rules).

The Department of Human Services suggested that N.J.A.C. 1:1-9.6 continue to provide for adjournment notices. However, the OAL believes these notices are not necessary because the parties themselves can notify witnesses and others required to attend that a hearing has been adjourned. In addition, the OAL will continue to send notices of new hearing dates. The Department of Personnel suggested that the reference to "Civil Service" in N.J.A.C. 1:1-9.6 be changed to Department of Personnel to reflect the change in the name of that Department. Since the OAL believes that the public generally refers to these cases as "civil service cases," it has retained that language but has added Department of Personnel to the reference.

The OAL has decided not to adopt the proposed amendments to N.J.A.C. 1:1-3.3, 1:1-14.4, 1:13-14.4 and 1:13A-14.1. Instead, the amendments to these rules, which relate to failure to appear at hearings, will be modified and repropose at a later date.

Proposed new rule N.J.A.C. 1:1-14.14 (sanctions) is also not being adopted, but will be repropose with the failure to appear rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

#### 1:1-3.3 Return of transmitted cases

**\*[(a)]\*** A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the transmitting agency head so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, the Office of Administrative Law shall return the case.

**\*[(b)]\*** A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at any proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear shall be addressed to the transmitting agency head after the case is returned. If, based on such explanations, the agency head believes the matter should be

rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.]\*

#### 1:1-9.6 Adjournments

(a) In Human Services (except Medical Assistance provider and rate); Motor Vehicle; Consumer Affairs Lemon Law; and Alcoholic Beverage Control, **\*Department of Personnel\*** **\*[Civil Service]\*** **\*civil service\*** and Community Affairs settlement conferences, applications for adjournments shall be made to the Clerk until such time as a party has appeared before the judge in person, by telephone or in writing for a motion, prehearing or hearing. Thereafter, applications for adjournments shall be made to the judge.

(b) In all cases other than those specified in (a) above, applications for adjournments shall be made to the Clerk until such time as a judge has been assigned. Thereafter, applications for adjournments shall be made to the judge.

(c) Applications may be made in writing or by telephone; telephone applications for adjournments which are granted must be confirmed in writing by the party requesting the adjournment. All adjournments that are granted will be granted for the shortest period possible and to a definite date.

Recodify (b)-(f) as (d)-(h) (No change in text.)

(i) All parties to an adjournment will be responsible for giving prompt notice to their witnesses as to the adjournment and the new scheduled date.

(j) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. 1:1-14.14(a)4 and 5.

#### 1:1-12.1 When and how made; generally; limitation in conference hearings

(a) (No change.)

(b) A party shall file each motion with the judge. If a case has not yet been assigned to a judge, motions may be filed with the Clerk.

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

#### 1:1-14.4 **\*Sanctions: failure\*** **\*[Failure]\*** to appear\*; **failure to comply with orders or requirements of this chapter\***

**\*[a)]\*** If **\*[**, after appropriate notice, neither]**]\*** a party **\*or\*** **\*[nor a]** representative **\*[of the party]\*** **\*fails to\*** appears at any proceeding scheduled by the Clerk or judge, the judge **\*[shall, pursuant to N.J.A.C. 1:1-3.3(b), direct the Clerk to return the matter to the transmitting agency for appropriate disposition. If the judge deems it advisable to state the circumstances of the failure to appear on the record, the judge may enter an initial decision memorializing the failure to appear and returning the matter to the transmitting agency for appropriate disposition.]\*** **\*shall hold the matter for 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge may dismiss the matter or grant the requested relief. The initial decision shall note that the dismissal or relief is granted because the party failed to appear. If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.**

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes from the explanation received that the nonappearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall grant the requested relief or dismiss the claim.

(b) If the judge dismisses the matter or grants the requested relief, the party who failed to appear at the hearing may request a remand in an exception to the initial decision.

(c) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;
2. Suppress a defense or claim;
3. Exclude evidence;
4. Continue the proceeding and consider sanctions under (a)1i or ii above; or
5. Take other appropriate case-related action.\*

1:1-14.7 Conduct of conference hearings, plenary hearings and telephone hearings

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

(h) The hearing shall be concluded in conference and plenary cases after the final argument or, if a schedule has been established for subsequent submissions, when the time established for the filing of such items has expired.

(i) (No change.)

\*[1:1-14.14 Sanctions; failure to comply with orders or requirements of this chapter

(a) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;
2. Suppress a defense or claim;
3. Exclude evidence;
4. Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party; or
5. Take other appropriate case-related action.]\*

1:1-18.4 Exceptions; replies

(a) Within 13 days from the date the judge's initial decision was mailed to the parties, any party may file written exceptions with the agency head. A copy of the exceptions shall be served on all other parties and the judge. Exceptions to orders issued under N.J.A.C. 1:1-3.2(c)4 shall be filed with the Director of the Office of Administrative Law.

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

(d) Within five days from receipt of exceptions, any party may file a reply with the agency head, serving a copy thereof on all other parties and the judge. Such replies may include cross-exceptions or submissions in support of the initial decision.

(e) (No change.)

1:1-19.2 Withdrawals

(a) A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties. Upon receipt of such notification, the judge shall discontinue all proceedings and return the case file to the Clerk. If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the matter to the transmitting agency for appropriate disposition.

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

1:10-18.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Director of the DEA. Copies of the exception shall be served on all other parties and the judge. The exceptions must be received by the DEA no later than seven days after the date the initial decision was mailed to the parties. No replies or cross-exceptions shall be permitted.

1:10B-18.2 Exceptions

(a) If the parties wish to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Medical Assistance and Health Services. Copies of the exception shall be served on all other parties and the judge.

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

1:13-14.4 Failure to appear

If the licensee fails to appear at the hearing and fails to submit the certification required by N.J.A.C. 1:13-14.2, the judge shall **\*hold the matter 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge shall impose the full penalty proposed by DMV in the notice of proposed**

**suspension.\*** \*[, pursuant to N.J.A.C. 1:1-3.3(b), direct the Clerk to return the matter to the transmitting agency for appropriate disposition. If the judge deems it advisable to state the circumstances of the failure to appear on the record, the judge may enter an initial decision memorializing the failure to appear and returning the matter to the transmitting agency for appropriate disposition.]\*

1:13A-14.1 Failure to appear

(a) If a party fails to appear at any proceeding scheduled by the Clerk or judge, the judge shall **\*hold the matter for 10 days before taking action. If the judge does not receive an explanation for the non-appearance within 10 days, the judge may take any of the following actions depending on the circumstances:**

1. **If the consumer failed to appear, the judge shall issue an initial decision dismissing the matter and denying the requested relief.**

2. **If both parties failed to appear, the judge shall issue an initial decision dismissing the matter and denying the requested relief.**

3. **If the manufacturer failed to appear, the judge shall issue an initial decision granting appropriate relief after reviewing the documents and, if necessary, requiring further proof to determine the amount due.**

(b) **If the judge receives an explanation for either party's non-appearance, the provisions of N.J.A.C. 1:1-14.4(a) shall apply.\*** \*[, pursuant to N.J.A.C. 1:1-3.3(b), direct the Clerk to return the matter to the transmitting agency for appropriate disposition. If the judge deems it advisable to state the circumstances of the failure to appear on the record, the judge may enter an initial decision memorializing the failure to appear and returning the matter to the transmitting agency for appropriate disposition.]\*

## AGRICULTURE

(a)

### DIVISION OF DAIRY INDUSTRY

#### Stores

#### Readoption: N.J.A.C. 2:53

Proposed: December 3, 1990 at 22 N.J.R. 3609(a).

Adopted: January 8, 1991 by Woodson W. Moffett, Jr., Director, Division of Dairy Industry.

Filed: January 10, 1991 as R.1991 d.51, **without change.**

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.

Effective Date: January 10, 1991.

Expiration Date: January 10, 1996.

Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:53.

## BANKING

(b)

### DIVISION OF LEGAL AFFAIRS

#### General Provisions

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

Proposed: November 19, 1990 at 22 N.J.R. 3425(a).

Adopted: January 3, 1991 by Jeff Connor, Commissioner, Department of Banking.

Filed: January 4, 1991 as R.1991 d.48, 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. 17:1-8; 17:1-8.1; 17:1B-2; 17:2A-1 et seq.; 17:9-41; 17:9A-11D et seq., 17:9A-24(a); 17:9A-24(b); 17:9A-25.2; 17:11A-54(a); 17:11B-5; 17:11B-13; 17:12B-20 et seq., 17:12B-48(21); 17:16F-11; 17:16I-16; and 17:16L-2.

Effective Date: January 4, 1991, Readoption; February 4, 1991, Amendments.

Expiration Date: January 4, 1996.

**Summary of Public Comments and Agency Responses:**

The Department received two comments on the proposed readoption. The first suggested technical changes with which the Department agrees and which are contained in the changes upon adoption below. At N.J.A.C. 3:1-2.2, the name of an association is being corrected. At N.J.A.C. 3:1-11.1, a statutory cite is being corrected in the definition for "institution". At N.J.A.C. 3:1-12.8, a printing error is being corrected. These are technical in nature and do not require further public comment pursuant to N.J.A.C. 1:30-4.3.

The second comment questions the amendment to N.J.A.C. 3:1-2.1, which would remove the current requirement that applicants submit with branch applications an executed indicia of title to the property where the branch will be located. The commenter opposes this change, expressing concern that an applicant association might unduly tie up a trade area by gaining approval for a branch without an indicia of title and then failing to open the branch.

The Department rejects this comment. Following adoption of the rule, all branch approvals will be conditioned upon prompt submission of title indicia, thereby preventing institutions from "tying up" particular trade areas for long periods of time as feared by the commenter.

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

**Full text** of the adopted amendments follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets **\*(thus)\***).

3:1-2.1 Applications; acceptance

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

1.-2. (No change.)

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

4. Any and all other documentation, including feasibility reports, the applicant wishes the Department to consider.

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

3:1-2.2 Notice, publication

(a) (No change.)

(b) Notice prescribed by (a) above shall be published in the weekly applications' bulletins of the New Jersey Bankers Association, **\*[Savings Banks' Association of]** New Jersey **\*Council of Savings Institutions\***, and New Jersey Savings League in the week following acceptance thereof. The publication of notice shall also include the following statement:

"You are hereby advised that an individual bank, savings bank or savings and loan association may object to any full branch application and request that an oral presentation be conducted if so requested in writing and if filed within 14 calendar days of the date of this bulletin. Individuals or financial institutions interested in perfecting an objection or request for oral presentation should immediately consult the Department's procedural rules for guidance."

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

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

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

3:1-3.2 Duties of Commissioner

(a) (No change.)

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

(c) (No change.)

(d) When any financial institution shall exercise or use any emergency mortgage powers, as enumerated in this subchapter, the Com-

missioner shall ascertain and determine in connection with and as part of the usual examinations and audits conducted by the Department of Banking concerning the affairs, conditions and status of such financial institutions, whether such financial institution has complied with the requirements enumerated in N.J.A.C. 3:1-3.3.

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

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

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

1.-2. (No change.)

3. If a mortgage loan is secured by real property which, when originally made was represented by improvements other than those described in (b)1 and 2 above, a financial institution may make an additional mortgage loan. The total of any such additional mortgage loan, together with the unpaid or unamortized principal balance due upon the existing mortgage loan or loans, shall not exceed 133 $\frac{1}{3}$  percent of the appraised value according to the appraisal certification on file with the financial institution.

4.-7. (No change.)

3:1-3.4 Preliminary requirements

(a) (No change.)

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

3:1-9.6 Filing requirements; processing fee

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

3:1-9.10 Investigatory hearings; presiding officer

Any investigatory hearing held pursuant to this subchapter may be conducted by the Commissioner or Deputy Commissioner.

3:1-9.11 Presiding officer's powers

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

1.-5. (No change.)

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

7.-9. (No change.)

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

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

3:1-9.12 Investigatory hearing procedure

(a) (No change.)

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

the right to examine and cross-examine as may be required for a full and true disclosure of the facts.

### 3:1-9.13 Report of presiding officer

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

### 3:1-9.14 Exceptions to report of presiding officer

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

### 3:1-9.15 Decision by the Commissioner

(a) The Commissioner shall issue a written decision and order. He or she shall mail copies to the parties by certified mail, return receipt.

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

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

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

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

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

### 3:1-9.16 Continued violation of Act; penalty

(a) (No change.)

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

### 3:1-9.17 Notice of charges; continued violation of Act

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

(b) The notice shall include:

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

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

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

### 3:1-9.18 (Reserved)

### 3:1-9.19 (Reserved)

### 3:1-11.1 Definitions

"Institution" means a bank or a savings bank as defined in N.J.S.A. \*[17:9A-1(1)]\* \*17:9A-1\* and a State association as defined in N.J.S.A. 17:12B-5(1).

### 3:1-12.4 Specific content of deposit contract

(a) (No change.)

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

### 3:1-12.6 Change in contract

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

### 3:1-12.8 Limitation of subchapter

Nothing in this subchapter shall be deemed to supersede specific provisions set out \*[ion]\* \*in\* the Act. Therefore, in the event of any question as to which authority is to be followed, the provisions in the Act will prevail.

### 3:1-15.1 Definitions

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

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

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

### 3:1-15.8 Compliance with Federal law

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

## COMMUNITY AFFAIRS

### (a)

### DIVISION OF HOUSING AND DEVELOPMENT

#### Uniform Construction Code

#### Barrier-Free Subcode

#### Adopted Amendments: N.J.A.C. 5:23-7.13 and 7.18

Proposed: September 17, 1990 at 22 N.J.R. 2869(a).

Adopted: December 26, 1990 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: December 31, 1990 as R.1991, d.36 **without change.**

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

Effective Date: February 4, 1991.

Expiration Date: March 1, 1993.

#### Summary of Public Comments and Agency Responses:

Comments were received from William Beck, Handi-Lift, Inc., United Lift Service Co., Laurence Field, Mobility Medical Co., the New Jersey Society of Architects, Herman Steenstra, Del-Val Driving Aids and Contractors, Inc., Scott Albin, Joe L. Brown, Eastern Paralyzed Veterans Association, the Dolan Group, Heightened Independence and Progress, Kopelson and Westreich, Dottie Messina, Developmental Disabilities Council, Seton Hall Disability Law Clinic, Computer-Aided Engineering Center, and the Department of the Public Advocate.

COMMENT: Four of the commenters requested that platform lifts be allowed on an accessible route if they comply with the safety standards in the American National Standards Institute (ANSI) 17.1, have a universal key operation, are regularly inspected and maintained, and have a label listing the telephone numbers of those to be contacted in the event the lift does not work. These commenters also suggested that fines be issued for non-compliance.

RESPONSE: In response, the Department states that the recommendation that the platform lifts be regularly inspected will be addressed through the elevator code, while penalties are already authorized by the State Uniform Construction Code Act. The Department accepts the suggestions regarding the ANSI standard 17.1, the use of the universal key, and the need for a label identifying the telephone numbers of the installer, the enforcing agency, the building owner, and the manufacturer,

but only as they relate to lifts in existing buildings. Accordingly, it has submitted a new proposal to add language implementing these suggestions for those lifts installed in renovations or modifications (see proposal elsewhere in this issue of the New Jersey Register).

COMMENT: One commenter suggested that a definition of "special use area" be included in the proposal.

RESPONSE: The Department believes that a "special use area" is commonly understood to refer to a particularized use, such as a stage, within a building. However, for the sake of clarity and uniformity in enforcement, it has included a definition of "special use area" in the new proposal, published elsewhere in this issue of the New Jersey Register.

COMMENT: One commenter assumed that a variation allowing the use of a platform lift in new construction could not be granted under the proposed language.

RESPONSE: Criteria for the granting of a variation are set by N.J.A.C. 5:23-2.9. If an applicant meets these criteria, a variation can be granted.

COMMENT: One commenter supported the proposal's limitations regarding restrictions on the use of platform lifts in new construction, but opposed allowing their use in renovations or modifications. This commenter proposed that the use of platform lifts be allowed in renovations or modifications only "as a last resort."

RESPONSE: The Department regards this suggestion as unduly restrictive in light of the limitations and requirements established, and to be established, for lifts in such locations.

Of the 14 comments received in support of the proposal, 10 indicated support of the restrictions on the use of platform lifts in new construction because platform lifts are generally so poorly maintained as to deny accessibility. At the same time, these commenters recognized the practicality of allowing platform lifts in renovations or modifications. Two commenters detailed a total of seven experiences of recent problems with existing platform lifts.

Two comments were received in support of the proposal on hand-capped parking signs. No comments were received in opposition to this proposal.

Full text of the adoption follows.

5:23-7.13 Parking spaces

(a) (No change.)

(b) Each parking space shall be marked with an R7-8 sign from the Manual of Uniform Traffic Control Devices displaying the International Symbol of Accessibility.

1. Beneath the R7-8 sign, each parking space shall also be marked with an R7-8P sign, as required by N.J.S.A. 39:4-197.3c, containing the following language:

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

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

(c) (No change.)

5:23-7.18 Accessible routes: change in level

(a) All changes in level or grade on accessible routes, walks, or floors, shall comply with the following:

1.-2. (No change.)

3. Changes in level of greater than three-quarter inch are to be connected by ramp, curb ramp, elevator or platform lift meeting criteria of this subchapter. However, the maximum change in level within a building which may be bridged by a ramp shall be 60 inches.

i. Platform lifts may be used to bridge any level differential in modification and/or renovation work.

ii. In new construction, platform lifts shall be utilized only for access to special purpose areas and shall not be used on accessible routes between major floor areas or accessible entrances.

4. (No change.)

(b) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Bylaws

Quorum

Adopted Amendment: N.J.A.C. 6:1-2.4

Adopted: January 9, 1991 by the State Board of Education, Jim Jones, President.

Filed: January 11, 1991 as R.1991 d.58.

Authority: N.J.S.A. 18A:4-3 et seq.

Effective Date: January 11, 1991.

Expiration Date: January 11, 1996.

Take notice that the State Board of Education has adopted an amendment to the quorum section of its bylaws, at N.J.A.C. 6:1-2.4. As the organizational rules of the State Board, pursuant to N.J.S.A. 52:14B-3(1), amendments to these rules need not be proposed and are effective upon the filing of this adoption with the Office of Administrative Law.

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

6:1-2.4 Quorum

A quorum shall consist of a majority of the [whole] number of **voting** members of the Board[, including any *ex officio* member].

(b)

STATE BOARD OF EDUCATION

Controversies and Disputes

Readoption with Amendments: N.J.A.C. 6:24

Proposed: September 4, 1990 at 22 N.J.R. 2841(a).

Adopted: January 9, 1991 by John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: January 11, 1991 as R.1991, d.57, 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. 18A:4-15, 18A:6-9, 18A:6-10 et seq., 18A:14-63.1 et seq., 18A:29-14 and 18A:60-1.

