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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 15, 1988
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 19, 1988

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

Interested persons comment deadline **2612**

ADMINISTRATIVE LAW
Transmittal of clerk's notices: withdrawal of proposal ..... 2613(a)
COMMUNITY AFFAIRS
Council on Affordable Housing: adoption of housing element ..... 2613(b)
Council on Affordable Housing: amending of certified municipal plan ..... 2613(c)
EDUCATION
Appeals to State Board ..... 2615(a)
High school core proficiencies ..... 2619(a)
ENVIRONMENTAL PROTECTION
Closure of hazardous waste facilities ..... 2650(a)
Water usage certifications for agricultural and horticultural purposes ..... 2663(a)
Clam licenses ..... 2666(a)
Solid waste facility and transporter registration fees ..... 2668(a)
HEALTH
Interchangeable drug products: substitution of unlisted generics ..... 2623(a)
HIGHER EDUCATION
Garden State Graduate Fellowships: approved programs .. 2624(a)
Vietnam Veterans Tuition Aid: eligibility ..... 2625(a)
HUMAN SERVICES
Lead Toxicity Control Program: comment period ..... 2688(a)
Medically Needy eligibility ..... 2688(b)
Food Stamp Program ..... 2689(a)
Youth and Family Services hearings ..... 2742(a)
CORRECTIONS
Personal property of inmates ..... 2746(a)
Involuntary placement to protective custody: hearing procedure ..... 2746(b)
Infants born to female inmates ..... 2747(a)
State Parole Board: juvenile inmates; conditions of parole ..... 2747(b)
LABOR
Employer reporting of workplace and residential zip codes of employees ..... 2625(a)
Job Training Partnership Act: grievance procedures ..... 2626(a)
LAW AND PUBLIC SAFETY
Certificates of title for salvage motor vehicles ..... 2675(a)
Board of Dentistry: access to complaint history of licensees ..... 2680(a)
Qualified graduate of veterinary medicine ..... 2680(b)
Public movers and warehousemen: public hearing and extension of comment period ..... 2681(a)
Automotive dispute resolution: Lemon Law implementation ..... 2681(b)
Temporary help service firms; booking agencies ..... 2684(a)
State Medical Examiner rules ..... 2687(a)
PUBLIC UTILITIES
Annual filing of customer lists by solid waste collectors; annual reports ..... 2629(a)
TRANSPORTATION
Speed limit zones along U.S. 40 in Salem County, Route 33 in Monmouth County, and Route 27 in Middlesex County ..... 2630(a)
Speed limit zone along Route 20 in Paterson ..... 2631(a)
Speed limit zones along Route 49 in Salem County and Route 94 in Sussex County ..... 2632(a)
Speed limit zones along Route 66 in Monmouth County . 2633(a)
Parking restrictions along U.S. 9 in Tuckerton, Route 31 in Hopewell, U.S. 46 in Mountain Lakes, and Route 49 in Pennsville ..... 2633(b)
No stopping or standing zone along Route 47 in Franklin Township ..... 2634(a)
Midblock crosswalk along U.S. 9 in Galloway Township . 2635(a)
Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services ..... 2635(b)
Licensing of aeronautical facilities ..... 2638(a)
NJ TRANSIT: private carrier capital improvement ..... 2638(b)

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **December 7, 1988.** 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.

RULEMAKING IN THIS ISSUE—Continued

TREASURY-GENERAL
Public retirement systems: disbursement checks ... 2639(a)
ELECTION LAW ENFORCEMENT COMMISSION
Reporting and recordkeeping ... 2640(a)
Public financing of general election for governor ... 2642(a)
CASINO CONTROL COMMISSION
Deletion of endorsement from employee license ... 2647(a)
Junket activities and representatives ... 2644(a)
Marking baccarat vigorish ... 2647(b)
Inspection of slot machine jackpots ... 2648(a)
Junket reporting requirements ... 2648(b)
Musical entertainment ... 2649(a)