Effective Date: January 11, 1991, Readoption: February 4, 1991, Amendments.

Expiration Date: January 11, 1996.

Summary of Public Comments and Agency Responses:

One letter with comments was received and one individual spoke at the October monthly public testimony session provided by the State Board of Education.

COMMENT: The commenter objected to the requirement that the municipal governing body provide specific reasons for each line item reduction since public officials lack educational expertise.

RESPONSE: This requirement has been specifically mandated by the New Jersey Supreme Court in *Bd. of Educ. of East Brunswick v. Mayor and Council of East Brunswick*, 48 N.J. 94 (1966).

COMMENT: The same commenter objected to the authority of the commissioner to restore positions of defeated budgets as being "taxation without representation" and as having the effect of taking monies from other municipal services.

RESPONSE: The right of the Commissioner to decide budget appeals is specifically authorized by statute at N.J.S.A. 18A:22-14 and 22-37.

COMMENT: Concern was expressed that the use of the term "individual party" in defining when the 90-day period for filing a petition commenced could be interpreted to include agents of the board of education who are already included in the rules.

RESPONSE: An appeal from the action of an individual party who is an agent of the board may serve as the trigger to the 90-day period for filing a petition if the petitioner never appealed the matter to the board

of education. If, however, the matter was brought to the board, the board's final action would constitute the trigger.

COMMENT: The commenter objected to the provision of the code which permits the Commissioner to designate an Assistant Commissioner to hear and decide a controverted matter.

RESPONSE: The authority for the Commissioner to designate an Assistant Commissioner to hear and decide a contested matter already exists in statute, N.J.S.A. 18A:4-34.

N.J.A.C. 6:24-7.2(b)(1)(iii):

COMMENT: The commenter suggested that the date that pupil enrollment figures which are to be provided by boards of education to municipal governing bodies upon defeat of a budget by the voters be changed from September 30 to October 15 to conform to the Quality Education Act of 1990 (QEA).

RESPONSE: This suggestion is valid since the QEA does change the date of enrollment figures to be used in calculating State aid. The recommended change is therefore being made upon adoption.

**Summary of Agency-Initiated Changes:**

At N.J.A.C. 6:24-1.15, unnecessary codification was removed.

At N.J.A.C. 6:24-7.2(b)1i, "school year" was separated as two words.

The following three changes were necessitated by the enactment of the Quality Education Act of 1990 which changed the date for pupil enrollment figures, moved the authority for budget review into a new chapter of Title 18A and revised formula for transportation aid:

At N.J.A.C. 6:24-7.2(b)1iii, September 30 was changed to October 15 and September to October.

At N.J.A.C. 6:24-7.2(b)1vi-ix, subparagraph vi was deleted and the remaining subparagraphs vii-ix recodified to vi-viii.

At N.J.A.C. 6:24-7.3(e), the citation was changed from N.J.S.A. 18A:7A-28 to N.J.S.A. 18A:7D-27.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:24.

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]\*).

**SUBCHAPTER 1. GENERAL PROVISIONS**

**6:24-1.1 Definitions**

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

"Interested person(s)" means a person(s) who will be substantially, specifically and directly affected by the outcome of a controversy before the Commissioner.

"OAL" means the Office of Administrative Law.

"Proof of service" means the provision of proof of the delivery of a paper by mail or in person to a party, person or entity to whom papers are required to be transmitted.

**6:24-1.2 Filing and service of petition**

(a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall serve a copy of a petition upon each respondent. The petitioner then shall file proof of service and the original and two copies of the petition with the Commissioner c/o the Director of the Bureau of the Controversies and Disputes, New Jersey Department of Education, 225 West State Street, CN-500, Trenton, New Jersey 08625.

(b) Proof of service shall be in the form of one of the following:

1. An acknowledgement of service signed by the attorney for the respondent or signed and acknowledged by the respondent or its agent;

2. A sworn affidavit of the person making service;

3. A certificate of service signed by the attorney making service; or

4. A receipt of certified mailing.

(c) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

(d) When the State of New Jersey Department of Education or one of its agents is named as a party, proof of service to the Attorney General of the State of New Jersey is required.

**6:24-1.3 Format of petition**

(a) (No change.)

(b) Any party to a controversy or dispute before the Commissioner, who is a party to another action before any other administrative agency, arbitration proceeding or court involving the same or similar issue of fact or law, shall indicate the existence of such action or complaint within the petition of appeal or the answer to the Commissioner, as may be appropriate. Failure to so certify may be deemed to be sufficient cause for dismissal of the petition of appeal when, in the judgment of the Commissioner and/or the ALJ, such failure results in the duplication of administrative procedures for the resolution of a controversy or dispute.

(c) (No change.)

**6:24-1.4 Filing and service of answer**

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, which shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition. Upon written application by a party the Commissioner may extend the time for answer. Such application must be received prior to the expiration of the 20 day period.

(b) (No change.)

(c) The Commissioner shall deem an affirmative defense to an allegation as also a denial of that allegation.

(d) The original and two copies of the answer shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner.

(e) Failure to answer within the 20 day period from receipt of service shall result in a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.

**6:24-1.5 Interim relief and/or stay**

(a) Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include, by way of separate motion, an application for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case.

(b) Where a motion for a stay or emergent relief is filed, it shall be accompanied by a letter memorandum or brief which shall address the standard to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982).

(c) Any party opposing such an application shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6:24-1.4; however, upon review, the Commissioner may:

1. Act upon such application prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard on that application;

2. Act upon such application upon receipt of the answer; or

3. Transmit the application to OAL for immediate hearing on the motion.

(d) The Commissioner may decide such application prior to any transmittal of the matter to the OAL for hearing. After transmittal to OAL, any motion for emergent relief shall be determined by the OAL. (See N.J.A.C. 1:1-12.6.)

**6:24-1.6 Amendment of petition and answer**

Prior to the transmittal of any matter to the OAL, the Commissioner may order the amendment of any petition or answer, or any petitioner may amend his or her petition, and any respondent may amend his or her answer, at any time and in any manner which the Commissioner deems fair and reasonable. Upon transmittal to the OAL, motions to amend a petition or answer shall be determined by the OAL. (See N.J.A.C. 1:1-6.2)

## 6:24-1.7 Permission to intervene

Prior to any transmittal to the OAL, requests for intervention or participation in a contested case shall be addressed to the Commissioner. Upon transmittal, requests should be made to the OAL. Such requests are governed by N.J.A.C. 1:1-16.

## 6:24-1.8 Appearance pro se

Any person may appear pro se or may be represented by an attorney at law admitted and authorized to practice in this State or by such persons as set forth in N.J.A.C. 1:1-5.

## 6:24-1.9 Dismissal of petition

At any time after the receipt of the answer and prior to transmittal of the pleadings to the OAL, the Commissioner, in his or her discretion, may dismiss the petition on the grounds that no sufficient cause for determination has been advanced, lack of jurisdiction, failure to prosecute or other good reason.

## 6:24-1.10 Hearing

(a) Upon the filing of the petition and answer(s) in a contested case, the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the case directly and individually or transmit the matter for hearing before the OAL. Should the Commissioner retain the matter, procedures relating to pre-hearing conferences shall be governed by the rules of the OAL. (See N.J.A.C. 1:1-13.1.)

(b) (No change.)

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the Commissioner or the ALJ, whoever is hearing the case.

## 6:24-1.11 Oaths

The Commissioner or the ALJ, whoever is hearing the case, shall have authority to administer oaths and affirmations, examine witnesses and receive evidence, issue subpoenas, rule upon offers of proof, take or cause depositions to be taken whenever the ends of justice would be served thereby, regulate the course of the hearing, and dispose of procedural requests or similar matters.

## 6:24-1.12 Subpoenas

Subpoenas requiring the appearance of persons or the production of documents may be issued at the discretion of the Commissioner or the ALJ, whoever is hearing the case, upon request of any party. (See also N.J.A.C. 1:1-11.1.)

## 6:24-1.13 Summary judgment

(a) Should the Commissioner determine to decide a motion for summary judgment prior to transmission to OAL such motion shall be subject to the following process:

1. If a statement of the material facts has been agreed upon by the parties and the Commissioner, or if the controversy is submitted solely upon a stenographic transcript of proceedings with the approval, or at the direction, of the Commissioner, or if for any other reason there are no issues of fact to be heard, the Commissioner shall require all parties to submit briefs on the matter. Such briefs shall be submitted within the time fixed by the Commissioner in consultation with the parties and confirmed by a written directive. The Commissioner shall thereupon determine the matter on the basis of the total record before him or her.

2. At any time prior to transmittal to the OAL any party may move for summary judgment, which motion shall be decided by the Commissioner on the basis of conference stipulations, affidavits and briefs. The parties must submit said affidavits and briefs within the time fixed by the Commissioner in consultation with the parties and confirmed by a written directive. Applications for summary judgment made after transmittal to the OAL shall be subject to the provision of N.J.A.C. 1:1-12.5.

3. Unless otherwise ordered by the Commissioner, there shall be no oral argument in connection with a summary judgment action. If the Commissioner grants oral argument, it shall be limited to 30 minutes for each party and shall not include testimony of witnesses.

## 6:24-1.14 Written decision

(a) Every determination of a controversy or dispute arising under the school law, or of charges against a district board of education employee or employees of the Departments of Human Services, Corrections or Education serving under tenure, shall be made by the Commissioner. Every such determination shall be embodied in a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order pursuant to the provisions of N.J.A.C. 1:1-18.6.

(b) Any determination or decision of the Commissioner is appealable to the State Board of Education pursuant to N.J.A.C. 6:2-1; however, any decision of the Commissioner shall be binding unless and until reversed on appeal or a stay is granted by either the Commissioner or State Board pursuant to N.J.A.C. 6:2-2.2.

## 6:24-1.15 Relaxing of rules

\*[(a)]\* The rules herein contained shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of, the Commissioner in connection with the determination of controversies and disputes under the school laws. They may be relaxed or dispensed with by the Commissioner, in his or her discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

## 6:24-1.16 Awarding of interest

(a) The Commissioner pursuant to the criteria herein may award both pre-judgment and/or post-judgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

(b) "Interest" is defined as follows:

1. (No change.)

2. Post-judgment interest is interest determined by the Commissioner to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. Pre-judgment interest shall be awarded by the Commissioner when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.

2. Post-judgment interest shall be awarded when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established or could have been established and the party responsible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) (No change.)

## SUBCHAPTER 2. DECLARATORY RULINGS

## 6:24-2.1 Petition for declaratory rulings

Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by the Commissioner. The determination to entertain such petitions for declaratory judgments shall be within the sole discretion of the Commissioner. If upon receipt and review of the answer such request is granted, the matter shall proceed in accordance with these regulations as they pertain to petitions. A declaratory judgment shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

## 6:24-2.2 Format of petition for declaratory rulings

(a) The format of the petition for declaratory rulings follows:

**EDUCATION**

**ADOPTIONS**

CAPTION : BEFORE THE COMMISSIONER OF  
: EDUCATION OF NEW JERSEY  
: PETITION FOR DECLARATORY  
: JUDGMENT

Petitioner, \_\_\_\_\_, residing at \_\_\_\_\_, hereby requests the Commissioner to render a declaratory judgment concerning the application of (N.J.S.A. 18A: \_\_\_\_; N.J.A.C. 6: \_\_\_\_ ) to the controversy which has arisen between petitioner and respondent who resides at \_\_\_\_\_ by reason of:

1. (Here set forth in appropriate paragraphs the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of \_\_\_\_\_ and determine and declare \_\_\_\_\_

\_\_\_\_\_  
Signature of petitioner or  
his or her attorney

Date: \_\_\_\_\_

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

- 1. I am the petitioner in the foregoing matter.
- 2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature)

Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_  
\_\_\_\_\_  
(Signature)

**6:24-2.3 Dissemination**

The Commissioner shall ensure the dissemination to district boards of education of the result of any declaratory judgment through the county superintendents of schools.

**SUBCHAPTER 3. ORDER TO SHOW CAUSE**

**6:24-3.1 Commissioner's order to show cause**

(a) If in the course of supervising the schools, and following investigation, the Commissioner should become aware of violation(s) of the school laws in school districts which if true would entitle him or her to impose a sanction on his or her own initiative, he or she may accord the district board of education or any other party subject to the Commissioner's jurisdiction an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing and, where authorized by law, the right to a contested case hearing is independent of and in addition to this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

- 1.-5. (No change.)
- (b) Submission by parties of orders to show cause seeking enforcement of litigants' rights shall not be deemed appropriate. Such actions are to be initiated by way of petition accompanied by motion for emergent relief pursuant to N.J.A.C. 6:24-1.2 and 6:24-1.5.

**SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT**

**6:24-4.1 Withholding salary increment**

Where a district board of education acts to withhold a teacher's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14 as modified by N.J.S.A. 34:13A-1, the teacher may file a formal petition of appeal for a hearing according to the procedures outlined in this chapter.

**SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT**

**6:24-5.1 Filing of written charges and certificate of determination**

(a) In a case of charges preferred against an employee of a district board of education pursuant to the Tenure Employees' Hearing Act which are to be brought before the Commissioner, N.J.A.C. 6:24-1.2 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education shall file the written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

- 1.-5. (No change.)
- 6. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charge and the required certificate of determination with the Commissioner together with proof of service upon the employee.

7. (No change.)  
(c) In the event that the tenure charges are charges of inefficiency, the following procedures and timelines shall be observed:

- 1.-2. (No change.)
- 3. The district board of education, through its board secretary, shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90-day period, or any longer period provided by the board, it intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4.-8. (No change.)  
9. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee.

10. (No change.)

**SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS**

**6:24-6.1 Request for recount or investigation**

(a) Request for recount of the ballots cast or for an investigation of the procedures at a school election shall be in compliance with N.J.S.A. 18A:14-63.1 et seq. and need not conform with N.J.A.C. 6:24-1.2 (Filing and service of petition). Such request shall be in letter form addressed to the Commissioner and shall set forth with particularity the grounds on which the election results are contested.

(b) Request for inquiry into alleged violations of statutorily prescribed election procedures, pursuant to N.J.S.A. 18A:14-63.12, shall be in writing to the Commissioner.

(c) Hearings inquiring into alleged violations of statutorily prescribed election procedures shall be conducted pursuant to N.J.A.C. 1:1 by the Commissioner or an ALJ.

**6:24-6.3 Subpoenas**

In any school election recount initiated pursuant to this subchapter, the Commissioner shall have the power to subpoena necessary witnesses to testify and to produce books, papers, documents and other objects designated in the subpoena.

**6:24-6.4 Continuation of recheck**

In districts where election machines have been used, the Commissioner shall ascertain from the party or parties applying for a recount which voting machines shall be rechecked. In the event that it shall appear during the course of the recheck that there has been a sufficient change in the tally of the votes cast to alter the result of the election, any candidate who appears then to have been defeated, or, in the event of a question, proposition or referendum, the parties in interest who may be affected adversely, may, within five days of such changed result, apply to the Commissioner to continue the recheck on his or her behalf upon the same terms and conditions under which the original recheck was held.

6:24-6.5 Finding of error/relief

Where the Commissioner finds as a result of a recount or an inquiry that an error has occurred which alters the result of the election or that irregularities have occurred sufficient to influence the outcome, he or she shall order such relief as is appropriate.

SUBCHAPTER 7. BUDGET APPEAL RULES

6:24-7.1 Authority

Unless otherwise expressly noted, all provisions of this subchapter governing a petition by a district board of education appealing a board of school estimate's or a governing body's decision to reduce a school budget have been prescribed by the Commissioner and approved by the State Board of Education pursuant to N.J.S.A. 18A:6-9, 18A:22-14, 18A:22-17, 18A:22-37, *Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick*, 48 N.J. 94 (1966) and Board of Education of Deptford Township v. Mayor and Council of Deptford Township, 116 N.J. 305 (1989).

6:24-7.2 Process for certifying the amount of tax levy

(a) In type I districts or type II districts having a board of school estimate, the following process for certifying the amount of tax levy necessary for school purposes shall be implemented.

1. On or before March 18, the board of school estimate shall fix and determine the amount of money necessary to be appropriated for use of the public schools for the ensuing school year pursuant to the provisions of N.J.S.A. 18A:22-14.

2. If the amount so appropriated shall be less than the amount proposed to the board of school estimate by the district board of education, the board of school estimate shall present to the district board of education, the municipal governing body and the county superintendent a revised line item budget which shall identify the specific line item reductions and the supporting reasons for each such reduction.

3. Accompanying the aforesaid revised line item budget and supporting reasons shall be a statement which shall certify that the board of school estimate has reviewed the budget proposed by the district board of education and that the revised budget is sufficient to assure the provision of a thorough and efficient system of education.

4. The governing body of each municipality comprising a type I district or a type II district having a board of school estimate shall appropriate on or before April 28 the amount certified by the board of school estimate.

5. Should a municipal governing body certify an amount less than that appropriated by the board of school estimate pursuant to N.J.S.A. 18A:22-17, it shall provide the district board of education and the county superintendent those line items wherein reductions were effectuated and the supporting reasons for such reductions. The governing body shall further certify that the amount appropriated for school purposes is sufficient to ensure the provision of a thorough and efficient system of education.

(b) In type II districts the following process for certifying the amount of tax levy necessary for school purposes shall be implemented upon rejection of either or both the current expense and capital outlay budget by the voters of the district.

1. If voters reject the tax levy for either or both capital outlay and current expense at the annual school election, the district board of education shall supply to the governing body or bodies within two days from the defeat of the referendum the following information:

i. A complete line item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current **\*[schoolyear]\* \*school year\***, proposed budgeted amount for the next school year (as submitted to the voters);

ii. Staff, numbers of professional and nonprofessional, during the current school year and projected staff for the next school year, with reasons for increase or decrease;

iii. Pupil enrollment by grade for the district as of June 30, preceding; **\*[September 30]\* \*October 15\*** preceding; and that projected for **\*[September]\* \*October\*** of the next school year;

iv. Salary schedules for all employees;

v. Number of schools and classrooms in each;

**\*[vi. Costs for non-aided transportation for the previous school year projected for the current school year and the next school year;]\***

**\*[vii.]\* \*vi.\* Tuition received or paid during the previous school year and anticipated for the current school year and the next school year;**

**\*[viii.]\* \*vii.\* Advertised budget for the next school year; and**  
**\*[ix.]\* \*viii.\* If a capital budget is in dispute, a substantiation for each proposed capital project.**

2. The governing body or bodies of the municipality or municipalities involved shall as soon as immediately practicable, consistent with N.J.S.A. 18A:22-37, consult with the district board of education for purposes of arriving at a tax levy sufficient to assure the provision of a thorough and efficient system of education.

3. By April 28th, the governing body or bodies shall certify to the county board of taxation an amount to be appropriated sufficient to provide a thorough and efficient system of education.

4. If the amount so appropriated shall be less than that which was submitted to the voters by the district board of education, the municipal governing body or bodies shall present to the board of education and the county superintendent of schools a revised line item budget which shall identify the specific line item reductions and the supporting reasons for each such reduction.

5. Accompanying the aforesaid revised line item budget and supporting reasons shall be a statement which shall certify that the governing body or bodies have reviewed the budget proposed by the district board of education and that the revised budget is sufficient to assure the provision of a thorough and efficient system of education.

6:24-7.3 Dispute resolution

(a) Upon receipt of the reduced line item budget and the supporting reasons for such reductions, the county superintendent shall schedule a conference which shall be attended by representatives of the district board of education and representatives of the municipal governing body or bodies for purposes of reaching agreement on a tax levy to be certified sufficient to provide a thorough and efficient system of education. The county superintendent shall not be precluded from initiating actions designed to assist the parties in resolving budgetary issues prior to formal action by the governing body or bodies.

(b) At said conference it shall be the responsibility of the county superintendent to review with the parties their respective positions relative to the line item reductions recommended by the governing body or bodies and/or the board of school estimate.

(c) If an agreement is reached between the parties at the conference to accept the reductions as certified and such agreement is approved by the county superintendent, no further action shall be required unless the district board of education has submitted a notice of intent to appeal or a petition of appeal in which case the parties shall submit a consent order to the Commissioner no later than 10 days from the conclusion of the conference.

(d) Should no agreement be reached settling the case at the conference, any agreement reached as to stipulation of facts or narrowing of differences shall be submitted to the Commissioner.

(e) Any agreement concluded between the district board of education and the governing body or bodies which results in a lower budget than approved by the county superintendent pursuant to N.J.S.A. 18A:**\*[7A-28]\*\*7D-27\*** shall be submitted to the county superintendent for his or her approval in order to ensure that such reduction does not impair the district's ability to provide a thorough and efficient system of education.

(f) Should the county superintendent, acting for the Commissioner, determine that the budget reduction agreed upon results in providing an amount less than that which is necessary to ensure a thorough and efficient system of education, the Commissioner shall issue an order to show cause directing the district board of education and governing body or bodies to show cause why the amount agreed upon is sufficient to ensure a thorough and efficient system of education.

6:24-7.4 Time for filing petition

(a) Within 20 days after the certification by either the board of school estimate or the governing body in a type I district or the governing body or bodies in a type II district with a board of school estimate and within 15 days of the certification by the governing body or bodies in a type II district, the district board of education shall notify the governing body or bodies of its intent to appeal the reduction of the certification to the Commissioner of Education.

(b) A petition by a district board of education appealing the decision of its board of school estimate or its governing body or bodies to certify a tax levy less than that deemed necessary by the district board to insure a thorough and efficient educational program shall be taken no later than 30 days following the governing body's or bodies' decision.

6:24-7.5 Format and documentation of petition

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

(c) The district board of education shall attach to its petition a copy of the following form:

Proposed tax levy adopted by the district board of education	Amount of tax levy certified by governing body or bodies		
Current expense \$ _____	Current expense	\$ _____	
Capital outlay \$ _____	Capital outlay	\$ _____	
Amount of reduction in the budget by governing body or bodies			
	Current expense	\$ _____	
	Capital outlay	\$ _____	
Amount of reduction in dispute before the Commissioner			
	Current expense	\$ _____	
	Capital outlay	\$ _____	

6:24-7.6 Filing and service of answer

The governing body or bodies shall file an answer with the Commissioner not later than 15 days after receiving the district board of education's petition.

6:24-7.7 Documentation of answer

(a) In conjunction with its answer, the governing body or bodies shall forward to the Commissioner a copy of the information which was given to the district board of education and the county superintendent at the time the reduction was made including the following documents:

1. A copy of the current expense line item budget detailing specific reductions that were effectuated by the governing body along with the statement of supporting reasons for each of the line item reductions;
2. A copy of the capital outlay budget detailing specific reductions that were effectuated along with a statement of supporting reasons for each of the line item reductions; and
3. Accompanying the foregoing shall be a certification stating the date on which the documents were originally given to the district board of education.

6:24-7.8 Commissioner's review and decision

(a) Within 20 days from the filing of the governing body's or bodies' answer to the district board of education's Petition of Appeal, the following submissions shall be filed with the Commissioner:

1. The governing body or bodies shall set forth its or their position in written form detailing by individual line item its or their reasons for effectuating the economies which represent the subject matter of the dispute. In so doing, the governing body or bodies shall provide sufficient detail based upon that data provided to it or them by the district board of education at the time of the budget defeat. Should the governing body or bodies fail to provide the district board of education with the specific line item reductions and the reasons for

same, it or they shall bear the burden of demonstrating that its or their actions were not arbitrary or capricious.

2. The district board of education shall set forth its position in written form detailing by individual line item why the amount by which the governing body or bodies reduced the line item is necessary to meet the requirement of providing a thorough and efficient system of education.

3. Each party may, in addition to its written position, submit sworn affidavits from individuals whose input may be relevant to assisting the Commissioner in rendering a determination.

4. Within 10 days from receipt of the written position of the opposing party, each party may file responses to such positions.

5. Within five days of the receipt of the responses to each other's written positions or the expiration of the time period for filing responses, each party may submit to the Commissioner a final summation of its position.

6. Upon the receipt of the summaries submitted by the parties or the expiration of the time period for filing, the Commissioner shall review the total record before him or her and render a written decision which shall be a final decision unless or until reversed upon appeal.

7. Should the Commissioner find that there are material issues of fact to be determined, he or she may conduct an evidentiary hearing or transmit the case to the OAL for a hearing on all of the disputed issues that remain undecided.

6:24-7.9 through 6:24-7.12 (Reserved)

**ENVIRONMENTAL PROTECTION**

**(a)**

**DIVISION OF WATER RESOURCES**

**Notice of Administrative Correction**

**Surface Water Quality Standards**

**Establishment of Water Quality Based Effluent Limitations**

**N.J.A.C. 7:9-4.6**

**Take notice** that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:9-4.6(c)5iii. The presence of a denominator "60" in the effluent toxicity limitation formula in that subparagraph is the result of a printing error in the publication of the formula's adoption (see 21 N.J.R. 2302(b)), which error was carried into the 8-21-89 Code update. The number "60" was a page number in the adoption document filed with the Office of Administrative Law, R.1989 d.420. Because this page number appeared on the document page immediately below the formula at N.J.A.C. 7:9-4.6(c)5iii, it was mistakenly printed as part of the formula. The correct adopted formula is " $L_c = 1(100)$ ." This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

**Full text** of the corrected rule follows (deletion indicated in brackets [thus]):

7:9-4.6 Establishment of water quality based effluent limitations

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

(c) The Department may develop water quality based effluent limitations for a single point source discharger in response to an application for a DAC or NJPDES permit. The procedure to be followed by the Department in developing such effluent limitations shall be as follows:

1.-4. (No change.)

5. The following methodologies may be utilized by the Department in developing water quality based whole effluent toxicity limitations for point source discharges:

i.-ii. (No change.)

iii. When utilizing chronic bioassays as the measure of whole effluent toxicity, the following effluent toxicity limitations formula may be utilized:

$$L_c = \left[ \frac{l(100)}{60} \right]$$

Where:  $L_c$  = Toxicity limitation expressed as a chronic NOEC in percent effluent.

$l$  = Critical instream waste concentration, determined in accordance with the method in ii above.

- iv. (No change.)
- 6. (No change.)

**(a)**

**DIVISION OF ENVIRONMENTAL QUALITY  
 Notice of Administrative Correction and Notice of Revised Operative Date  
 Air Pollution Control  
 Volatile Organic Substances in Consumer Products Labeling Requirements  
 N.J.A.C. 7:27-23.5(a)2**

**Take notice** that the Department of Environmental Protection has discovered an error of fact in the Code at N.J.A.C. 7:27-23.5(a)2. The type size requirement of this provision incorrectly implies that 12 point type is approximately equivalent to text 0.08 inches high. In most standard fonts, the equivalent of text 0.08 inches high in the point system is eight point, not 12 point. This administrative correction replaces the type size designation "12 point" with "eight point".

**Take notice** that the Department of Environmental Protection is revising the operative date for compliance with the type size requirement for the labeling of architectural coatings. This notice revises the compliance date from February 28, 1991, as currently set forth in the Code at N.J.A.C. 7:27-23.5(a)2, to August 9, 1991.

As stated in the responses to comments, published in the New Jersey Register, Monday, July 16, 1990, at 22 N.J.R. 2151 (10th and 12th responses), the Department's intent is to provide manufacturers with one year from the effective date of the rule amendment to use up stocks of printed labels. The effective date of the rule amendment is August 9, 1990, 60 days after the adoption date of June 10, 1990. The current operative date for compliance with the labeling requirement, February 28, 1991, is inconsistent with this intention. Therefore, the revised compliance date of August 9, 1991, established herein, allows manufacturers with one year to comply with the type size requirement since the rule amendment became effective.

The type size requirement was published in the New Jersey Register, Monday, July 16, 1990, at 22 N.J.R. 2145(b), 2161. This notice of administrative correction is pursuant to N.J.A.C. 1:30-2.7.

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

7:27-23.5 Labeling requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

- 1. (No change in text.)
- 2. The label on any side of the container except the bottom shall include a statement which specifies the maximum pounds of VOS in a gallon of architectural coating as produced by that manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning. For architectural coatings manufactured after [February 28] **August 9, 1991**, this statement shall be prominent and in print no smaller than 0.08 inches (two millimeters or [12] **eight** point) in size.

**HUMAN SERVICES**

**(b)**

**DIVISION OF MENTAL HEALTH AND HOSPITALS  
 Community Mental Health Services Act  
 Confidentiality of Records**

**Adopted Amendment: N.J.A.C. 10:37-6.79**

Proposed: August 6, 1990 at 22 N.J.R. 2216(b).

Adopted: January 9, 1991 by Alan Gibbs, Commissioner, Department of Human Services.

Filed: January 9, 1991 as R.1991 d.50, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:9A-10.

Effective Date: February 4, 1991.

Expiration Date: November 2, 1995.

**Summary of Public Comments and Agency Response:**

The Department received written comments from the Board of Medical Examiners and the Ocean Mental Health Services, Inc.

**COMMENT:** Since N.J.S.A. 2A:84A-22.1(c) extends the physician-patient privilege to "the personal representative of a deceased patient," this privilege does not expire with the patient. Unless N.J.S.A. 2A:84A-22.1(c) is also changed, State-funded community mental health agencies will still require the consent of such a personal representative prior to release of client records to officials within the offices of the State Medical Examiner or a County Medical Examiner.

**RESPONSE:** The privilege articulated in N.J.S.A. 2A:84A-22.1(c) constitutes a rule of evidence during criminal prosecutions or civil actions and was not intended to be a barrier to State or County Medical Examiners conducting autopsies or making investigations pursuant to their statutory responsibilities. This amendment authorizes State-funded community mental health agencies to release client records to officials within the offices of the State Medical Examiner or a County Medical Examiner regardless of whether the consent of a personal representative of the deceased patient has been obtained.

**COMMENT:** It certainly appears that the State Medical Examiner or a County Medical Examiner should have access to certain patient records when investigating a death and performing an autopsy.

**RESPONSE:** The Department agrees.

Additionally, the Department has made a typographical correction to the proposed amendment by restoring the word "and" to the proposal between the words "investigations" and "conducting." This language tracks the relevant provision within the State Medical Examiner Act at N.J.S.A. 52:17B-90a, as it was always intended to do.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***).

10:37-6.79 Confidentiality of records

(a) These requirements govern the disclosure of information and records of persons who are receiving or have received State-funded mental health services. This section shall only apply to people for whom a formal client record has been established.

1. Disclosure of records and information to third parties: All information and records directly or indirectly identifying any person currently or formerly receiving services from an agency (client) shall be treated as confidential, and may only be disclosed in the following circumstances to persons presenting appropriate identification:

- i.-iii. (No change.)
- iv. Client records may also be disclosed to:
  - (1) Clinical records audit teams, monitoring and site review staff designated by the Division, the Office of Legislative Services;
  - (2) A person participating in a Professional Standards Review Organization; and
  - (3) Officials within the offices of the State Medical Examiner or a County Medical Examiner making investigations **\*and\*** conducting autopsies, pursuant to N.J.S.A. 52:17B-78 et seq.

**CORRECTIONS****(a)****THE COMMISSIONER****Reports****Reports of Unusual Incidents or Events****Adopted New Rules: N.J.A.C. 10A:21-5**

Proposed: November 5, 1990 at 22 N.J.R. 3304(a).

Adopted: January 8, 1991 by William H. Fauver, Commissioner, Department of Corrections.

Filed: January 11, 1991 as R.1991 d. 53, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: February 4, 1991.

Expiration Date: February 4, 1996.

**Summary of Public Comments and Agency Responses:**

The Department of Corrections received one comment regarding the proposed new rules which is addressed below.

COMMENT: Commenter suggested that the requirements of the proposed new rules should be consistent with the Attorney General's Standards to Ensure the Rights of Crime Victims pursuant to N.J.S.A. 52:4b-44(a) and (b) which require the Department of Corrections to notify the "appropriate" county prosecutor of the escape of an inmate and the capture and/or return of the escapee.

RESPONSE: The Department of Corrections agrees and N.J.A.C. 10A:21-5.5(a) will be modified to require that the "appropriate" county prosecutor be notified of the unusual incidents or events listed in this section, instead of the county prosecutor of the county in which the correctional facility is located. The Department will add a new subsection N.J.A.C. 10A:21-5.5(d) which will require that the persons, listed in N.J.A.C. 10A:21-5.5(a), be notified of the capture and/or return of an escapee.

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 21  
REPORTS

## SUBCHAPTERS 1-4. (RESERVED)

## SUBCHAPTER 5. REPORTS OF UNUSUAL INCIDENTS OR EVENTS

## 10A:21-5.1 Preliminary inquiry

(a) When a Superintendent or his or her designee becomes aware of the occurrence of an unusual incident or event, he or she shall notify the Internal Affairs Unit which shall make an immediate preliminary inquiry to determine the facts in the case.

(b) If there is a delay in the arrival of a staff member from the Internal Affairs Unit, the Superintendent shall assign a custody supervisor with a rank not lower than sergeant to secure and/or cordon off the location of the incident or event, when appropriate.

(c) No one, including non-custody staff and custody staff, shall be permitted access to the secured area and nothing shall be touched, moved or destroyed until the staff from the Internal Affairs Unit has completed the examination of the secured area.

## 10A:21-5.2 Telephone reports within the Department of Corrections; reportable unusual incidents or events

(a) If after the preliminary inquiry, it is the determination of the Superintendent or his or her designee that the incident or event is of such significance that the incident or event has the potential for disrupting the orderly operation of the correctional facility, or if the orderly operation of the correctional facility has been disrupted because of the incident or event, the Superintendent or his or her designee shall promptly contact the Assistant Commissioner of the appropriate Division or his or her designee and the Public Infor-

mation Officer, New Jersey Department of Corrections, by telephone and give them a summary of:

1. What happened;
2. Persons involved;
3. The action taken; and
4. The current assessment of the situation.

(b) The unusual incidents and events which shall be reported by telephone to the Assistant Commissioner or his or her designee and the Public Information Officer shall include, but are not limited to:

1. A homicide;
2. A suspicious death;
3. A suicide or serious suicide attempt;
4. A disturbance involving a considerable number of inmates or employees which threatens the maintenance of security or the orderly operation of the correctional facility, for example:
  - i. A riot;
  - ii. A work stoppage; or
  - iii. A melee.
5. A medical emergency;
6. A medical problem requiring expeditious handling because of its special nature;
7. An escape or walkaway in which:
  - i. Force was used;
  - ii. A weapon was used;
  - iii. An injury to an inmate(s) or a staff member resulted;
  - iv. A crime was committed;
  - v. The inmate(s) escaped from a secure or self contained unit;
  - vi. The inmate(s) involved is widely and/or unfavorably known by virtue of his or her offense history; and/or
  - vii. The inmate(s) involved is considered capable of committing violent acts;
8. The taking of a hostage(s);
9. A serious injury to an inmate(s) or staff member(s);
10. Suspected introduction of drugs, narcotics or intoxicants into the correctional facility by staff;
11. Suspected drug, narcotic or intoxicant abuse by staff on correctional facility grounds;
12. A serious mechanical or engineering difficulty which could result in the loss of steam, electric power, sanitary facilities;
13. A natural disaster such as a flood, tornado, earthquake or cyclone and the extent of damage that resulted;
14. A fire which resulted in considerable damage or in which there is the potential for extensive property damage and/or loss of lives; and
15. A situation involving an inmate(s) in which the life of an inmate or a group of inmates is in danger and an immediate transfer is needed to provide safety for the inmate(s) involved.

## 10A:21-5.3 Telephone reports to judges in the event of an escape

(a) All escapes from medium and maximum security correctional facilities shall be reported by telephone to the sentencing judge as soon as possible after the escape.

(b) If an escape from a medium or maximum security correctional facility occurs during the evening, weekend or on a holiday, the Superintendent or his or her designee shall notify the appropriate Assistant Commissioner. The Assistant Commissioner shall be responsible for notifying the sentencing judge at his or her home. In cases when contact cannot be made with the appropriate Assistant Commissioner, attempts shall then be made to contact the Deputy Director or the Deputy Commissioner if the Deputy Director is also unavailable.

(c) The sentencing judge, who has been notified of an escape from a medium or maximum security correctional facility, shall also be notified of the capture and/or return of the escapee(s).

## 10A:21-5.4 Correctional facility liaison to outside law enforcement agencies

(a) At the direction of the Superintendent, the Internal Affairs Unit assigned to a correctional facility shall serve as the liaison to all outside law enforcement agencies.

(b) The liaison shall have the general responsibility of effecting a cooperative relationship with outside law enforcement agencies dur-

## ADOPTIONS

ing investigations conducted and/or associated with a correctional facility. These outside law enforcement agencies shall include, but are not limited to:

1. County prosecutors;
2. State and local police agencies;
3. The New Jersey Division of Criminal Justice;
4. The Federal Bureau of Investigations; and
5. The United States Department of Treasury.