RULE ADOPTIONS

ADMINISTRATIVE LAW
Proceedings on the papers: inaction by requesting party ... 2749(a)
Discovery in school budget cases ... 2749(b)
AGRICULTURE
Association standards for commercial feeds ... 2749(c)
Commercial fertilizers and soil conditioners ... 2750(a)
BANKING
Advertising by financial institutions ... 2750(b)
COMMUNITY AFFAIRS
Homelessness Prevention Program: eligibility for temporary assistance ... 2752(a)
Barrier Free Subcode: recreation standards ... 2754(a)
EDUCATION
Marie H. Katzenbach School for the Deaf ... 2754(b)
ENVIRONMENTAL PROTECTION
Groundwater monitoring parameters for hazardous waste facilities ... 2755(a)
1989 Wild turkey season ... 2757(a)
1989-90 Fish Code ... 2758(a)
Special medical waste ... 2760(a)
HEALTH
Interchangeable drug products ... 2768(a), 2768(b), 2769(a)
HIGHER EDUCATION
Facilities planning for public colleges and universities ... 2771(a)
Chargeback for disability—specific programs at county colleges ... 2771(b)
Tuition Aid Grant Program: part-time students ... 2772(a)
Garden State Scholarships ... 2772(b)
HUMAN SERVICES
Public comment procedure and petitions for rulemaking ... 2773(a)
Statewide Respite Care Program ... 2774(a)
Registration of family day care providers ... 2774(b)
LABOR
1989 Unemployment Compensation weekly benefit, taxable wage base, local government contribution rate, base week, and alternate earnings test ... 2786(a)
1989 Workers' Compensation maximum weekly benefit ... 2786(b)
LAW AND PUBLIC SAFETY
Amusement games control: disciplinary proceedings and appeals ... 2787(a)
Special motor vehicle plates for nonprofit organizations ... 2788(a)
Transportation of bulk commodities ... 2790(a)
Health club services ... 2790(b)
TRANSPORTATION
NJ TRANSIT: Section 16(b)(2) Capital Assistance Program ... 2791(a)
NJ TRANSIT: Small Urban and Rural Area Public Transportation Program ... 2793(a)
TREASURY-GENERAL
Lottery Commission rules ... 2795(a)
Affirmative action and public contracts ... 2795(b)
CASINO CONTROL COMMISSION
Exclusion of persons hearings ... 2801(a)
Gaming schools: licensure and standards ... 2802(a)
Exclusion of persons ... 2802(b)
DELAWARE RIVER BASIN
Comprehensive Plan and Water Code ... 2803(a)

EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION
Waterfront development ... 2815(a)
Permit exemptions for composting facilities ... 2817(a)

PUBLIC NOTICES

COMMUNITY AFFAIRS
Uniform Construction Code: correction to N.J.A.C. 5:23-4.4 ... 2823(a)

NEW JERSEY REGISTER

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Clerk's Notices
Withdrawal of Proposed Amendment: N.J.A.C. 1:1-9.5

Take notice that the Office of Administrative Law (OAL) recently proposed an amendment to N.J.A.C. 1:1-9.5 which would have eliminated sending clerk's notices to parties in OAL hearings when the party will be represented. New Jersey Court Rule 1:21-1(e) and OAL rules permit parties in contested case hearings to be represented by attorneys and in certain situations by non-lawyers, such as State agency employees, county or municipal welfare agency employees and legal service paralegals or assistants as well as union representatives. Hearing notices and other notices sent by the OAL Clerk, would, under this proposed amendment, have been sent only to a litigant's attorney or other authorized representative. The proposed amendment appeared in the August 15, 1988 Register at 20 N.J.R. 1979(a).

Several comments were received opposing the amendment. Most were from unions, including the following: AFSCME (Council 1 and Council 73); CWA and CWA Locals 1033, 1034 and 1037; Motor Vehicles Employees Union; International Federation of Professional and Technical Engineers (Local 195), and N.J.P.B.A. The unions were primarily concerned that sending clerk's notices only to representatives, rather than to parties as well, would place an unfair burden on union representatives, making them responsible for informing parties about hearings, scheduling changes and other information contained in clerk's notices. The unions contend that although they sometimes provide representation at hearings, such notices should not be the responsibility of union representatives. Rather, the litigant should continue to have the main responsibility for his or her case and the OAL should be responsible for providing notice to the litigant. Unlike attorneys, non-lawyer representatives may not have staff, time or resources necessary to devote to contacting parties to inform them about the content of clerk's notices. Also, unlike attorneys, non-lawyer representatives, according to the commenters, do not have a fiduciary responsibility to the litigants they represent. Similar comments were also submitted by the Department of Personnel and Atlantic Electric. The Department of Labor also opposed the amendment, suggesting that the rule be clarified to insure that transmitting agencies would continue to receive clerk's notices.