### 10A:21-5.5 Telephone reports to outside law enforcement agencies; reportable unusual incidents and events

(a) At the direction of the Superintendent, an investigator from the Internal Affairs Unit shall promptly report, by telephone, the following unusual incidents or events to the **\*appropriate\*** county prosecutor **\*[of the county in which the correctional facility is located]\***, the local State Police Commander, and/or the local police agency having primary jurisdiction:

1. A homicide;
2. A serious injury to an inmate(s) or staff member(s);
3. A suspicious death;
4. A suicide;
5. The taking of a hostage(s);
6. A disturbance involving a considerable number of inmates or employees wherein the security or the orderly operation of the correctional facility is threatened, for example:
  - i. A riot; or
  - ii. A work stoppage;
7. An escape or walkaway in which:
  - i. Force was used;
  - ii. A weapon was used;
- iii. An injury to an inmate(s) or staff member(s) resulted;
- iv. A crime was committed;
- v. The inmate(s) involved escaped from a secure or self-contained unit;
- vi. The inmate(s) involved is widely and/or unfavorably known by the virtue of his or her offense history; and/or
- vii. The inmate(s) involved is considered capable of committing violent acts;
8. An indictable drug offense involving a staff member(s) or visitor(s);
9. A serious mechanical or engineering difficulty, the occurrence of which threatens the security of the correctional facility;
10. A natural disaster such as a flood, tornado, earthquake or cyclone, whereby the security of the correctional facility is threatened; and
11. A fire which resulted in considerable damage or in which there is the potential for extensive property damage and/or loss of lives.

(b) For all incidents and events cited in (a) 1 through 6 above, the Superintendent or his or her designee shall contact one of the following persons in the Division of Criminal Justice:

1. The Director, whose office telephone number is (609) 984-0027; or
2. The Deputy Director, whose office telephone number is (609) 984-0029 in the Director's absence; or
3. The Chief, Special Prosecutions Section, whose office telephone number is (609) 984-7596 in the absence of the Deputy Director.

(c) In the event that the unusual incident or event occurs after working hours, on weekends or on holidays and one of the above named persons must be contacted, a telephone call shall be made to the Division of Criminal Justice's 24 hour Control Number, (609) 984-6122, to be provided with a telephone number at which these persons can be reached.

### 10A:21-5.6 Observers from law enforcement agencies

If based upon information received in the telephone account of the unusual incident or event, the county prosecutor, State Police Commander and/or the Division Criminal Justice liaison decide to send an observer to the correctional facility, the Superintendent shall have the observer met by an investigator from the Internal Affairs Unit for a briefing of the situation.

## CORRECTIONS

### 10A:21-5.7 Correctional facility cooperation with investigation

(a) Determinations regarding assistance in investigations by outside law enforcement agencies shall be made by the Commissioner, New Jersey Department of Corrections, or his or her designee.

(b) If it is determined that an investigation is warranted, the Superintendent of the correctional facility or his or her designee shall be responsible for ensuring that all involved parties to an incident or event including corrections officers, non-custody staff members and inmates are available for interviews, if so requested, by representatives of the Internal Affairs Unit, the New Jersey State Police, the Division of Criminal Justice or the county prosecutor's office until such time as the investigation is completed.

(c) All information relative to the incident or event shall be shared with outside law enforcement agencies in order to facilitate an accurate, timely and complete investigation.

**\*(d) At the direction of the Superintendent, an investigator from the Internal Affairs Unit shall promptly report, by telephone, to those parties notified in (a) above the capture and/or return of an escapee to the custody of the Department of Corrections.\***

### 10A:21-5.8 Written reports

(a) Within 10 working days following the occurrence of an unusual incident or event, the Superintendent or his or her designee shall always prepare and submit Form 844-I INCIDENT REPORT to the Deputy Commissioner, New Jersey Department of Corrections, with copies to:

1. The Commissioner;
2. The appropriate Assistant Commissioner; and
3. The Chief Investigator of the Internal Affairs Unit.

(b) A follow-up report may be submitted following the completion of the investigation.

(c) In addition to preparing and submitting Form 844-I INCIDENT REPORT upon the occurrence of incidents and events listed in N.J.A.C. 10A:21-5.2, Form 844-I shall also be prepared and submitted to the Deputy Commissioner when the following types of incidents or events occur:

1. Homosexual incidents between inmates in which force was used;
2. Undue familiarity between staff and inmates if there is evidence of a sexual relationship;
3. The introduction of contraband into the correctional facility, such as:
  - i. Firearms;
  - ii. Narcotics;
  - iii. Dangerous drugs; and
  - iv. Money in excess of 20 dollars;
4. Disturbances or breaches of good order involving four or more inmates or any incident symptomatic of possible general disturbance or unrest;
5. Instances where an employee or an inmate has been injured during an act of physically restraining an inmate;
6. Serious injuries to inmates or employees requiring medical or surgical treatment;
7. Allegations of theft made against staff members;
8. Suspicions of theft by staff members;
9. Investigations of allegations or suspicions of theft by staff members;
10. Arrests of employees; and
11. Incidents involving assaults on officers.

### 10A:21-5.9 Dissemination of reporting procedures

(a) Each correctional facility shall be responsible for developing written procedures and post orders that are consistent with this subchapter.

(b) Copies of the written procedures and/or post orders regarding the reporting of unusual incidents or events shall be disseminated to all supervisory custody personnel.

(c) Copies of the procedures and post orders shall be maintained at the Center Control.

## 10A:21-5.10 Forms

Form 844-I INCIDENT REPORT may be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections.

**(a)****THE COMMISSIONER****Reports****Reporting Violations of the Criminal Statutes****Adopted New Rules: N.J.A.C. 10A:21-8**

Proposed: November 19, 1990, at N.J.R. 3440(a).

Adopted: December 31, 1990 by William H. Fauver,  
Commissioner, Department of Corrections.

Filed: January 3, 1991 as R.1991 d.43, **without change**.

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

Effective Date: February 4, 1991.

Expiration Date: February 4, 1996.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

**SUBCHAPTER 8. REPORTING VIOLATIONS OF THE CRIMINAL STATUTES**

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

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

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

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

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

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

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

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

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

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

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

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

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

## 10A:21-8.4 Referral of questionable violations

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

## 10A:21-8.5 Reporting procedures

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

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

1. The name of the accused person;

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

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

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

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

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

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

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

**INSURANCE****(b)****THE COMMISSIONER****Automobile Insurance****Readoption with Amendments: N.J.A.C. 11:3****Adopted Repeals: N.J.A.C. 11:3.2, 3, 4 and 5**

Proposed: June 4, 1990, at 22 N.J.R. 1678(a).

Adopted: January 4, 1991 by Samuel F. Fortunato,

Commissioner, Department of Insurance.

Filed: January 4, 1991 as R.1991 d.45, **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. 17:1C-6(e).

Effective Date: January 4, 1991, Readoption;

February 4, 1991, Amendments and Repeals.

Expiration Date: January 4, 1996.

**Summary of Public Comments and Agency Responses:**

COMMENT: One commenter suggests that the phrase "any residual market mechanism created by statute" as used in the definition of "eligible applicant" at N.J.A.C. 11:3-1.2 may have the effect of prohibiting assignment of CAIP-eligible vehicles to the CAIP mechanism. The commenter suggests that "any residual market mechanism created by statute" be replaced by "the Market Transition Facility, Assigned Risk Plan or any mechanism created by the Fair Automobile Insurance Reform Act of 1990."

RESPONSE: The Department agrees that the phrase should be revised. Upon adoption, the phrase will read thusly: "any residual market mechanism created by statute, other than CAIP".

COMMENT: One commenter suggests that the phrase "any residual market mechanism created by statute" in the definition of "Voluntary All Other Automobile Direct Written Premiums" at N.J.A.C. 11:3-1.2 be replaced by the term "the Market Transition Facility, Assigned Risk Plan or any mechanism created by the Fair Automobile Insurance Reform Act of 1990." The commenter suggests that the proposed phrase could be considered redundant in that subparagraph 1 of the definition of "Voluntary All Other Direct Written Premiums" already eliminates CAIP direct written premiums.

RESPONSE: The Department agrees that the phrase should be revised. Upon adoption, the phrase will read thusly: "any residual market mechanism created by statute, other than CAIP".

COMMENT: One commenter suggests that the phrase "any residual market mechanism authorized by statute" as used at N.J.A.C. 11:3-6.2(d) regarding permanent identification cards should be replaced by the phrase "the Market Transition Facility, Assigned Risk Plan or any mechanism created by the FAIR Automobile Insurance Reform Act of 1990" to remove possible reference to CAIP.

RESPONSE: The Department disagrees. Appropriate exclusions for specific types of automobiles or motor vehicles, rather than specific insurers, are provided in the rules. No other exclusions are currently necessary or appropriate.

COMMENT: One commenter suggests that the phrase "any residual market mechanism authorized by statute" as used in the definition of "insurer" and "voluntary market insurer" at N.J.A.C. 11:3-23.3 should be replaced by the phrase "the Market Transition Facility, Assigned Risk Plan or any mechanism created by the Fair Automobile Insurance Reform Act of 1990".

RESPONSE: The Department disagrees that any revision is necessary.

COMMENT: One commenter suggests that the phrase "any residual market mechanism created by statute" as used at N.J.A.C. 11:3-23.4(c) would require CAIP to issue physical damage coverage under a dangerous driver definition which was created by the NJAFIUA and is not included in the CAIP Plan of Operation, and thus, should be revised.

RESPONSE: The Department disagrees that a revision is necessary. The issuance of physical damage coverage is intended to occur under the residual market mechanism's plan of operation. Thus, CAIP should issue physical damage coverage pursuant to its plan of operation.

COMMENT: One commenter states that if the Department proposes to create a mechanism, pursuant to N.J.A.C. 11:3-28.5(b), whereby the UCJF may recover amounts, designated as damages to the UCJF, which have been sustained as a result of an insurer's failure to properly investigate a claim, such a mechanism should be set out in detail to provide insurers with fair notice of what is expected and how failure to meet the UCJF Board's expectations will affect a claim for reimbursement. To accomplish this objective the commenter suggests that the Department authorize the UCJF Board to identify the standards against which insurers' conduct would be measured, and to specify how the UCJF Board will measure its damages. The commenter also suggests that the Board adopt whatever procedure is developed as its own rules, in accordance with N.J.S.A. 39:6-64.1.

RESPONSE: Insurers are on notice pursuant to the proposed amendment that the UCJF Board may put in place a procedure for assessing a penalty against reimbursements if the insurer does not properly discharge its investigative duty in accordance with N.J.A.C. 11:3-28.5(a). Nothing more is necessary to be stated with respect to this rule. Additional information may be requested from the UCJF.

COMMENT: One commenter questions whether the Commissioner intends to consult with members of the automobile insurance industry prior to readoption of rules establishing the Automobile Insurance Plan. The commenter states that it is its interpretation that such consultation is a requisite to adoption of such Plan in addition to any public notice regarding adoption.

RESPONSE: The Department is repealing, not readopting, those rules which make up the Automobile Insurance Plan, other than those regarding the Commercial Automobile Insurance Plan.

COMMENT: One commenter suggests that there may be a conflict or inconsistency between the definition of "eligible applicant" at N.J.A.C. 11:3-1.2 and N.J.A.C. 11:3-1.8, Eligibility. The commenter states that N.J.A.C. 11:3-1.8 requires as a prerequisite to consideration for assignment under the Plan that an applicant certify that he has attempted, but been unable to obtain, within 60 days prior to the date of application to the Plan, insurance at rates not exceeding those applicable under the Plan.

RESPONSE: The Department disagrees with the commenter's reading of the rules, and suggests that the commenter is referring to a separate set of rules not affected by the definition of "eligible applicant" at N.J.A.C. 11:3-1.2.

#### Summary of Agency-Initiated Changes:

The Department is making two revisions to N.J.A.C. 11:3-26 concerning the filing of a Notice of Intention to make a claim with the Unsatisfied Claim and Judgment Fund ("UCJF").

N.J.A.C. 11:3-26.1(a)1 is being revised to require that among the identification information on a claimant to be filed, a social security number is to be included. This is being done to provide additional administrative convenience in identification of claims by the UCJF.

N.J.A.C. 11:3-26.2(c) is being revised to include a statement that a Notice of Intention which is deemed unfiled does not have the effect of tolling the statute of limitations for such claims. The UCJF Board has consistently applied this principle to such Notices of Intention, although the principle was not explicitly stated within these rules. The Department believes it is expedient to remind filers that incomplete Notices are insufficient and will not serve to keep a claim from lapsing under the statute of limitations.

N.J.A.C. 11:3-28.5(a) concerning an insurer's continuing obligation to investigate claims which are expected to exceed \$75,000 (and thus, are subject to reimbursement by the UCJF) is being revised. This rule states that insurers are responsible for all expenses involved with the claims investigation. Implicit among those expenses has been any expenses related to cost containment measures. In considering claims and reimbursements, the UCJF has consistently applied the principle in relation to cost containment measures, as well as other expenses. The UCJF Board, however, has expressed a desire that "cost containment measures" be amongst those expenses explicitly included within the phrase "all expenses" to avoid future confusion and contention which has arisen on previous occasions. The Department agrees that it is expedient to make an explicit reference to "cost containment measures". Insurers are reminded, however, that the phrase which includes certain expenses does not in any manner exclude other expenses which may be related to the investigation of claims from the realm of the insurer's financial responsibility.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:3.

Full text of the amendments to the rules readopted follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

#### 11:3-1.2 Definitions

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

...  
 "Eligible applicant" means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is not in good faith qualified for automobile insurance coverage in any residual market mechanism created by statute \*other than the CAIP\*. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles may be registered in other states. Members of the United States military forces with vehicles registered in other states shall be deemed eligible applicants if they are otherwise eligible; are stationed in New Jersey; and the vehicle is garaged in New Jersey at the time application is made. No applicant shall be deemed eligible if the principal operator of the vehicle to be insured does not hold a driver's license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.

...  
 "Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through any residual market mechanism created by statute, and is owned by an individual or husband and wife.

...  
 "Voluntary All Other Automobile Direct Written Premiums" means automobile liability, personal injury protection, and physical damage premiums written by a participant on New Jersey risks, minus:

- 1. (No change.)
- 2. Any direct written premiums included in the figures from insureds who are eligible applicants for any residual market mechanism created by statute **\*other than the CAIP\***.
- 3.-4. (No change.)

11:3-6.2 Permanent identification card (form IV-1)  
 (a)-(c) (No change.)  
 (d) Servicing carriers of any residual market mechanism authorized by statute shall issue an insurance identification card in accordance with (b) and (c) above. Provided, however, that the card shall indicate that coverage is being issued by the servicing carrier on behalf of the residual market mechanism.

11:3-6.3 Temporary identification card (form IV-2)  
 (a) The specifications for temporary insurance identification cards are set forth below:  
 1.-5. (No change.)

11:3-8.2 General provisions  
 (a)-(e) (No change.)  
 (f) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal.  
 1. (No change.)  
 2. Each notice of nonrenewal shall include or be accompanied by the statement prescribed in (f)2i below which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention.

i. Each notice of nonrenewal must set forth: "If you have reason to believe that our decision to nonrenew (or conditionally renew, as appropriate) your policy is not in compliance with N.J.A.C. 11:3-8, you should file a written complaint immediately with the New Jersey Department of Insurance, Division of Enforcement and Consumer Protection, 20 West State Street, CN 325, Trenton, New Jersey 08625."

3. The notice of nonrenewal shall also include or be accompanied by a statement advising the insured of his possible eligibility for coverage through a residual market mechanism created by statute.

11:3-9.1 Rating information; private passenger cars; automobile insurance  
 (a) (No change.)  
 Recodify existing (c)-(e) as (b)-(d) (No change in text.)

11:3-10.5 Unreasonable delay  
 (a)-(c) (No change.)  
 (d) A copy of the second update letter sent 60 days after the date of receipt of notice of loss, and all thereafter sent to any New Jersey insured, shall be mailed simultaneously to the insured and the Division of Enforcement and Consumer Protection, 20 West State Street, CN 325, Trenton, New Jersey 08625.

11:3-20.3 Definitions  
 The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Insurer" means an entity authorized or admitted to transact private passenger automobile insurance business in New Jersey. Where an insurer is part of an insurance holding company system, insurer means each individual insurer within the insurance holding company system as defined in N.J.S.A. 17:27A-1 et seq. Insurer does not include any residual market mechanism for automobile insurance for the purposes of this subchapter.

11:3-22.3 Coverage option survey requirements  
 (a)-(b) (No change.)  
 (c) Completed coverage option survey forms shall be submitted to:  
 Director of Public Affairs  
 State of New Jersey, Department of Insurance  
 20 West State Street  
 CN 325  
 Trenton, New Jersey 08625

(d) (No change.)  
 (e) Insurers which act as servicing carriers for a residual market mechanism created by statute shall report directly to the Department only the coverage options selected by their voluntary policyholders. The options selected by residual market mechanism insureds shall be reported directly to the residual market mechanism.  
 (f) (No change.)

Form A  
 STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE  
 AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: \_\_\_\_\_

Total Number of Automobiles with Insurance Policy Coverage in Force as of December 31 or June 30, 19 \_\_\_\_\_

Options

	Number of Automobiles
PIP Coverages for Medical Expenses Only	_____
PIP Medical Expense Benefits Deductible:	_____
\$ 250	_____
500	_____
\$1,000	_____
\$2,500	_____
Excess of \$250,000	_____
Health Insurance Primary for PIP	_____
Auto Insurance Primary for PIP	_____
Tort Threshold	_____
Lawsuit Threshold	_____
No Threshold	_____

Form B  
STATE OF NEW JERSEY—DEPARTMENT OF INSURANCE  
AUTOMOBILE INSURANCE COVERAGE OPTION SURVEY

Company/Group: \_\_\_\_\_

Total Number of Automobiles with Insurance Policy Coverage in Force as of December 31 or June 30, 19 \_\_\_\_\_

PIP Option	Auto Insurance Primary Full PIP with		Auto Insurance Primary Medical PIP Only With		Health Insurance Primary Full PIP with	
	Lawsuit Threshold	No Threshold	Lawsuit Threshold	No Threshold	Lawsuit Threshold	No Threshold
\$250 deductible						
\$500 deductible						
\$1,000 deductible						
\$2,500 deductible						
Excess \$250,000						

11:3-23.1 Purpose

The purpose of this subchapter is to implement N.J.S.A. 17:29C-2.1 (P.L. 1985, c.520) which authorizes insurers in the voluntary market to refuse to issue or nonrenew physical damage coverages to drivers who are identified as dangerous drivers or drivers with excessive claims. The statute permits voluntary market insurers to issue physical damage coverages to drivers identified as dangerous drivers or drivers with excessive claims on the basis of their experience. N.J.S.A. 17:29C-2.1 requires that the Commissioner adopt standards and guidelines for the identification of dangerous drivers and drivers with excessive claims which take into consideration the total driving record of the driver including serious driving offenses and at-fault accidents occurring within a three-year period.

11:3-23.2 Scope

This subchapter shall apply to all insurers authorized to write private passenger automobile insurance in this State.

11:3-23.3 Definitions

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

...  
"Insurer" means an insurance company authorized to write private passenger automobile insurance in this State, including any residual market mechanism created by statute.

...  
"Voluntary market insurer" means an insurance company authorized to write private passenger automobile insurance in this State, except any residual market mechanism created by statute.

11:3-23.4 Availability of physical damage coverages for dangerous drivers or drivers with excessive claims

- (a) (No change.)
- (b) Any voluntary market insurer may issue or renew physical damage coverages for any policy covering a driver who is identified as a dangerous driver or driver with excessive claims pursuant to N.J.A.C. 11:3-23.5 at rates based on their experience and approved by the Commissioner. Any voluntary market insurer wishing to impose higher rates for physical damage coverage for dangerous drivers and drivers with excessive claims shall submit to the Commissioner filings of rates and manual rules prepared in accordance with N.J.S.A. 17:29A-1 et seq., N.J.A.C. 11:1-2 and any applicable insurance laws, rules and the Department's current filing procedures.
- (c) Any residual market mechanism created by statute shall issue physical damage coverages to its insureds identified as dangerous drivers and drivers with excessive claims pursuant to the requirements and procedures found in its Plan of Operation.

11:3-26.1 Claim information

(a) Notice of intention to make claim under N.J.S.A. 39:6-55 shall contain the following information:

- 1. The claimant's name, address \*[and]\*\*, date of birth \*and social security number\*;

2. The time and place of the accident, the municipality and county in which the loss occurred and the date of loss;

3. The identity of the operators and vehicles involved in the accident, including the name and address of the owner and operator and the license plate number of the vehicle;

4. (No change.)

5. A short description of the accident, including the claimant's role or position therein;

6. A description of the injuries then known, and attached thereto a medical certificate if then available. In any event the medical certificate shall be filed as soon as available;

7. A description of the damage sustained to property, and attached thereto an estimate of the cost of repairs if then available; and

8. The policy number of any insurance applicable to the accident, including the name and address of all insurance companies involved.

11:3-26.2 Claim filing; form

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

(c) A notice of intention to make a claim that does not contain the items identified in N.J.A.C. 11:3-26.1(a) through 8 shall be returned to the sender and deemed to be unfiled with the Unsatisfied Claim and Judgment Fund (UCJF) for the purpose of complying with N.J.S.A. 39:6-65. **\*A notice of intention which is deemed to be unfiled does not toll the statute of limitations.\***

11:3-28.5 Insurer's continuing obligation to investigate claims

(a) An automobile liability insurer shall be required to discharge its duty of investigating claims where the potential exposure to the insurer exceeds \$75,000. Said insurer's duty and obligation with regard to claim handling shall exist and continue to exist notwithstanding this rule. The Executive Director may direct such investigations as often as he or she deems necessary. All expenses relating to the investigation of claims, including expenses for medical examinations \*[and]\*\*, file maintenance \*and cost containment measures\*, are the responsibility of the automobile liability insurer.

(b) The failure to properly discharge the duty of investigating a claim may result in the imposition of a penalty, to be determined by the UCJF Board of Directors, against the insurer's request for reimbursement.

11:3-31.3 Definitions

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

...  
"Insurer" means an entity authorized or admitted to transact private passenger automobile insurance business in New Jersey. Where an insurer is part of an insurance holding company system, insurer means each individual insurer within that insurance holding system. Insurer does not include any residual market mechanism created pursuant to statute.

**(a)****DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION****Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing; Activities for Which a Person Must Be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative****Adopted Amendment: N.J.A.C. 11:17A-1.3**

Proposed: November 19, 1990 at 22 N.J.R. 3444(a).

Adopted: January 10, 1991 by Samuel F. Fortunato,

Commissioner, Department of Insurance.

Filed: January 10, 1991 as R.1991 d.52, **without change**.

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

Effective Date: February 4, 1991.

Expiration Date: January 2, 1995.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** Many insurers responded favorably to the Department's proposal to extend time allowed for compliance with N.J.A.C. 11:17A-1.3(e) one year from January 1, 1991 to January 1, 1992. They also expressed their position with regard to the merits of subsection (e). Only the Professional Insurance Agents of New Jersey (PIANJ) opposed further deferral of compliance with producer licensing requirements for company employees. PIANJ believes that any deferral should apply equally to employees of licensed producers; or, in the absence of equal treatment, no further extension should be granted. They urge that the entire question of "who must be licensed" be revisited during a year of deferral for both categories of employee, and that the Department grant the same treatment to both categories in any subsequent changes.

**RESPONSE:** The sole purpose of the one year deferral is to allow time for further deliberation and possible proposal by the Department of other amendments to N.J.A.C. 11:17A-1.3(e) before requiring compliance with the new provisions of this section which were adopted on December 6, 1989 and published on January 2, 1990 at 22 N.J.R. 30(b). The Department has no intention of deferring requirements of the rule that applied before and were not affected by the above-referenced revision. However, the Department will take into consideration all comments received on the merits in considering future proposals.

**Full text of the adoption follows.**

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

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

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

**LABOR****(b)****DIVISION OF INCOME SECURITY****Unemployment Benefit Payments****Readoption: N.J.A.C. 12:17**

Proposed: November 19, 1990 at N.J.R. 3445(a).

Adopted: January 4, 1991, by Raymond L. Bramucci,

Commissioner, Department of Labor.

Filed: January 4, 1991 as R.1991 d.46, **without change**.

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

Effective Date: January 4, 1991.

Expiration Date: January 4, 1996.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:17.**

**(c)****NEW JERSEY STATE BOARD OF MEDIATION Arbitration****Readoption: N.J.A.C. 12:105**

Proposed: December 3, 1990 at N.J.R. 3616(a).

Adopted: January 11, 1991, by Raymond L. Bramucci,

Commissioner, Department of Labor.

Filed: January 11, 1991 as R.1991 d.54, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:13A-1 et seq., specifically 34:13A-11.

Effective Date: January 11, 1991.

Expiration Date: January 11, 1996.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:105.**

**(d)****DIVISION OF WORKPLACE STANDARDS****Signs****Adopted Amendment: N.J.A.C. 12:196-1.10**

Proposed: November 5, 1990 at N.J.R. 3306(a).

Adopted: January 4, 1991, by Raymond L. Bramucci,

Commissioner, Department of Labor.

Filed: January 4, 1991 as R.1991 d.47, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A(e), and 34:3A-4 et seq., specifically 34:3A-11.

Effective Date: February 4, 1991.

Expiration Date: August 6, 1995.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

12:196-1.10 Signs

(a)1. (No change.)

2. **WARNING**—It is unlawful and dangerous to dispense gasoline or other flammable liquid into any portable container unless the container is constructed of metal or is approved and is red in color;

3.-4. (No change.)

**LAW AND PUBLIC SAFETY****(e)****DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ACCOUNTANCY****Fees; Sponsors of Continuing Professional Education****Adopted Amendment: N.J.A.C. 13:29-1.13**

Proposed: November 5, 1990 at 22 N.J.R. 3314(b).

Adopted: December 20, 1990 by the State Board of Accountancy,

Milton Brown, President.

Filed: January 11, 1991 as R.1991 d.55, **without change**.

Authority: N.J.S.A. 45:2B-9 and 38.

Effective Date: February 4, 1991.

Expiration Date: May 23, 1995.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of adoption follows.

13:29-1.13 Fees

(a) (No change.)

(b) Entities filing an application to become Sponsors of Continuing Professional Education shall pay a fee of \$100.00 for administrative costs and evaluation of programs submitted.

1. Sponsor fees shall be charged on a biennial basis on the first business day of each even numbered year.

**(a)**

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS**

**Delegation of Tasks to Physician Assistants**

**Adopted New Rule: N.J.A.C. 13:35-6.15**

**Proposed:** July 16, 1990 at 22 N.J.R. 2135(b).

**Adopted:** December 26, 1990, by the State Board of Medical Examiners, Michael B. Grossman, D.O., President.

**Filed:** January 11, 1991 as R.1991 d.56, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

**Authority:** N.J.S.A. 45:9-2.

**Effective Date:** February 4, 1991;

**Operative Date:** May 12, 1991.

**Expiration Date:** September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:35-6.15, relating to the delegation of tasks to physician assistants. The proposed regulation was published in the New Jersey Register on July 16, 1990 at 22 N.J.R. 2135(b) together with announcement of a public hearing to be held on August 15, 1990. Announcements of the opportunity to respond to the Board were also forwarded to the Trenton Times, the Star Ledger, the Camden Courier Post, the Medical Society of New Jersey, the New Jersey Hospital Association, the New Jersey Chiropractic Society, the New Jersey Association of Osteopathic Physicians and Surgeons, the Department of Health, the American Academy of Physician Assistants, the New Jersey Nurses Association, the New Jersey Society of Physician Assistants, the New Jersey State Board of Nursing and to various additional professional groups, practitioners and other interested parties. The official comment period ended on August 15, 1990.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608.

**Summary of Public Comments and Agency Responses:**

Twenty-nine speakers were scheduled to give testimony at the public hearing held on August 15, 1990; an additional seven commenters were recognized by Fred Jacobs, M.D., who served as the hearing officer during the hearing. In all, 36 witnesses were heard. (A list of witnesses may be obtained from the Board of Medical Examiners.) Nine witnesses testified in opposition to the proposed rule and 27 witnesses testified in support of the proposed rule. In addition, during the 30-day comment period, 46 letters were received. Nineteen commenters (including five who spoke at the public hearing) expressed opposition to the rule and 27 commenters (including 10 who spoke at the public hearing) expressed support for the rule.

Based upon a careful review of the public comment received as well as consideration of supplementary documentary submissions, as more fully described below, the Board of Medical Examiners, at its meeting of December 12, 1990, voted to adopt the proposed rule without change. Following is an excerpt of the hearing examiner's report of the Physician Assistant Hearing held on August 15, 1990 as well as a summary of the written comments received and the Board's responses thereto.

**I. REPORT OF HEARING EXAMINER**

As a threshold issue, two speakers, one a representative of the Medical Society of New Jersey, the other a State Senator, raised questions as to the Board's authority to promulgate the regulation under consideration. It was suggested that because the legislature has on several occasions declined to pass upon pending legislation which would authorize physician assistants, the Board should be foreclosed from pursuing this regulatory initiative. These witnesses also noted that legislation is presently pending which would prohibit a state agency from registering or certifying physician assistants. (Of course, neither activity is contemplated by the terms of this rule.) Both argued that recognition of physician assistants demands a legislative approach, suggesting that such statutory authority exists in all the jurisdictions permitting physician assistants, save Mississippi.

While the ultimate enactment of legislation authorizing physician assistants may be desirable, the regulation under consideration here allows for the establishment of a track record, in structured settings where an appropriate evaluative process can be undertaken. Consistent with the advice of the Attorney General's Office, this rule permits doctors to delegate tasks to persons who have attained certain training. Supplementary submissions show that in a number of states where physician assistants have been statutorily recognized, legislation was preceded by experience, as is contemplated here. Many states have apparently allowed physician assistants to work under the supervision of physicians before enabling legislation was passed. In some cases, this is noted to have continued for more than fifteen years. Other states reportedly sought regulatory enactments prior to legislative action.

Critics have also suggested that the Attorney General's Opinion has been undercut by the passage of legislation which identified certain physical modalities delineated at N.J.A.C. 13:35-6.14 which can no longer be performed by unlicensed aides under a doctor's supervision. Since the activities delineated in the legislation are distinct from those set forth in the regulation under consideration here, the enactment of this statute poses no impediment to the physician assistant initiative. Until advised otherwise by the Attorney General, the Board should assume that it possesses the authority to promulgate the rule under consideration.

In addition to the opposition of the Medical Society of New Jersey and of a member of the State Senate, opposition was also expressed by a representative of the Essex County Medical Society, whose arguments were essentially the same as those noted above but who felt, in addition, that physician assistants would compromise the quality of care given to the citizens of New Jersey and that nurses specifically trained as nurse practitioners would be a more appropriate answer to any perceived shortage problems. This representative also noted that New Jersey had excellent access to medical care compared with other states but did not counter the arguments of the Department of Health, Department of Corrections, and the Department of Human Services, who asserted the need for the kind of assistance provided by this class of practitioners.

Nurses, as a group and as represented by organizations such as the New Jersey State Board of Nursing, the Association of Operating Room Nurses of New Jersey, the Organization of Nurse Executives of New Jersey, and the New Jersey State Nurses Association, all spoke in opposition to the proposed regulation. These opponents generally felt that there was no need for an additional class of health care provider which would be interposed between the physician and nurse. In addition, they questioned the clinical ability of physician assistants as opposed to nurses in similar roles. The Association of Operating Room Nurses additionally argued for the provision for nurse first assistants in the operating room. This, of course, is beyond the scope of the present regulation and is the subject of a regulation already in effect by the Board of Medical Examiners. One additional opponent representing the Communication Workers of America, AFL/CIO Local 1040, mentioned that physician members of his union did not want to assume the responsibilities which would be shouldered by them in supervising services rendered by physician assistants.

Thus it may be summarized that the opponents to the proposed legislation asserted legal challenges to the Board's authority and philosophical opposition to the interposition of a new class of health care provider performing functions that the nurses feel could be best performed by them. In addition, one group of organized labor felt that it was unacceptable to ask their physician members to assume the responsibility for supervising physician assistants.

As opposed to the nine witnesses who testified against enactment of the proposed rule, but who demonstrated a total lack of personal experience with the education or practice of physician assistants, the many

supporters of the rule brought to the discussion a widely varied background in the education and proposed practice of physician assistants in various aspects of the New Jersey health care delivery system. Organizations in support of the proposed regulation include the New Jersey Hospital Association, the University of Medicine and Dentistry of New Jersey, the New Jersey State Department of Health, the American College of Surgeons New Jersey Chapter, the Deborah Heart and Lung Center, the Robert Wood Johnson University Hospital, University Hospital, Newark, New Jersey, the Cooper Hospital University Medical Center, the Department of Human Services of the State of New Jersey, the American Academy of Physician Assistants, as well as many individual physicians, nurses and physician assistants.

The three original petitioners to the Board of Medical Examiners included the New Jersey State Society of Physician Assistants (a member of the American Academy of Physician Assistants), the University of Medicine and Dentistry of New Jersey, and the Chairman of the Department of Surgery of Morristown Memorial Hospital. The University of Medicine and Dentistry operates a training program for physician assistants in New Jersey and has done so for approximately fifteen years. The testimony from representatives of the University outlined the history of the program, the educational and philosophical foundation for the curriculum employed in the school, as well as the characteristics of the graduates and the demand for their services. In addition, there was testimony from a representative of the New Jersey Department of Human Services which reasserted the Department's prior testimony concerning the need for physician assistant personnel in many of its institutional programs. The Department noted that it faced shortages in health care personnel and that physician assistants would help fill this need. The Department also felt that the use of physician assistants would be cost effective and asked for further expansion of the proposed regulation to enable the program to work more effectively in the institutions regulated by the Department. The University Hospital was represented by the Vice President and Chief Executive Officer who testified that his experience with physician assistants in New York City at a major teaching hospital convinced him that they provided a needed source of health manpower and that quality of care could be improved by utilizing physician assistants in what he referred to as the "front lines of urban health care in New Jersey." It was argued that the respect and responsibility earned in 49 other states have indicated that physician assistants can make a significant contribution to the health and well-being of New Jersey citizens. The Cooper Hospital Medical Center provided testimony that physician assistants could be used to alleviate the shortage of health care providers at a significantly lower cost by allowing residents and fellows to more efficiently use their educational experience without being overburdened by routine technical work which could be effectively and efficiently performed by physician assistants. They also asserted that physician assistants would be able to provide house calls for ambulatory care center patients and, when necessary, home visits for the indigent homebound elderly. Of course, the present proposed regulation does not envision these particular services being performed at this time and it must be assumed that the representative of the Cooper Hospital University Medical Center was looking towards a possible future expansion of the program in making these statements. Similar testimony was offered by representatives of the Deborah Heart and Lung Center, Robert Wood Johnson University Hospital, and the Chief of the Department of Emergency Medicine and Ambulatory Care at Kings County Hospital Center in Brooklyn, New York. This latter witness had extensive experience in working closely with physician assistants in this large urban health care environment and testified as to their effectiveness and efficiency. The Department of Health of the State of New York representative testified that "physician assistants have an excellent record of providing high quality care to thousands of New Yorkers."

The American College of Surgeons, New Jersey Chapter, particularly emphasized the role of physician assistants as surgical assistants in the operating room acting as first assistants where physicians are not otherwise required or as second assistants in other surgical procedures freeing physician time for other purposes. In addition, the Cardiac Surgical Services, as represented by the chief cardiac surgeon at Morristown Memorial Hospital, strongly supported the concept of physician assistants for use in limited surgical procedures such as vein harvesting during coronary bypass surgery as well as other support services on a surgical service. The information provided by the chairman of the department of surgery at Morristown Memorial Hospital indicated that various polls taken since 1988 by the New Jersey Chapter of the American College of Surgeons have indicated that there has been very substantial support

throughout the New Jersey surgical community and especially in the cardiac surgical community for the use of physician assistants.

Several nurses practicing out of the state testified as to their experience with and support of physician assistant practice. Additionally, nurses within the state as individuals testified as to their strong support for the physician assistant rule. There was in addition testimony from physician assistants themselves. One testified as to the role of physician assistants in the military and on the White House Health Care Team. A letter of support from former President Ronald Reagan was introduced, as well as a letter from President George Bush. Other physician assistants trained in New Jersey but practicing out of state also spoke as to what they considered to be the excellence of their medical training and their willingness and desire to return to and work in their native state. As a group, the supporters of the physician assistant's rule consisted of people who had direct and personal experience with physician assistant practice as well as a longstanding and direct involvement in physician assistant education. This distinction between the supporters and opponents of the regulation concerning personal experience with physician assistants was pointed out by the present medical director of the Rutgers University/University of Medicine and Dentistry of New Jersey Physician Assistant Program. The Department of Health, State of New Jersey, testified that they have supported the use of physician assistants since 1973. They noted that every state but New Jersey has licensed physician assistants and that the New Jersey Cardiac Services Task Force recommended licensure of physician assistants in 1987. Several public hearings were held following this recommendation but nothing had been accomplished with regard to enactment of physician assistant rules. They assert that physician assistants are a "nationally recognized group of health professionals with a proven track record."