The purpose of the proposed amendment was to end the confusion that often occurs when a party who is represented by an attorney receives copies of clerk's notices which do not require action by the party. Also, the proposed change would have reduced the number of notices which must be sent by the OAL, thereby reducing costs related to administration, copying and postage.

After considering the comments, the OAL believes that litigants need not receive clerk's notices when they are represented by attorneys. However, the elimination of notice to litigants when non-lawyer representatives are involved may pose problems. Because of the practical difficulty of tailoring OAL's notice procedures to apply only when parties are represented by attorneys, the OAL has decided to withdraw the proposal to amend N.J.A.C. 1:1-9.5.

COMMUNITY AFFAIRS

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural Rules
Petitions for Substantive Certification
Proposed Amendment: N.J.A.C. 5:91-4.1

Authorized By: James L. Logue, III, Chairman, New Jersey Council on Affordable Housing.
Authority: N.J.S.A. 52:27D-301 et seq.
Proposal Number: PRN 1988-543.

Submit comments by December 7, 1988 to:
Douglas V. Opalski, Executive Director
N.J. Council on Affordable Housing
CN 813
Trenton, New Jersey 08625-0813

The agency proposal follows:

Summary

The proposed amendment provides that a municipality filing a final housing element with the Council on Affordable Housing (Council) must first have the housing element duly adopted by the municipal planning board pursuant to the Municipal Land Use Law. Proof of such adoption must be filed with the Council at the time of filing of the housing element.

Social Impact

The proposed amendment will insure that a housing element submitted to the Council has been properly adopted following a public hearing. This will insure that the public will have had an opportunity to review and comment on the plan prior to submission, thus furthering the goal of maximum public input on a proposed plan. It may also serve to resolve certain objections to a plan prior to submission to the Council.

Economic Impact

To the extent that the proposed amendment permits resolving of differences between the municipality and interested parties prior to submission of the housing element to the Council, it may act to decrease the number of objectors and the extent of mediation before the Council.

Regulatory Flexibility Statement

The proposed amendment does 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. Therefore, no regulatory flexibility analysis is necessary.

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

5:91-4.1 Petition
(a)-(b) (No change.)
(c) The housing element shall be duly adopted by the municipal planning board in accordance with N.J.S.A. 40:55D-1 et seq. at the time it is filed with the Council. Proof of adoption by the municipal planning board shall be filed with the housing element.

(c)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural Rules
Amendment of Substantive Certification
Proposed New Rules: N.J.A.C. 5:91-14

Authorized By: New Jersey Council on Affordable Housing, James L. Logue, III, Chairman.
Authority: N.J.S.A. 52:27D-301 et seq.
Proposal Number: PRN 1988-542.

Submit comments by December 7, 1988 to:
Douglas V. Opalski, Executive Director
N.J. Council on Affordable Housing
CN 813
Trenton, New Jersey 08625-0813

The agency proposal follows:

Summary

The proposed new rules, provide a mechanism for amendments to the terms of a housing element and fair share plan that have previously received substantive certification from the Council on Affordable Hous-

ing (Council). The Council views the rules as necessary, as changes, or amendment of a plan, may be called for in a variety of cases (such as a post-certification change in circumstances), and such amendments to the plan should be subject to Council review.

Under the proposed rules, amendments may be requested by the municipality that has received certification (by filing of a petition) or by another party (by filing of a motion). Approval of any amendment shall be at the discretion of the Council. The rule sets forth the information that must be provided with an application to amend. In two specific instances (N.J.A.C. 5:91-14.3(a) 7 and 9), a party requesting amendment is required to provide the Council with an agreement between certain enumerated parties endorsing the change. Finally, the rules contain a detailed procedure for Council review of the amendment, and for public comment on the amendment.

Social Impact

The proposed new rules should benefit low and moderate income households, since it permits a municipality to amend its plan to react to changed circumstances that may have rendered the original plan suspect, while insuring Council review of any proposed amendment.

Economic Impact

The proposed new rules may aid municipalities by facilitating Regional Contribution Agreements, and by permitting a municipality to request amendment of a plan that changed circumstances have rendered unrealistic and unworkable.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small business as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis is necessary.

Full text of the proposal follows:

SUBCHAPTER 14. AMENDMENT OF SUBSTANTIVE CERTIFICATION

5:91-14.1 Amendment of substantive certification; general

Amendments to the terms of a housing element and fair share plan that have received substantive certification may be approved by the Council at any time following the granting of certification. Approval of any such amendment shall be solely at the discretion of the Council.