#### The Hearing Officer's Recommendation

As the appointed hearing officer for this public hearing, I have carefully reviewed the contents of the testimony of the 36 witnesses who appeared either in support of, or in opposition to, the proposed regulation. I have reviewed, as well, supplementary documentary submissions, as well as the recent report of the Governor's Commission on Health Care Costs. I remain convinced that the proposed regulatory initiative is in the best interest of patients in the State of New Jersey in that it will provide an appropriate mechanism to evaluate and recognize the contribution which physician assistants can make in the delivery of health care in this State. Proponents have identified numerous advantages that can be achieved through recognition of physician assistants. First, it can be anticipated that physician assistants will bring quality medical care into presently underserved areas, especially those in state institutions. I note with interest that the recently released report of the Governor's Commission on Health Care Costs at page 29 recommends that physician assistants should be considered for licensure in New Jersey. The Commission notes: "Forty-nine states currently license physician assistants. Only New Jersey does not though it is the home to one of the nation's finest physician assistant training programs. Physician assistants have the potential to increase access to needed services in medically underserved areas." The Commission, like many of the speakers, also recognized the potential health care costs savings which might be achieved. In reference to the Medicaid program, the Commission noted: "Whenever possible, the use of non-physician providers such as nurse practitioners and physician assistants will also be increased in a variety of service settings. These professionals have the ability to deliver high quality care at a much lower cost. Nurse-practitioners have already been successful in the school-based centers. Physician assistants have practiced in a number of settings in 49 other states and should soon be able to practice in New Jersey. The legislative branch should review the possible establishment of separate licensure guidelines for both nurse-practitioners and physician assistants." Physician assistants like nurse-practitioners can be utilized to address shortages which exist now and can be anticipated to grow in the future. As noted by several speakers, the recognition of physician assistants also provides opportunities for citizens of New Jersey to serve the public in this State after having received training at a New Jersey sponsored school. It also provides the taxpayers of this State with an appropriate return on their education dollars.

In reviewing the arguments presented in opposition to the regulation, I find no evidence to support the position that there would be a diminution in the quality of care provided to patients in this State. Indeed, it has been suggested by some speakers that the infusion of physician assistants into the health care delivery system would provide prompt care by persons who may be more willing to spend time in assuring that

patients are properly educated. In reviewing the testimony, I note that there is a persistent argument that nurse-practitioners are better suited to meet the needs that have been identified. I do not suggest that nurse-practitioners should be foreclosed from performing an enhanced role since they obviously are well respected and capable. I do not envision this as an either/or situation, however. A number of physicians and nurses testified concerning their experiences in working together with physician assistants. They noted that the skepticism of one group for another dissipates and is replaced by respect as professionals pursue their common goal of providing the best quality patient care. It is my hope that this proposed rule will be the first step towards achieving that goal and, accordingly, I urge the Board to adopt the regulation as proposed.

## II. SUMMARY OF WRITTEN COMMENTS AND AGENCY RESPONSES:

Nineteen comments opposing the rule were received, including comments from five individuals who spoke at the public hearing. The commenters included eight nurses, the New Jersey Board of Nursing, representatives of five medical societies, a representative of the Communications Workers of America, one physician, a representative of the New Jersey Senate, a representative of the New Jersey Assembly, and a representative of the New Jersey Optometric Association. With the exception of the latter organization, the commenters expressed objections similar to those raised at the public hearing, all of which objections have been discussed in detail above.

The New Jersey Optometric Association raised the following more specific objections to the proposal.

**COMMENT:** The Association stated first that the proposed rule fails to meet the specificity requirements of the Attorney General's Opinion on delegation in that it does not state the number of physician assistants that can be adequately supervised by one physician nor does it define program monitoring procedures.

**RESPONSE:** The Board points out that specific supervision ratios were not established by rule in order to allow for flexibility within each institutional setting. Applications for program approval will be reviewed and considered by a Board committee, which the Board expects will acquire sufficient information about each applicant to make an informed decision as to the appropriate ratio in each case. With regard to program monitoring, the Board recognizes the value of consultants and, as stated in the rule, expects to seek the assistance of independent consulting panels in evaluating the continued appropriateness of a program.

**COMMENT:** Another concern which the Association expressed was that although N.J.A.C. 13:35-6.15(d) stated that in no case may a physician assistant prescribe, administer or dispense medication without the supervising physician's order or direction, paragraph (d)3 states that physician assistants may be delegated such tasks as "giving injections, administering medications . . . which are specified in a protocol approved by the program director." The Association asserts that it is therefore unclear as to whether a physician assistant may prescribe, administer or dispense medications without an express order.

**RESPONSE:** The Board points out that the written protocol is one way in which a physician may give an express order and believes the rule is sufficiently clear in that regard; that is, that a physician assistant may give injections or administer medications pursuant to the supervising physician's express order or direction, which order or direction may be contained in the protocol.

**COMMENT:** With regard to post-operative care, the Association stated its opinion that the rule is less restrictive than that recently proposed by the Board with respect to post-operative care of patients who have undergone ophthalmic surgery. The Association therefore recommended that the Board retract its rule proposal on ophthalmic surgery.

**RESPONSE:** The Board points out that the rule referred to by the Association has never formally been proposed and that any comments about that rule are more appropriately made if and when it is formally proposed. In any event, the Board wishes to stress that it in no way intended the physician assistant initiative to diminish the surgeon's responsibility for post-operative care.

**COMMENT:** An additional concern expressed by the Association was that the proposed rule vests excessive and inappropriate powers in the program director, particularly in regard to the director's ability to suspend or revoke program participation privileges of physicians and physician assistants.

**RESPONSE:** The Board does not foresee problems in this regard. However, the purpose of the physician assistant initiative is to establish a track record in structured settings where an appropriate evaluation

process can be undertaken. Through this evaluation process the Board will be apprised of and can remediate any problems which arise in the initial implementation of the rule.

**COMMENT:** Finally, the Association voiced its strong objection to the fact that the rule does not include language to clarify that physician assistants are neither intended nor permitted to practice allied health care professions.

**RESPONSE:** The Board did not intend through this initiative to permit a physician assistant to perform the functions or duties of any allied health care profession, but rather, as stated in the rule proposal, the Board seeks to allow its licensees to avail themselves of the opportunity to delegate certain tasks to qualified physician assistants, subject to strict supervision. The requirement set forth in N.J.A.C. 13:35-6.15(b)4 that the program director submit for board approval a written delineation of the tasks delegable to physician assistants will assure that the physician assistant will function within the parameters set forth in N.J.A.C. 13:35-6.15(d). Furthermore, under N.J.A.C. 13:35-6.15(g) and (h), both the physician assistant and the supervising physician will have their participation privileges suspended if the physician assistant with the physician's knowledge engages in activities or tasks beyond the scope of those permitted by this rule.

Letters expressing support for the proposed rule were received from 27 commenters, many of whom stated they had previously worked with or been cared for by physician assistants. These commenters included 14 physicians, representatives of four hospitals, the New York Department of Health, the New Jersey Department of Human Services, and other individuals who recommended adoption of the rule. Four of these commenters, while expressing general support for the proposal, raised the following concerns.

**COMMENT:** One physician stated his belief that physician assistants will be unable to function optimally unless the physician's counter-signature on orders is permitted within 24 hours, rather than prior to execution of the orders.

**RESPONSE:** The Board acknowledges this concern. However, this initiative has been structured so as to ensure that the public is protected during a program's pilot period, and thus no change in this regard is appropriate.

**COMMENT:** Another physician stated that the Board should consider general guidelines for a charge structure for physician assistant services.

**RESPONSE:** In response to the commenter's suggestion that setting a range of charges based on a percentage of the physician's fee would avoid antitrust issues, the Board points out that it does not set fees.

**COMMENT:** The Department of Human Services stated its concern that not allowing graduates of physician assistant programs outside New Jersey to work in New Jersey prior to passing the examination will limit the number of available physician assistants.

**RESPONSE:** The Board acknowledges this concern but remains hopeful that there will be an adequate pool of qualified physician assistants available for employment in New Jersey.

**COMMENT:** Finally, a physician expressed the concern that physician assistants would be limited in their ability to do routine histories and physicals.

**RESPONSE:** The Board points out in response that except as may be set forth in a program's protocol, a physician assistant may take patient histories and perform routine physicals, as specified in N.J.A.C. 13:35-6.15(d)1. The Board does not anticipate that physician assistants will be limited by protocol from performing these functions.

### Summary of Technical Changes Made upon Adoption:

Subsections (h) through (k) were inadvertently identified as (i) through (l) in the proposal. Amendments have been made upon adoption to correctly codify these subsections. In addition, the actual operative date of the rule (May 12, 1991) has been added to subsection (k), as recodified.

**Full text** of adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

#### 13:35-6.15 Delegation of tasks to physician assistants

(a) A physician participating in a physician assistant program that is sponsored by an eligible institution, meets the criteria set forth in (b) below, and is approved by the Board, may direct and supervise an agreed upon number of physician assistants who meet the qualifications set forth in (c) below in the performance of tasks as delineated in (d) below but only at the sponsoring entity after appropriate notice has been provided to patients as required by (e) below, and only so

long as the delegated tasks are within the protocol, training and experience of both the physician and the physician assistant.

(b) In order to be approved by the Board pursuant to (a) above, a physician assistant program shall:

1. Complete such application as the Board may require;
2. During the first year following the implementation of this rule, be sponsored by a hospital licensed by the New Jersey State Department of Health which has established one or more accredited post-graduate training programs in a clinical department (such as internal medicine, pediatrics, surgery, obstetrics and gynecology or family practice) or by an institution, facility or program regulated by the New Jersey State Department of Human Services or at an infirmary within a correctional facility regulated by the New Jersey State Department of Corrections, which sponsoring entity will employ physician assistants. During the second year following the implementation of this rule, the Board in its discretion may review and approve applications from licensed hospitals which do not maintain training programs;
3. Have a designated director who is a plenary licensed physician in good standing in this State, with supervisory experience, who shall have a continuing responsibility to provide the Board with the names, license numbers and qualifications of all participating supervising physicians as well as the names and addresses of those participating physician assistants meeting the qualifications set forth in (c) below and any updates on such lists as may be necessary. In advance of such designation, the sponsoring entity shall submit to the Board a copy of the proposed director's *curriculum vitae* for its review and approval;
4. Establish a written delineation of the tasks delegable to physician assistants which is consistent with (d) below, a written protocol setting forth the supervising physician's responsibilities and a specific ratio of physicians to physician assistants (or physician assistants to physicians) applicable to that setting in accordance with (f) below and a mechanism for the revocation of the privilege of participating in the program in accordance with (g) and (h) below, all of which shall be acceptable to the Board;
5. Establish a method for the continuing and ongoing evaluation of the program, supervising physicians and participating physician assistants. Programs sponsored by entities regulated by the Department of Corrections and the Department of Human Services shall establish a collaborative relationship with a clinical department within a licensed hospital which will supervise and assist in an evaluative process on a regular periodic basis;
6. File periodic reports with the Board providing such information as the Board may require; and
7. Cooperate with the Board or any independent consulting panel which the Board may choose to appoint in order to evaluate the continued appropriateness of the program.

(c) In order to be qualified pursuant to (a) above, a physician assistant shall have submitted to the director of the program the following. The program director shall secure and maintain all proofs required under this subsection and make these proofs available to the Board upon request.

1. An application for participation in the entity's program which shall be supported by an affidavit of good moral character;
2. Proof of successful completion of a curriculum for the education and training of physician assistants or surgeon assistants, approved by the American Medical Association Committee on Allied Health Education and Accreditation; and
3. Proof of certification by the National Commission on Certification of Physician Assistants ("NCCPA"); or
4. In the case of persons having graduated from a program for the education and training of physician assistants in New Jersey, proof that an application has been made to take the next examination scheduled by the NCCPA or proof that the examination has been taken and results are forthcoming. Failure of that examination shall disqualify the physician assistant from continued participation in a program, until such time as he or she has received certification from NCCPA.

(d) The tasks which are delegable pursuant to (a) above subject to the supervision as required by (f) below are as follows. In no case

may a physician assistant prescribe, administer or dispense medication without the supervising physician's order or direction.

1. Obtaining and recording of case histories, performing an appropriate preliminary physical examination (which shall not include rectal, pelvic or breast examinations unless expressly specified in the program protocol), presenting the resulting data to the physician and making pertinent progress note entries. All entries by a physician assistant in the clinical record should be appropriately signed and followed by the designation "P.A.". Such histories and physicals performed by a physician assistant shall not be a substitute for that required of the physician as part of an admitting process;
  2. Performing non-invasive laboratory procedures and related studies or assisting licensed personnel in the performance of invasive laboratory procedures and related studies;
  3. Giving injections, administering medications, and requesting diagnostic studies which have been ordered, prescribed or directed by the supervising physician or are specified in a protocol approved by the program director (which shall not include intravenous injections or medications unless specified in the program protocol);
  4. Suturing and caring for wounds including removing sutures and clips and changing dressings, except that physicians may not delegate to physician assistants the care of facial wounds or traumatic wounds requiring suturing in layers or infected wounds and shall in all cases retain the responsibility for post-operative care;
  5. Providing patient counseling services and patient education consistent with orders made by the supervising physician;
  6. Assisting the supervising physician in delivery of services to patients, including recording progress notes, requesting non-invasive diagnostic studies (that is, studies that do not involve the physical penetration of the body for the purpose of the study, except for routine administration of intravenous fluids) transcribing or executing studies, transcribing or executing specific orders at the direction of the supervising physician, recording detailed narrative case summaries; and
  7. Assisting a supervising surgeon in the operating room when a qualified first assistant surgeon is not required pursuant to N.J.A.C. 13:35-4.1.
- (e) Before any tasks as set forth at (d) above may be undertaken by a qualified physician assistant, the patient shall have been notified verbally (and if appropriate by supplemental printed material) that the physician assistant:
1. Is not a physician; in addition, the physician assistant shall conspicuously wear an identification tag which uses the term "physician assistant";
  2. May perform services delegated and directed by the supervising physician; and
  3. Will notify the supervising physician if the patient elects to be treated directly by the physician.
- (f) Any participating physician may delegate specific tasks consistent with (d) above to a qualified physician assistant, so long as the physician:
1. Is in good standing with the Board and possesses unrestricted privileges at the sponsoring institution and a knowledge of pertinent regulations;
  2. Maintains proper supervision in the form of direct continuing presence or intermittent presence while on site, with constant accessibility through electronic communication;
  3. Engages in active and continuing overview of the activities of the physician assistant to ensure that delegated tasks are being implemented, such as would be provided through the personal and regular review of patient records and periodic education and review sessions during which specific conditions, protocols, procedures and patients are discussed;
  4. Establishes written transport and back-up procedures to be implemented when the supervising physician is not on the premises to provide for immediate care of patients needing emergency care beyond the physician assistant's scope of practice;
  5. Countersigns all chart entries documenting his or her direction; test and treatment orders shall be countersigned within 24 hours;
  6. Confirms in writing, to the director of the program, that he or she is professionally and legally responsible for all of those services rendered by physician assistants under his or her direction; and

## ADOPTIONS

7. Complies with program protocols as to applicable ratios of physicians to physician assistants which are to be designed to ensure that each supervising physician will have sufficient experience with an assigned physician assistant to adequately evaluate his or her work.

(g) The director of an approved program shall give notice to the Board and immediately revoke or suspend the privilege of any physician assistant participating in the program if the director has information indicating that the physician assistant:

1. Has obtained certification through fraud, deception or misrepresentation;

2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

3. Has engaged in gross negligence, gross malpractice or gross incompetence or repeated acts of malpractice, negligence or incompetence;

4. Has been convicted of a crime or has pleaded guilty, *non vult*, or *nolo contendere* to a crime or any other offense which relates adversely to the physician assistant's delegated activities;

5. Has had his or her authority to engage in the activities of a physician assistant revoked, suspended, rescinded or limited by any other state, agency or authority;

6. Is incapable of discharging the functions assigned by the supervising physician;

7. Has exhibited any behavior or engaged in any conduct reasonably demonstrating a mental impairment or substance abuse; or

8. Has engaged in activities or performed tasks without physician direction and supervision, beyond the scope of those permitted herein or beyond the abilities, experience or training of the physician assistant or the supervising physician.

\*[(i)]\* \*(h)\* The director of an approved program shall give notice to the Board and immediately revoke or suspend the privilege of any supervising physician participating in the program if the director has information indicating that the physician, in the course of performing responsibilities as a supervisor:

1. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

2. Has engaged in gross negligence, gross malpractice or gross incompetence or repeated acts of malpractice, negligence or incompetence;

3. Has been convicted of a crime or has pleaded guilty, *non vult*, or *nolo contendere* to a crime or any other offense which relates adversely to the physician assistant's delegated activities;

4. Has had his or her license or authority to practice revoked, suspended, rescinded or limited by any other state, agency or authority;

5. Is incapable of discharging the functions as a supervising physician;

6. Has exhibited any behavior or engaged in any conduct reasonably demonstrating a mental impairment or substance abuse; or

7. Has allowed or permitted a physician assistant to engage in tasks without physician direction and supervision, beyond the scope of those permitted under this rule or beyond the abilities, experience or training of the physician assistant or the supervising physician.

\*[(j)]\* \*(i)\* The director shall not reinstate any revoked participant without the approval of the Board.

\*[(k)]\* \*(j)\* Any physician who delegates tasks to a person not in accordance with the requirements set forth in this rule or who allows a physician assistant to perform tasks in violation of (d) above

## OTHER AGENCIES

shall be deemed to have engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e).

\*[(l)]\* \*(k)\* This section shall be operative \*[six months after the date of adoption]\* \*May 12, 1991\*. Two years following that operative date, the Board shall determine after study and consultation with such experts as it may deem warranted whether the program established pursuant to this rule should be continued, altered or expanded.

## OTHER AGENCIES

### (a)

#### CASINO CONTROL COMMISSION

#### Notice of Administrative Correction Procedures for Transportation Expense Reimbursement

#### N.J.A.C. 19:45-1.9A

Take notice that the Casino Control Commission has discovered an error in the adopted text of an amendment to N.J.A.C. 19:45-1.9A(d)10 as published in the December 17, 1990 New Jersey Register at 22 N.J.R. 3764(a).

In the original proposal document filed with the Office of Administrative Law (OAL), PRN 1990-480, the paragraph's statement in quotes reads, in pertinent part, "... receipts which I (have provided) (will provide) ..." with the boldface text signifying proposed additions to the then-current rule text. However, in the publication of the proposal, the added parentheses around "have provided" were misprinted as brackets ([have provided]), signifying proposed deletion of the text. The adoption of the proposed amendment was filed with OAL as being "without change" from the proposed text; therefore, paragraph (d)10 was published in the notice of adoption with the words "have requested" deleted.

Because the proposed and adopted text does not conform to the Commission's filed documents, the Commission has requested the addition of the erroneously deleted text through this notice of administrative correction. Because the addition of the missing text does not substantively change the rule's requirements and is in keeping with the amendment's purpose as a whole, the OAL agreed to permit the requested change.