5:91-14.2 Form of amendment

(a) A municipality that has received substantive certification may request an amendment of the terms of that certification by filing with the Council a petition for amendment, containing all of the information required by this subchapter.

(b) Requests for amendments of the terms of the certification may be made by any party, by filing with the Council a motion containing the information required by this subchapter.

5:91-14.3 Municipal petition

(a) A municipal petition to amend the terms of its certification shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for, the proposed amendment;

2. Evidence that the amendment was previously presented to, and endorsed by, the municipal planning board;

3. A duly adopted resolution of the municipal governing body requesting Council approval of the petition to amend;

4. Proof of service of the petition on all objectors, interested parties, and owners of sites contained in both the certified and proposed fair share plans; and

5. Proof of public notice in conformity with the requirements of N.J.A.C. 5:91-14.5.

(b) All of the information required by (a)1 through 4 above shall be filed with the Council by the municipality at the time of filing of its petition for amendment. The information required by (a)5 above shall be filed with the Council within seven days of the date of the municipality's filing of its petition.

(c) In the event a proposed amendment involves changing the zoning on a site that is a component of a certified housing element and fair share plan, for the purpose of entering into a RCA, the municipality shall provide the Council with a signed agreement between itself and the owner of the site in question, indicating the owner's endorsement of the proposed amendment. A copy of the agreement shall be filed with the Council at the time the municipality files its petition.

(d) In the event a proposed amendment involves changing the zoning on a site that is a component of a certified housing element and fair share plan, or affects any signed mediation agreement, and the amendment is not the result of changed circumstances or the addition of a Regional Contribution Agreement, the municipality shall provide the Council with an agreement signed by all parties to the original mediation, including the owner of the site in question, indicating endorsement of the proposed amendment.

5:91-14.4 Amendment by motion

(a) A motion to amend the terms of a certification shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for, the proposed amendment; and

2. Proof of service of the motion on all objectors, interested parties, and owners of sites contained in both the certified and proposed fair share plans.

5:91-14.5 Notice of amendment petitions and motions

(a) A municipality which has petitioned to amend its substantive certification shall publish notice of said petition in a newspaper of general circulation within the municipality and the county.

(b) The municipality shall make available for public inspection copies of the petition and supporting documentation within the municipality and during business hours. The public notice required by this section shall include a statement of this fact, as well as the times and places at which the petition will be made available for public inspection.

(c) Where a party has filed with the Council a motion to amend the terms of a certification, the Council shall direct that the municipality publish notice pursuant to this section. The municipality shall file with the Council proof of publication within seven days of its receipt of notification from the Council of the necessity of publishing notice.

(d) The Council shall publish a list of all petitions and motions for amendments to certifications it has received monthly, in newspapers of general circulation within the State.

5:91-14.6 Objection(s) to amendments

(a) Within 30 days of publication of notice of a petition or motion to amend the terms of a certification, any person objecting to the terms of the proposed amendment shall file objections with the Council. These objections shall be in a form as may be determined by the Council and shall include, at a minimum, the following:

1. A statement as to each and every aspect of the proposed amendment which the objector disputes, and the reasons therefore;

2. An explanation of the basis for each objection including, where appropriate, copies of expert reports, studies, or other data relied upon;

3. Any proposed modifications, changes or other measures that will resolve the objection in a manner consistent with the Council's regulations; and

4. A statement documenting all efforts at resolving the objection.

(b) An objection shall constitute as completely as possible a full statement of all issues, or matters, contained in the proposed amendment, with which the objector is in dispute.

(c) In the event the Council receives valid objections in a timely manner, it shall initiate the mediation process contained in N.J.A.C. 5:91-7.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Appeals

Proposed Repeal: N.J.A.C. 6:2-1
Proposed New Rules: N.J.A.C. 6:2-1, 2, and 3

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

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

Proposal Number: PRN 1988-575.

Submit comments by December 7, 1988 to:

Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

While repeal of the current provisions pertaining to appeals is proposed, the substance of those provisions has been embodied in the proposed new rules with technical changes, although, in some cases, with substantive revision. The following cross reference chart provides a crossover from the old to the proposed new code citation.

Cross Reference Chart: N.J.A.C. 6:2-1

Old Citation	New Citation
6:2-1.1	6:2-1.3(a)(b), 6:2-1.6(a), and 6:2-1.7(a)
6:2-1.2	6:2-1.4(a)
6:2-1.3	6:2-1.6
6:2-1.4(a)(b) & (c)	6:2-1.6(b)
6:2-1.4(d)	6:2-1.6(c)
6:2-1.5	6:2-1.4(b)
6:2-1.6(a)	6:2-1.7(b)
6:2-1.6(b)	6:2-1.7(c)
6:2-1.7	6:2-1.8(b)
6:2-1.8(a)	6:2-1.10(a)(b)
6:2-1.8(b)	6:2-1.12(a)(b)
6:2-1.8(c)	6:2-1.11(a) and 6:2-1.15
6:2-1.9	6:2-1.3(a)(b), 6:2-1.6(a)(b), 6:2-1.7(a), and 6:2-1.11(b)
6:2-1.10(a)(b)	6:2-1.13(b)(c)(d)
6:2-1.10(c)	6:2-1.14
6:2-1.11	6:2-1.13(e)
6:2-1.12	6:2-1.13(a)
6:2-1.13	6:2-1.5
6:2-1.14	6:2-3.1
6:2-1.15(a)	6:2-3.2
6:2-1.15(b)	6:2-1.17 and 6:2-3.1(d)
6:2-1.15(c)	6:2-3.4(a)
6:2-1.16	6:2-2.2
6:2-1.17	6:2-2.7
6:2-1.18	6:2-2.1
6:2-1.19	6:2-2.5
6:2-1.20	6:2-2.3
6:2-1.21	6:2-2.6

In contrast to the current rules, all of which are included in one subchapter, the proposed new rules are organized in three subchapters: General Provisions, N.J.A.C. 6:2-1, which includes procedural rules applicable to all matters; Miscellaneous Proceedings, N.J.A.C. 6:2-2, which contains the rules controlling particular motions and special actions and proceedings; and Review and Decision, N.J.A.C. 6:2-3, which includes the provisions pertaining to functions of the legal committee, argument and decision by the State Board.

Additionally, the rules have been restructured so as to progress sequentially and to provide the information pertinent to each step of the appeals process within the subchapter or section applicable to that step or by cross reference.

Major changes are as follows:

1. N.J.A.C. 6:2-1.1 specifies which decisions are appealable, distinguishing between appeals from final decisions and interlocutory appeals.

2. N.J.A.C. 6:2-1.1, 1.2, 1.8, and 2.2 make explicit provision for appeals from State Board of Examiners' decisions revoking or suspending certification.

3. N.J.A.C. 6:2-1.9 specifies what is included in the record on appeal, and N.J.A.C. 6:2-1.8 clarifies that the record may not be supplemented unless, on motion of a party or on its own motion, supplementation is directed by the State Board.

4. N.J.A.C. 6:2-1.10 specifies the requirements for filing and service of all briefs, motions, applications and exceptions. N.J.A.C. 6:2-1.10(b) increases the number of copies from 15 to 17 so as to bring the number of copies filed into conformity with the number needed by the State Board, and the rule clarifies that an original plus the designated number of copies must be filed.

5. N.J.A.C. 6:2-1.14 explicitly provides for and establishes requirements applicable to appendices to briefs so as to insure that the documentation that is material to the resolution of a given case will be submitted with the briefs.

6. N.J.A.C. 6:2-1.15 changes the page limitation from 30 pages to 40, but, in contrast to the current rules, includes the entirety of the brief in the page count aside from tables of contents and appendices. The proposed rule makes explicit that page limits may be relaxed only by leave of the legal committee.

7. N.J.A.C. 6:2-1.16 provides for situations in which a brief is inadequate or includes parts that are profane or abusive, making explicit that such briefs may be suppressed in part or in their entirety.

8. N.J.A.C. 6:2-1.18 specifies the form of notice, the papers that may be filed, filing requirements and timelines for all motions. The rule also eliminates the 10 day delay for filing of the movant's brief that exists under the current rules.

9. N.J.A.C. 6:2-1.19 clarifies that the procedural rules may be relaxed by the State Board where adherence would result in injustice.

10. N.J.A.C. 6:2-2.4 makes specific provision for emergency relief, setting forth the procedures that must be followed by the party seeking such relief. N.J.A.C. 6:2-3.3 would authorize the president of the State Board or chairperson of the legal committee to decide such applications unless the determination would constitute the final decision with respect to the controversy. This will permit a decision to be made in such cases between regularly scheduled public meetings of the State Board without the necessity of convening a special meeting. Although N.J.S.A. 18A:6-29 precludes delegation of authority in cases where a determination as to emergent relief would constitute a final decision, amendment to the statute permitting such delegation is pending before the Legislature.