This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

19:45-1.9A Procedures for transportation expense reimbursement

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

(d) Vouchers shall be manually prepared or computer generated and shall contain, at a minimum, the following information:

1.-9. (No change.)

10. The patron's signature, indicating acknowledgment of the following statement which shall be included on the Voucher: "I affirm that the expenses for which I am seeking reimbursement are supported by genuine tickets, invoices or receipts which I (**have provided**) (will provide) to (insert name of licensee) and I have not received reimbursement for these expenses from any other source. I am aware that this Voucher is required to be prepared by the regulations of the Casino Control Commission and I may be subject to civil or criminal liability if any material information provided by me is willfully false."

(e)-(i) (No change.)

# PUBLIC NOTICES

## EDUCATION

(a)

### THE COMMISSIONER

#### Notice of Public Hearings State Plan for the Education of Children with Educational Disabilities

**Take notice** that the New Jersey Department of Education, Division of Special Education will receive public comment on the State Plan under the Education of Individuals with Disabilities Act for fiscal years 1992 through 1994. This revision is a required, three-year submission under the Act. The Federal Office of Special Education and Rehabilitative Services (OSERS) in the United States Department of Education must approve the State Plan prior to authorizing Part B funds for special education services to the state of New Jersey.

**Copies** of the 1992-1994 State Plan may be obtained from the 21 offices of the county superintendents of schools. Appendices are available for review at the Division of Special Education, 225 West State Street, Trenton, New Jersey. If you wish to review the appendices, contact Erin Hillary Leff, Esq. at the address/telephone below.

**Interested agencies**, organizations and individuals are invited to comment on the proposed State Plan, to suggest improvements in the administration of the program and/or to allege a failure to comply with applicable statutes and/or regulations.

**The public comment period** on the State Plan is March 25, 1991 to April 25, 1991. Public hearings will be held from 4:00 P.M. to 6:00 P.M. as follows:

April 8, 1991  
Learning Resource Center—South  
EIRC, 700 Hollydell Court  
Sewell, New Jersey 08080  
(609) 582-7000

April 9, 1991  
Learning Resource Center—North Satellite  
322 American Road  
Morris Plains, New Jersey 07950  
(201) 539-0331

April 10, 1991  
Learning Resource Center—Central  
Old Bridge Centre Professional Bldg.  
1405 Route 18  
Old Bridge, New Jersey 08857  
(908) 679-8252

April 11, 1991  
Learning Resource Center—North  
240 South Harrison Street, 6th Floor  
East Orange, New Jersey 07018  
(201) 266-8665

These hearings are not in relation to the Plan to Revise Special Education in New Jersey. Public comment on the Plan to Revise will be taken in separate hearings.

**If you wish to comment** on the proposed State Plan, you may request an opportunity to testify or you may send your written comment to:

Erin Hillary Leff, Esq.  
Division of Special Education  
225 West State Street  
CN 500  
Trenton, New Jersey 08625  
(609) 292-5894

The State Plan will be revised following a review of the public comments. It will be submitted to OSERS on or about May 1, 1991.

## ENVIRONMENTAL PROTECTION

(b)

### DIVISION OF WATER RESOURCES

#### DIVISION OF SOLID WASTE MANAGEMENT DIVISION OF ENVIRONMENTAL QUALITY

#### Notice of Receipt of Petition to Amend N.J.A.C. 7:14-4 to Adopt Sludge Quality Management Regulations

Petitioner: Public Interest Research Group.

**Take notice** that on December 18, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of the regulations related to sludge quality assurance.

The petitioner requests that the Department amend the regulations related to the sludge quality assurance at N.J.A.C. 7:14-4 to require all sludge produced by Publicly Owned Treatment Works to produce high quality sludge, to ban incineration of sludge and to delineate permitted uses of high quality sludge.

(c)

### DIVISION OF WATER RESOURCES

#### Amendment to the Upper Delaware Water Quality Management Plan Public Notice

**Take notice** that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Alexandria Township (Township), Hunterdon County. Several wastewater treatment plants are proposed. On-site groundwater disposal treatment facilities are proposed for the Crescent Hill Estates and The Hamlet at Alexandria residential developments. Treatment facilities utilizing groundwater discharge are proposed for the Pittstown, Little York, Alexandria Field, Sky Manor Airport, and the southern area of the Township along Routes 513 and 619. A surface water discharge facility is proposed for the Everittstown area. Remaining portions of the Township are designated to be served by non-surface discharge facilities having design capacities of less than 2,000 gallons per day.

**This notice** is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 Bureau of Water Quality Planning at (609) 633-7026.

**Interested persons** may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested persons** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

## (a)

**DIVISION OF WATER RESOURCES**  
**Amendment to the Lower Raritan/Middlesex County**  
**Water Quality Management Plan**  
**Public Notice**

**Take notice** that an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan has been proposed. This amendment would identify a discharge to groundwater treatment facility proposed to serve Phase I of the Einstein Center commercial development. Phase I consists of Lots 17.03, 17.07 and 17.09 of Block 11.01 in Franklin Township, Somerset County.

**This notice** is being given to inform the public that a plan amendment has been developed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901, and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Middlesex County will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on March 7, 1991, at 8:00 P.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey. **Interested persons** may submit written comments on the amendment to Mr. William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above. All comments must be submitted by the date of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this amendment request. In addition, if the amendment is adopted by Middlesex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Middlesex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

## (b)

**DIVISION OF WATER RESOURCES**  
**Amendment to the Lower Raritan/Middlesex County**  
**Water Quality Management Plan**  
**Public Notice**

**Take notice** that an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan has been proposed. This amendment would identify a discharge to groundwater treatment facility proposed to serve the Trap Rock Industries administration facilities in Franklin Township, Somerset County.

**This notice** is being given to inform the public that a plan amendment has been developed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901, and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, 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 either the Bureau of Water Quality Planning at (609) 633-7026 or the Middlesex County Planning Board at (201) 745-3016.

Middlesex County will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Thursday, March 7, 1991, at 8:00 P.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey. Interested persons may submit written comments on the amendment to Mr. William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above. All comments must be submitted by the date of the public hearing. **All comments** submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this amendment request. In ad-

dition, if the amendment is adopted by Middlesex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Middlesex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

## HEALTH

## (c)

**DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH**  
**ENVIRONMENTAL PROTECTION**  
**DIVISION OF ENVIRONMENTAL QUALITY**  
**LABOR**  
**DIVISION OF WORKPLACE STANDARDS, AND**  
**OFFICE OF COMPTROLLER, FINANCE AND**  
**ACCOUNTING**  
**RIGHT TO KNOW ADVISORY COUNCIL**  
**Notice of Public Hearing**  
**Worker and Community Right to Know Act**

**Take notice** that, pursuant to the "Worker and Community Right to Know Act", N.J.S.A. 34:5A-1 et seq., the Department of Health, Department of Environmental Protection and Department of Labor, in conjunction with the Right to Know Advisory Council, will hold a public hearing to receive information, advice, testimony, and recommendations from the public concerning the implementation of the Act, as follows:

Friday, March 8, 1991  
 10:00 A.M. to 5:00 P.M.  
 War Memorial Building  
 Second Floor Board Room  
 Barrack & Lafayette Streets  
 Trenton, New Jersey 08625

The purpose of the hearing will be to receive public comments about the implementation of the Right to Know Act by the State, the effects of the Community Right to Know provisions of SARA—Title III, the problems employers and employees are having concerning compliance with the Right to Know law, and positive actions that have occurred as a result of the law.

The Departments of Health and Environmental Protection would like to hear suggestions regarding substances which should be added to or deleted from the Right to Know Hazardous Substance List and the Environmental Hazardous Substance List. Any suggested revisions to the lists should be based on and accompanied by documented scientific evidence.

**Persons who wish to testify** should call Eva McGovern at (609) 984-2202. The record will be kept open for 15 days beyond March 8, 1991 for the receipt of written comments, which should be sent to: Richard Willinger, Program Manager, Right to Know Program, New Jersey Department of Health, CN 368, Trenton, New Jersey 08625-0368.

## (d)

**DIVISION OF HEALTH PLANNING AND RESOURCES**  
**DEVELOPMENT**

**Notice of A One Time Only Moratorium on the**  
**Submission of Certificate of Need Applications for**  
**any Solid Organ Transplantation Service for which**  
**there are No Adopted Review Criteria for Two**  
**Years by the New Jersey State Department of**  
**Health**

**Take notice** that the Department of Health, in conjunction with the Health Care Administration Board (HCAB) and the Statewide Health Coordinating Council (SHCC), is removing from consideration for one time only any certificate of need application for a new solid organ transplantation service for which there are no review criteria adopted in the form of a health planning regulation. No health care services other than

proposed new organ transplantation services for which there are no applicable review criteria are affected by this proposed action.

The Department of Health is establishing this two-year moratorium in order to assure that any new organ transplantation service is evaluated using appropriate and applicable planning regulations. In the last several years, advances in surgical techniques and new medical technologies have made it possible to transplant both a larger number and an increasing variety of organs and tissues.

This moratorium will allow sufficient time for the Commissioner of Health, with the approval of the Health Care Administration Board, to adopt a coordinated Statewide policy regarding the orderly review of certificate of need applications for such services as heart-lung and lung-only transplantation. The two-year time period will also permit the Department to prepare for the review of any other new transplantation service that may evolve in the foreseeable future.

The moratorium will become effective upon publication of this notice in the *New Jersey Register* (February 4, 1991) and will end with the January 15, 1993 certificate of need review cycle. Should the Department of Health adopt a regulation with review criteria for heart-lung, lung-only or any other transplantation service prior to the end of this two-year time period, the applicability of the moratorium to that service will be shortened accordingly.

Any inquiries should be sent to:

John C. Scioli, Director  
Health Policy, Planning and Certificate of Need  
New Jersey Department of Health  
CN 360, Room 604  
Trenton, New Jersey 08625

## STATE

### (a)

#### NEW JERSEY STATE COUNCIL ON THE ARTS

##### Notice of Availability of Funds

##### Organizational Grants; Fellowships; Block Grants to County Arts Agencies

**Take notice** that, pursuant to N.J.S.A. 52:14-34 et seq., the New Jersey State Council on the Arts (NJSCA), a Division of the Department of State, operates a program that provides financial assistance in the form of grants and fellowships to eligible professional artists, arts organizations and special arts projects throughout the State of New Jersey. While eligibility involves several factors, the public is advised that organizational grants are awarded only to non-profit entities, incorporated in the State of New Jersey.

NJSCA awards several types of matching and non-matching **organizational grants**. To be eligible for an organizational grant, an applicant must:

1. Be in existence and active for at least two years (since 1989). Federal Employer's Identification Number (F.E.I.) must be entered on the application;
2. Be incorporated in the State of New Jersey, and defined as a non-profit organization by the Internal Revenue Service; Sections 501(c)(3) or 501(c)(4); A copy of the I.R.S. determination letter provided by the applicant confirms federal tax-exempt status and must be included with the application. Nonprofit organizations that have not yet achieved tax-exempt status may apply through an alternate organization (fiscal agent) which is tax-exempt and otherwise eligible to apply for funding. The fiscal agent becomes the legal applicant of record, redistributes the funds to the intended receiver, and is entirely responsible for all published requirements of the grants program, including contracts, revised budgets, fiscal records and reports. The NJSCA recommends that a fiscal agent enter into a formal agreement with the group implementing the project, outlining the working relationship between the two parties; a fiscal agent may apply on behalf of an arts organization for a maximum of two years;
3. Comply with Fair Labor Standards and pay professional performers, artists, and supporting personnel at least the minimum compensation level prevailing for persons employed in similar activities;
4. Comply or submit a plan for compliance with the Civil Rights Act of 1964 (Title VI, Section 601), and the Rehabilitation Act of 1973 (Section 504), as amended, which bar discrimination on the basis of race, color, national origin, sex, or handicap. A plan for compliance with 504 regulations is required within the grant application; and

5. Have a board of directors empowered to formulate policies and be responsible for the administration of the organization, its programs, and its finances.

Universities, colleges, and other educational and religious institutions must comply with the required match; in-kind contributions are not allowable as a portion of the required match.

Universities, colleges, and other educational and religious institutions are eligible for New Jersey State Council on the Arts funding:

1. If the majority of the audience consists of non-students or non-congregational members, and the program has potential statewide or multi-regional impact;
2. If the events, classes, or services are supplementary to the institution's regular curriculum or services;
3. If the grant will not be used to replace funds normally allocated for specific arts projects; and
4. If the grant and the required matching funds will not be used to pay for the salaries of faculty members or members of the ministry.

Universities, colleges, and other educational institutions may only apply for Special Project Support for arts presentation, producing, or touring. Other educational institutions which are considering a General Operating Support application may only use the Arts Basic to Education applications which requires demonstration of ways in which the institution makes art a basic part of the educational experience. Only accredited schools will be considered. Consultation with NJSCA staff is recommended to assure that applicants are in compliance with NJSCA guidelines.

**Fellowship grants** are awarded to professional New Jersey artists to enable them to pursue their artistic goals. Fellowships are granted to artists in recognition of their outstanding work and are awarded to allow the artist to work more freely and to obtain the time and space necessary for creative expression.

Fellowship awards are based solely upon demonstrated artistic merit and not on any other merits that may be associated with a project described in the artist's statement.

Artists will NOT be funded to travel out of the country, study as matriculated students in a formal curriculum, teach, publish, produce already completed works or purchase permanent equipment (equipment with resale value exceeding \$300.00 or having a life span over three years). Artists may use fellowship awards to purchase supplies, study in a workshop situation, rent studio space or otherwise free their time to pursue work in their artistic discipline.

Fellowships are awarded in choreography, crafts, design arts, experimental art, film, graphics, interdisciplinary, music composition, painting, photography, playwriting, poetry, prose, sculpture, and video.

Artists eligible for fellowships are:

- a. Artists who are residents of the State of New Jersey (if awarded a fellowship, proof of New Jersey residency will be required).
- b. Artists who have NOT received a fellowship since Fiscal Year (FY) 1988-89.
- c. 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).

An artist may apply only in one discipline.

**Block Grants** to County Arts Agencies (CAA's) under the State/County Partnership Program have as their objective the promotion of local arts development by providing to officially designated County Arts Agencies funds that are: (1) re-granted to support the development of local arts organizations and the provision of quality local arts programs, projects, and services; (2) utilized by the CAA's to plan and implement local arts development programs, projects, and services; and (3) utilized by the CAA's for the professional administration of the Block Grant and the CAA's program of local arts development.

An eligible County Arts Agency may be either a unit of county government or a private, non-profit organization whose central mission must directly relate to promoting and developing the arts within an entire county region. The CAA must have a two-year record of sponsoring quality programs, projects, and services designed to fulfill that mission and must have the professional administration to do so. The CAA must have either a Board of Directors or an advisory committee which represents the local arts community and assists the CAA in planning its program of local arts development. For the purpose of this program there may be only one CAA in each county as officially recognized by the NJSCA and so designated by resolution of its respective Board of Chosen Freeholders. The NJSCA reserves the right to remove such designation in the event that the CAA is unable to fulfill the eligibility criterion or

fails to fulfill its contractual obligations. Furthermore, a CAA recipient of NJSCA funds must:

1. Comply with Fair Labor Standards and pay professional performers, artists and supporting personnel at least the minimum compensation level as determined by the Secretary of Labor to be the prevailing minimum compensation for persons employed in similar activities; and

2. Comply or submit a plan for compliance with the Civil Rights Act of 1964 (Title VI, Section 601), and with the Rehabilitation Act of 1973 (Section 504), as amended, which bar discrimination on the basis of race, color, national origin, sex, or handicap. A plan for compliance with Section 504 regulations is required to be submitted as part of the grant application.

The actual amount of funding available for the grants and fellowships is not known at this time, as the amount depends upon funds provided the NJSCA.

Guidelines and application forms for grants and fellowships to be awarded for fiscal year 1991/92 are now available. Interested parties should contact the New Jersey State Council on the Arts by phone at (609) 292-6130 or in writing at 4 North Broad Street, CN 306, Trenton, New Jersey 08625. Guidelines and application forms will be mailed directly.

Deadlines for receipt of applications for FY92 grants and fellowships have been set for 5:00 PM on the following dates:

All organizational grants ..... February 20, 1991

All fellowships ..... March 4, 1991  
Block Grants to County Arts Agencies ..... April 24, 1991

Final funding recommendations on organizational grants are made by the grants committee which is composed of Council members and voted upon by the full Council at its regularly scheduled annual meeting. Applicants are notified in writing for the Council's decision within six weeks of the annual meeting. Usually scheduled on the fourth Tuesday in July in Trenton, final scheduling each year will depend on the finalization of the Council's legislative appropriation.

Fellowship applicants are notified of decisions in writing approximately six weeks after the Council's annual meeting. Usually scheduled on the fourth Tuesday in July in Trenton, final scheduling each year will depend on the finalization of the Council's legislative appropriation. Once final recommendations have been voted upon by the full Council, applicants can call the Council office to find out if they have received a fellowship pending written confirmation of award.

NJSCA staff reviews Block Grant applications for completeness and guideline compliance, after which they are forwarded to an independent grant review panel for evaluation and ranking. Panel comments are recorded and forwarded along with the rankings and any other recommendations to the Grants Committee. After full review, the Grants Committee recommends to the Council both the grant recipients and the grant amounts. At its annual meeting the NJSCA officially announces awards.