11. N.J.A.C. 6:2-2.6 proposes procedures under which recommendations for the creation of a State-operated school district made by the Commissioner would be considered by the State Board. This new rule was published in the July 15, 1988 New Jersey Register and was adopted by the State Board of Education on September 7, 1988, effective October 3, 1988 (see 20 N.J.R. 2452(a)). It is included in the current rules under the code citation N.J.A.C. 6:2-1.21.

12. N.J.A.C. 6:2-3.1(b) provides notice that the legal committee may alter the time schedule in a given appeal so as to insure that proceedings are expeditious and the interests of the parties protected.

13. N.J.A.C. 6:2-3.1, 3.3, and 3.4 set forth more explicitly the process of review and decision, and N.J.A.C. 6:2-3.2 clarifies the procedures for requesting oral argument before the legal committee or State Board.

In sum, the proposed rules are intended to provide greater clarity by subchapter designation, sequential organization and by expressly providing for those situations in which procedural questions have arisen since adoption of the current rules. While reflecting that proceedings before the State Board are more sophisticated than in the past, the proposed rules maintain the simplicity essential to fair and expeditious decision making by the Board.

Social Impact

The proposed new rules will further insure the fairness of proceedings before the State Board of Education in all cases appealed to the Board and will enhance the ability of individuals and district boards of education to obtain due process adjudication of appeals to the State Board. The new rules also will contribute to the State Board's ability to more expeditiously arrive at a substantive determination in each case that is consistent with law and the educational policies of the State Board of Education.

Economic Impact

No major economic impact is expected as a result of these rules since it is anticipated that they can be implemented by existing departmental staff.

Regulatory Flexibility Statement

The proposed new rules will have no reporting, recording or compliance requirements for small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 6:2-1.

Full text of the proposed new rules follows:

CHAPTER 2
APPEALS

SUBCHAPTER 1. GENERAL PROVISIONS

6:2-1.1 Appealable decisions

(a) Final decisions of the Commissioner of the Department of Education and State Board of Examiners are appealable to the State Board of Education. Final decisions include the following:

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

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

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

6:2-1.2 Who may appeal

(a) Any party aggrieved by a decision of the Commissioner or a decision by the Board of Examiners to revoke or suspend certification may appeal to the State Board of Education.

(b) Parties jointly interested in a decision or action may join in an appeal therefrom or may appeal separately.

(c) A respondent may cross appeal as provided by N.J.A.C 6:2-1.3(b).

6:2-1.3 Time for appeal

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

(b) Cross appeals may be taken by filing notice of cross appeal within 10 days of service of notice of appeal.

(c) Applications for leave to appeal from interlocutory orders, decisions or actions shall be made within the time provided by N.J.A.C. 6:2-2.3.

6:2-1.4 Computation of time

(a) A decision of the Commissioner or State Board of Examiners shall be deemed filed three days after the date of mailing to the parties.

(b) In computing any period of time fixed by this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

6:2-1.5 Extensions of time

(a) No extension of time may be granted to enlarge the time specified for appeal or for cross appeal.

(b) By notice to the Legal Committee of the State Board of Education, extensions with consent of all parties for filing briefs or exceptions to the report of the Legal Committee may be obtained for a period of time not to exceed an accumulated total of 30 days for all extensions in one case.

(c) Requests for extensions of time without the consent of all parties may be granted only by leave of the Legal Committee for a period not to exceed 10 days for any party in one case. The Legal Committee may grant further extensions without the consent of all parties only upon a showing of good cause and the absence of prejudice.

(d) Extensions of time that are opposed, or a combination of opposed and unopposed, may not exceed an accumulated total of 30 days for all extensions in one case. Further extensions of time may be granted only by leave of the Legal Committee upon a showing of good cause.

6:2-1.6 How to appeal

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

(b) An appeal or cross appeal shall be considered filed upon receipt of notice of appeal by the Legal Committee if hand delivered or upon mailing if appended thereto is a proof of mailing including either:

1. An affidavit of the person mailing the appeal; or

2. A certificate of mailing signed by the attorney for the party filing the appeal.

(c) Where there is no accompanying affidavit or certificate of mailing, the appeal shall be deemed to have been mailed three days before receipt of the appeal by the State Board.

6:2-1.7 Contents of notice of appeal and notice of cross appeal

(a) A notice of appeal or notice of cross appeal shall set forth the name of the party taking the appeal and his or her address or that of his or her attorney if he or she is represented, the names of all other parties, and shall specifically designate the decision appealed from, or such part as appealed from.