# 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 December 3, 1990 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT NOVEMBER 19, 1990**

**NEXT UPDATE: SUPPLEMENT DECEMBER 17, 1990**

**Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.**

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 1291 and 1408	May 7, 1990	22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 1409 and 1648	May 21, 1990	22 N.J.R. 3607 and 3666	December 3, 1990
22 N.J.R. 1649 and 1806	June 4, 1990	22 N.J.R. 3667 and 3896	December 17, 1990
22 N.J.R. 1807 and 1964	June 18, 1990	23 N.J.R. 1 and 144	January 7, 1991
22 N.J.R. 1965 and 2062	July 2, 1990	23 N.J.R. 145 and 248	January 22, 1991
22 N.J.R. 2063 and 2202	July 16, 1990	23 N.J.R. 249 and 332	February 4, 1991
22 N.J.R. 2203 and 2386	August 6, 1990		

J.A.C. TATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>			
1-3.2, 14.10	Interlocutory appeal for review of hearing location	22 N.J.R. 3278(a)	R.1991 d.34
1-3.3, 9.6, 12.1, 14.4, 14.7, 14.14, 18.4, 19.2	Scheduling, processing, and conclusion of contested cases	22 N.J.R. 3278(b)	R.1991 d.44
1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)	
10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)	
10-18.2	Economic Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)	R.1991 d.44
10B-18.2	Medical Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)	R.1991 d.44
13-14.4	Motor Vehicle cases: failure to appear	22 N.J.R. 3278(b)	R.1991 d.44
13A-14.1	Lemon Law hearings: failure to appear	22 N.J.R. 3278(b)	R.1991 d.44
30	Agency rulemaking	22 N.J.R. 3281(a)	

**Most recent update to Title 1: TRANSMITTAL 1990-6 (supplement November 19, 1990)**

<b>AGRICULTURE—TITLE 2</b>			
:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)	
:16	Plant certification	22 N.J.R. 3285(a)	R.1991 d.28
:48	Dairy industry rules	22 N.J.R. 2625(a)	R.1990 d.572
:53	Retail milk stores	22 N.J.R. 3609(a)	R.1991 d.51

**Most recent update to Title 2: TRANSMITTAL 1990-9 (supplement November 19, 1990)**

<b>BANKING—TITLE 3</b>			
:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)	
:1	General provisions of Department	22 N.J.R. 3425(a)	R.1991 d.48
:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)	
:6	General rules for banks	23 N.J.R. 147(a)	
:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)	
:18-10.5	Secondary mortgage licensees	22 N.J.R. 2868(a)	R.1990 d.603
:26	Savings and loan associations	22 N.J.R. 3428(a)	R.1991 d.41
:29-1.1-1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)	
:38-1.5	Secondary mortgage licensees	22 N.J.R. 2868(a)	R.1990 d.603

**Most recent update to Title 3: TRANSMITTAL 1990-7 (supplement November 19, 1990)**

## GOVERNMENT EMPLOYMENT—TITLE 4

**Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)**

## PERSONNEL—TITLE 4A

**Most recent update to Title 4A: TRANSMITTAL 1990-5 (supplement November 19, 1990)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>COMMUNITY AFFAIRS—TITLE 5</b>				
5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Ceiling heights in multiple dwellings	22 N.J.R. 3430(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)	R.1990 d.604	22 N.J.R. 3734(a)
5:19-3.1	Continuing care retirement communities: financial feasibility study for proposed facility	23 N.J.R. 3(b)		
5:23-2.14	Uniform Construction Code: gas utility meters	22 N.J.R. 3609(b)		
5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)	R.1991 d.36	23 N.J.R. 296(a)
5:23-9.6	UCC interpretation: casino stools	22 N.J.R. 3610(a)		
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-1.5	Full plan of property conversion documents	22 N.J.R. 3669(a)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:28	State Housing Code	22 N.J.R. 1456(a)	R.1991 d.18	23 N.J.R. 57(a)
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:30-6.1	Local Finance Board: address correction			23 N.J.R. 57(b)
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)	R.1990 d.595	22 N.J.R. 3639(a)
5:34	Local public contracts	22 N.J.R. 724(a)	R.1990 d.595	22 N.J.R. 3639(a)
5:34-4.2	Local public contracts: administrative correction			23 N.J.R. 57(b)
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)	R.1991 d.19	23 N.J.R. 57(c)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91	Council on Affordable Housing: procedural rules	22 N.J.R. 3610(b)		
5:92	Council on Affordable Housing: substantive rules	22 N.J.R. 3671(a)		
5:92-7.1(b)	Council on Affordable Housing: notice of invalidation of 1,000 unit cap			23 N.J.R. 58(a)

Most recent update to Title 5: TRANSMITTAL 1990-11 (supplement November 19, 1990)

#### MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

#### EDUCATION—TITLE 6

6:1-2.4	State Board of Education quorum	Exempt	R.1991 d.58	23 N.J.R. 297(a)
6:3-7	Education of homeless children and youth	22 N.J.R. 2630(a)	R.1990 d.615	22 N.J.R. 3734(b)
6:12	Governor's Teaching Scholars Program	22 N.J.R. 3672(a)		
6:20-1.1, 1.2, 4.1-4.4, 4.7-4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)	R.1990 d.610	22 N.J.R. 3736(a)
6:20-2A.11	Accounting in local districts: administrative correction			23 N.J.R. 59(a)
6:22-2.1, 5.2, 5.3, 5.4, 5.5	School Facility Planning Service: administrative corrections			23 N.J.R. 59(b)
6:24	Controversies and disputes	22 N.J.R. 2841(a)	R.1991 d.57	23 N.J.R. 297(b)
6:28-3.6, 11.5	Special education: administrative corrections			23 N.J.R. 59(c)

Most recent update to Title 6: TRANSMITTAL 1990-8 (supplement November 19, 1990)

#### ENVIRONMENTAL PROTECTION—TITLE 7

7:1E-2.2, 4.3, 4.4	Bureau of Discharge Prevention: address correction			23 N.J.R. 60(a)
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:7-2.3	Waterfront development: administrative correction			23 N.J.R. 60(b)
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:9	Water pollution control	22 N.J.R. 3297(a)		
7:9	Water pollution control: extension of comment period	23 N.J.R. 29(a)		
7:9-4.6	Water quality based effluent limitations: administrative correction			23 N.J.R. 302(a)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)	R.1990 d.629	22 N.J.R. 3741(a)
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES fee schedule	22 N.J.R. 3679(a)		

I.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:18-1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.15, 5.2-5.5, 5.7, 5.8	Radon laboratory certification program	23 N.J.R. 29(b)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App. 7:25	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:25-4.13, 4.17	Division of Fish, Game, and Wildlife Endangered and nongame wildlife species	23 N.J.R. 37(a) 22 N.J.R. 1308(a)		
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)	R.1990 d.617	22 N.J.R. 3746(a)
7:25-12	Surf clam management	Emergency (expires 3-5-91)	R.1991 d.49	23 N.J.R. 223(a)
7:25-18.1	Taking of striped bass	22 N.J.R. 3078(a)	R.1990 d.607	22 N.J.R. 3628(b)
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)		
7:25-18.5-18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy: waste determination: waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity characteristic	23 N.J.R. 151(a)		
7:26-8.13	Hazardous waste from non-specific sources: F019 exclusion	23 N.J.R. 153(a)		
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)		
7:26-8.15, 8.16	Hazardous waste management: ferric dextran and strontium sulfide	23 N.J.R. 44(a)		
7:26-8.17, App. I	Delisting of hazardous waste at Beecham Laboratories	22 N.J.R. 3430(b)		
7:26-8.19	Listing of hazardous wastes	22 N.J.R. 3299(a)		
7:26-8.19	Listing of hazardous waste: extension of comment period	23 N.J.R. 45(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-3.2	Air Pollution Control: administrative correction	_____	_____	23 N.J.R. 61(a)
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23.5	Volatile organic substances: administrative correction and revised operative date regarding labeling of architectural coatings	_____	_____	23 N.J.R. 303(a)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)		
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

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**HEALTH—TITLE 8**

8:9	Handling of human remains	22 N.J.R. 3458(a)		
8:18-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)	R.1990 d.619	22 N.J.R. 3754(a)
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:24	Retail food establishments	23 N.J.R. 168(b)		
8:31A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B	Hospital reimbursement	22 N.J.R. 3724(a)		
8:31B-3	Hospital rate setting	Emergency (expires 3-1-91)	R.1991 d.42	23 N.J.R. 227(a)
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31C-1.15, 1.18	Residential alcoholism treatment facilities: reimbursement methodology	22 N.J.R. 3468(a)		
8:33H-3.3	Long-term care beds for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:33L-2.4	Home health services for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:39-19.5, 20.1, 29.1, 29.3, 30.1	Long-term care facilities: Mantoux tuberculin testing of staff; pharmacy organization	22 N.J.R. 3612(a)		
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)	R.1991 d.12	23 N.J.R. 61(b)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
8:65-10.5	Controlled substances: administrative correction to Schedule V	_____	_____	22 N.J.R. 3619(c)
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a))	22 N.J.R. 1214(b)	R.1990 d.569	22 N.J.R. 3581(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a))	22 N.J.R. 2501(a)	R.1991 d.29	23 N.J.R. 206(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products	23 N.J.R. 178(a)		

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#### HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:5	Tuition policies for public institutions	22 N.J.R. 3437(a)		
9:7-4.4	Garden State Scholarships: award amounts	23 N.J.R. 4(a)		
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)		

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#### HUMAN SERVICES—TITLE 10

10:6	Administrative hearings	22 N.J.R. 3115(a)	R.1991 d.13	23 N.J.R. 61(c)
10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:37	Community Mental Health Services Act rules	22 N.J.R. 2915(a)	R.1990 d.591	22 N.J.R. 3620(a)
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)	R.1991 d.50	23 N.J.R. 303(b)
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:47	Private licensed facilities for mentally retarded	22 N.J.R. 2915(b)	R.1990 d.593	22 N.J.R. 3620(b)
10:48	Developmental Disabilities: appeal procedure: viral hepatitis and legal poisoning control programs	22 N.J.R. 3192(a)	R.1991 d.27	23 N.J.R. 209(b)
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
10:50	Transportation Services Manual	23 N.J.R. 5(a)		
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)	R.1990 d.592	22 N.J.R. 3620(c)
10:50-1.3, 1.4, 1.5, 3.2	Transportation Services Manual: administrative corrections	_____	_____	23 N.J.R. 63(a)
10:54	Physician's Services Manual	22 N.J.R. 3711(a)		
10:57	Podiatry Services Manual	22 N.J.R. 3439(b)		
10:58	Nurse-Midwifery Services Manual	22 N.J.R. 3613(a)		
10:59	Medical Supplier Manual	22 N.J.R. 3712(a)		
10:60	Home Care Services Manual	22 N.J.R. 3116(a)		
10:61	Independent Laboratory Services Manual	22 N.J.R. 3713(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:64	Hearing Aid Services Manual	22 N.J.R. 3614(a)		
10:65	Medical Day Care Services Manual	22 N.J.R. 3327(b)		
10:65-2.1	Medical day care reimbursement	22 N.J.R. 3253(a)	R.1990 d.609	22 N.J.R. 3755(a)
10:67	Psychologist's Services Manual	22 N.J.R. 3615(a)		
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)	R.1990 d.614	22 N.J.R. 3756(a)
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:71	Medicaid Only Manual	22 N.J.R. 3357(a)	R.1991 d.33	23 N.J.R. 215(a)
10:71-4.5-4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)	R.1991 d.32	23 N.J.R. 215(b)
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: new eligibility computation amounts	Emergency (expires 3-1-91)	R.1991 d.37	23 N.J.R. 233(a)
10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1-14.8, 14.10-14.15, 14.17, 14.19-14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)	R.1991 d.8	23 N.J.R. 63(b)
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)	R.1991 d.7	23 N.J.R. 93(a)
10:83-1.11	Supplemental security income payment levels	Emergency (expires 3-1-91)	R.1991 d.38	23 N.J.R. 234(a)
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-2.3, 2.6, 2.23, 2.30, 2.31, 3.6, 4.8, 5.5, 5.6, 5.9, 5.10, 7.14, 9.5, 9.7, 10.3, 10.9, 10.10, 10.21, 10.24, 11.23, App. A	Food Stamp Program: miscellaneous requirements	23 N.J.R. 179(a)		
10:89-2.2, 2.3	Home Energy Assistance: eligibility criteria	22 N.J.R. 3590(a)	R.1991 d.39	23 N.J.R. 218(a)
10:89-2.2, 2.3	Home Energy Assistance eligibility criteria: administrative correction	_____	_____	22 N.J.R. 3766(a)
10:91-4.4, 7.1	Commission for Blind and Visually Impaired: administrative corrections	_____	_____	23 N.J.R. 99(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)	R.1991 d.6	23 N.J.R. 99(b)
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)		

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10A:2-3	Expenditure of inmate welfare funds	23 N.J.R. 155(a)		
10A:16-7.4	Distribution of money and personal belongings of deceased inmates	23 N.J.R. 156(a)		
10A:18-1.4, 6.7	Attorney-client visits	23 N.J.R. 14(a)		
10A:18-2.6	Inspection and identification of incoming correspondence: withdrawal of proposal	22 N.J.R. 3714(a)		
10A:18-7.7	Court ordered funeral visits: administrative correction	_____	_____	22 N.J.R. 3625(a)
10A:21-5	Reporting unusual incidents or events within facilities	22 N.J.R. 3304(a)	R.1991 d.53	23 N.J.R. 304(a)
10A:21-8	Reporting violations of criminal statutes	22 N.J.R. 3440(a)	R.1991 d.43	23 N.J.R. 306(a)
10A:31-3.5, 22.2	Adult county facilities	22 N.J.R. 3714(c)		
10A:31-13.9, 13.10, 13.18	Adult county facilities: pregnant inmates; dental care	23 N.J.R. 15(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 3714(b)		
10A:35	Alternatives to Juvenile Incarceration Grant Program	23 N.J.R. 156(b)		

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11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1	Administration: miscellaneous rules	22 N.J.R. 3686(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)	Expired	
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)	R.1991 d.15	23 N.J.R. 100(a)
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)	R.1991 d.4	23 N.J.R. 103(a)
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-29	Orderly withdrawal of insurance business	23 N.J.R. 15(b)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:2-32	Custodial deposits	22 N.J.R. 2640(a)	R.1991 d.14	23 N.J.R. 105(a)
11:3	Automobile insurance	22 N.J.R. 1678(a)	R.1991 d.45	23 N.J.R. 306(b)
11:3-8.2-8.7, App. A and B	Nonrenewal of automobile policies	Emergency (expires 1-25-91)	R.1990 d.626	22 N.J.R. 3766(b)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-14.8, 37	Benefit determination between automobile personal injury protection and health insurance plans	Emergency (expires 1-25-91)	R.1990 d.625	22 N.J.R. 3777(a)
11:3-16	Automobile insurance rate filings	Emergency (expires 1-25-91)	R.1990 d.621	22 N.J.R. 3790(a)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	Emergency (expires 1-25-91)	R.1990 d.628	22 N.J.R. 3804(a)
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App.	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)	R.1991 d.17	23 N.J.R. 106(a)
11:3-24.4	Automobile insurance coverage: policy constants	22 N.J.R. 3441(a)		
11:3-25.4	Automobile insurance coverage: residual market equalization charges	22 N.J.R. 3442(a)		
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	Emergency (expires 1-25-91)	R.1990 d.624	22 N.J.R. 3809(a)
11:3-29.6	Medical fee schedules for PIP coverage: administrative correction	_____	_____	23 N.J.R. 125(a)
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	Emergency (expires 1-25-91)	R.1990 d.620	22 N.J.R. 3847(a)
11:3-35	Private passenger automobile insurance: underwriting rules	Emergency (expires 1-25-91)	R.1990 d.627	22 N.J.R. 3856(a)
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	Emergency (expires 1-25-91)	R.1990 d.622	22 N.J.R. 3861(a)
11:3-38	Automobile towing and storage fee schedule	Emergency (expires 1-25-91)	R.1990 d.623	22 N.J.R. 3874(a)
11:4	Actuarial services	22 N.J.R. 1689(a)	R.1991 d.3	23 N.J.R. 111(a)
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	Emergency (expires 1-25-91)	R.1990 d.625	22 N.J.R. 3777(a)
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.36	Real Estate Guaranty Fund: special assessment	22 N.J.R. 3688(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)	R.1990 d.594	22 N.J.R. 3625(b)
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)	R.1991 d.16	23 N.J.R. 112(a)
11:16	Fraud prevention: claim from statement of liability: reporting of automobile theft or salvage	22 N.J.R. 3688(b)		
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:17A-1.3	Insurance producers and limited insurance representatives: licensure and registration	22 N.J.R. 3444(a)	R.1991 d.52	23 N.J.R. 310(a)

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<b>LABOR—TITLE 12</b>				
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1991 rates	22 N.J.R. 2885(a)	R.1990 d.597	22 N.J.R. 3627(a)
12:17	Unemployment benefit payments	22 N.J.R. 3445(a)	R.1991 d.46	23 N.J.R. 310(b)
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46-12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:105	Arbitration through State Board of Mediation	22 N.J.R. 3616(a)	R.1991 d.54	23 N.J.R. 310(c)
12:196-1.10	Dispensing of retail gasoline: signs	22 N.J.R. 3306(a)	R.1991 d.47	23 N.J.R. 310(d)
12:235-1.6	Workers' Compensation: 1991 maximum rates	22 N.J.R. 2886(a)	R.1990 d.596	22 N.J.R. 3628(a)
12:235-3.11-3.23	Conduct of Judges of Compensation: notice of rule invalidation			23 N.J.R. 207(a)

**Most recent update to Title 12: TRANSMITTAL 1990-9 (supplement November 19, 1990)**

**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A:80-2	Urban Development Corporation: public and nonpublic information	23 N.J.R. 20(a)		
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**Most recent update to Title 12A: TRANSMITTAL 1990-3 (supplement August 20, 1990)**

**LAW AND PUBLIC SAFETY—TITLE 13**

13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:4	Division on Civil Rights: practice and procedure	22 N.J.R. 3689(a)		
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:18-4.2-4.6, 4.9, 4.14-4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)		
13:19-1.1, 1.2, 1.3, 1.5, 1.8, 1.13, 12.2-12.9	Motor Vehicles: administrative hearings regarding proposed license suspension or surcharge collection actions	22 N.J.R. 3446(a)		
13:20	Motor Vehicles enforcement service	22 N.J.R. 3307(a)	R.1991 d.20	23 N.J.R. 207(b)
13:20-10.1	Automatic vehicle identification systems: traffic management	23 N.J.R. 21(a)		
13:21	Motor Vehicles licensing service	22 N.J.R. 3311(a)	R.1991 d.21	23 N.J.R. 207(c)
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:27-5.8	Architectural services: certificate of authorization for general business corporations	22 N.J.R. 3314(a)	R.1991 d.40	23 N.J.R. 207(d)
13:27-6.2-6.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		
13:29-1.13	Accountancy: sponsors of continuing professional education	22 N.J.R. 3314(b)	R.1991 d.55	23 N.J.R. 310(e)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:31-1.11	Board of Examiners of Electrical Contractors: fee schedule	23 N.J.R. 22(a)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)	Expired	
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)	R.1991 d.56	23 N.J.R. 311(a)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)	R.1990 d.608	22 N.J.R. 3756(b)
13:36-10	Mortuary science: withdrawal of continuing education adoption			23 N.J.R. 117(a)
13:37-12.1	Certification of homemaker-home health aide: application fee	23 N.J.R. 24(a)		
13:38-3.11	Practice of optometry: application for licensure	23 N.J.R. 166(a)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)		
13:40-7.2-7.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		
13:41-4.2-4.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)	R.1991 d.11	23 N.J.R. 117(b)
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:44C-5.3	Audiology and speech-language pathology: clinical internship licensure	23 N.J.R. 167(a)		
13:45A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)	R.1990 d.606	22 N.J.R. 3758(a)
13:48	Charities Registration and Investigation Section	22 N.J.R. 3108(b)		
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