(b) Proof of service shall be appended to notice of appeal or cross appeal in the form of one of the following:

1. An acknowledgement of service signed by the attorney for the party or signed and acknowledged by the party;

2. An affidavit of the person making service; or

3. A certificate of service appended to the paper to be filed and signed by the attorney for the party making service.

(c) Failure to append proof of service to notice of appeal or cross appeal does not affect the validity of service, and the State Board at any time may allow proof of service to be amended or supplied unless an injustice would result.

6:2-1.8 Record on appeal

(a) The record on appeal shall consist of all papers on file with the Commissioner or Board of Examiners, with all entries as to matters made on the record, any stenographic transcript, and all papers filed with or entries made on the records of the State Board.

(b) Upon notice of appeal, the Commissioner or Board of Examiners shall certify the record and remit the record to the State Board, together with the notice and two copies of the decision appealed from.

(c) The record shall be retained by the State Board except that any party may be permitted to use any portion of such record in the State Board's appeals office.

6:2-1.9 Supplementation of the record

At any time during the pendency of the appeal, if it appears that evidence unadduced at the proceedings below may be material to the issues on appeal, the State Board may direct, on its own motion or on motion of a party, on such terms as it deems appropriate, that the record on appeal be supplemented by the taking of additional evidence.

6:2-1.10 Filing and service of briefs, motions, applications, and exceptions

(a) One copy of all briefs, motions, applications, and exceptions filed pursuant to this chapter shall be served on all parties, and proof of such service in conformity with N.J.A.C. 6:2-1.7(b) shall be appended to an original, which shall be filed with the Legal Committee.

(b) In addition to an original, 17 copies of all briefs, motions, applications, and exceptions shall be filed with the Legal Committee.

(c) All briefs filed pursuant to this chapter shall be deemed filed upon receipt by the Legal Committee.

6:2-1.11 Time for serving and filing briefs

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

(b) If a cross appeal is taken, the party first appealing shall serve and file an appeal brief within 30 days of notice of the cross appeal. Within 30 days thereafter, the cross-appellant shall serve and file a brief in support of the cross appeal, which shall include an answer to appellant's brief. The appellant may file a reply brief within 10 days thereafter. No other briefs shall be served or filed without leave of the Legal Committee.

6:2-1.12 Failure to meet filing deadlines

(a) Failure to meet the filing deadline for an appeal brief or brief in support of a cross appeal may be viewed as a failure to perfect the appeal or cross appeal. Accordingly, on its own motion, the State Board may move to dismiss such appeal or cross appeal.

(b) If a respondent fails to meet the filing deadline for an answer brief, the record may be closed and the State Board may consider the matter on the record then before it.

6:2-1.13 Contents of briefs

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

1. The name of the State Board of Education and State Board of Education docket number of the action;
2. The title of the action;
3. The designation of the parties before the Commissioner and the designation of the parties in the action before the State Board;
4. The title of the document and the designation of the party for whom it is filed; and
5. The name and office address of the attorney of record and the names of any attorneys "of counsel" or "on the brief".

(b) All briefs shall be typed and plainly legible. All formal briefs shall be typed double spaced.

(c) Each formal brief filed by an appellant shall contain the following material under distinct titles, arranged in the following order:

1. A table of contents, including the point headings to be argued. Any point neither briefed nor argued in the proceedings prior to the appeal to the State Board shall be so indicated by including a statement in parentheses to that effect in the point heading.
2. If the appeal raises questions concerning educational policies, a concise and specific statement of those policies.
3. A concise procedural history including a statement of the nature of the proceedings and a reference to the order, decision or action appealed from or sought to be reviewed.
4. A concise statement of the facts material to the issues on appeal supported by references to the record and transcript. The statement shall be in the form of a chronological narrative summarizing all pertinent evidence, but shall not be a summary of all the evidence adduced at hearing, witness by witness.
5. The legal argument for the appellant, under appropriate point headings, distinctively printed or typed, into as many parts as there are to be argued.

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

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

(f) A brief in support of a cross appeal shall conform to the requirements of (c) or (d) above.

(g) Appeallant's reply brief shall conform to the requirements of (c) or (d) above.

6:2-1.14 Appendices

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

(b) An appendix shall not include any document that would supplement the evidentiary record made before the Commissioner unless motion to supplement the record has been made and granted by the State Board as provided by N.J.A.C. 6:2-1.9.

6:2-1.15 Length of briefs

(a) Initial briefs of parties, if formal briefs, shall not exceed 40 pages exclusive of tables of contents and appendices. Letter briefs and reply briefs shall not exceed 15 pages.

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

6:2-1.16 Inadequacy or impropriety of briefs

(a) If a brief does not substantially conform to this subchapter or is so inadequate that justice cannot be done without the State Board's independent review of the record or research of the law, the State Board may order the same suppressed and direct the filing within a fixed period of time of a new brief.

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

6:2-1.17 Exceptions to reports of the Legal Committee

(a) Whenever there is a written report of the Legal Committee as provided by N.J.A.C. 6:2-3.1(d), the parties may serve and file exceptions within 10 days of the date on which the report is filed. Exceptions shall be filed concurrently and shall not exceed 10 pages. No other papers shall be served or filed without leave of the Legal Committee.

(b) Written reports of the Legal Committee shall be deemed filed three days after the date of mailing to the parties.

6:2-1.18 Motions

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

(b) Every brief shall have appended to it any decision or order of the Commissioner or State Board of Examiners granting or denying the relief sought or challenged, and such portions of the record upon which the movant either relies or should reasonably assume the opposing party will rely.

(c) Each motion shall be accompanied by an affidavit setting forth fully the factual basis upon which the motion is founded.

(d) The moving party shall serve one copy of the moving papers on all other parties, and file with the Legal Committee an original and 17 copies thereof.

(e) Except as provided by N.J.A.C. 6:2-2.4, Emergency relief, an opposing party shall have 10 days after service of the movant's papers to serve and file the same number of papers in opposition. The opposing party's brief shall explain clearly the grounds for opposition, annexing any papers relied on that were not included in the moving party's appendix. If no opposing brief is filed, the State Board may consider the motion unopposed.

(f) Without leave of the Legal Committee, which may be applied for ex parte, supporting and answering briefs shall not exceed 15 pages, exclusive of table of contents and appendix.

(g) No other papers shall be filed by either party without leave of the Legal Committee.

(h) Unless otherwise directed by the State Board, there shall be no oral argument on motions.

6:2-1.19 Relaxation of the rules

The rules of this chapter shall be construed to secure a just determination, simplicity of procedure, fairness in administration and elimination of unnecessary delay. Unless otherwise stated, any rule may be relaxed in any case by the State Board, in its discretion, if adherence to such rule would result in an injustice.

SUBCHAPTER 2. MISCELLANEOUS PROCEEDINGS

6:2-2.1 Motion to appear as amicus curiae

(a) A motion for leave to appear as amicus curiae shall state with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise with respect thereof.

(b) The State Board shall grant the motion if it is satisfied under all the circumstances that the motion is timely, that the applicant's participation will assist in the resolution of an issue of public importance, and that no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall fix a briefing schedule.

(c) An amicus curiae who has been granted leave to appear in a case before the Commissioner may, without seeking further leave, file a brief and appear in an appeal taken to the State Board from the decision or order entered therein.

6:2-2.2 Motion for stay of a decision of the Commissioner or State Board of Examiners

(a) After the filing of a notice of appeal to the State Board from a determination of the Commissioner or Board of Examiners, a motion for stay shall be made first to the Commissioner or Board of Examiners.

(b) A motion for stay to the Commissioner or Board of Examiners shall be done by notice of motion with supporting affidavit, two copies of which shall be filed with the Commissioner or Board of Examiners and one copy served on each party to the action.

(c) The motion and affidavit shall set forth fully that portion of the Commissioner's or Board of Examiner's decision with respect to which a stay is sought, the factual basis on which the motion for stay is founded, and the reasons favoring the stay.

(d) Any party opposing the motion for stay shall file and serve within 10 days of service of such application an answering affidavit in the same manner, setting forth the reasons why the motion for stay should be denied.

(e) If the motion is denied by the Commissioner or Board of Examiners, motion for stay may be made to the State Board. If the motion is granted before the Commissioner, a motion to dissolve the stay may be made to the State Board.

6:2-2.3 Motion for leave to appeal an interlocutory order, decision or action

Motion for leave to appeal an interlocutory order, decision or action shall be made by filing a motion for leave to appeal to the State Board of Education within five days after the action or service of the interlocutory decision or order. Motion for leave to appeal shall conform to the requirements of N.J.A.C. 6:2-1.18, except that the brief in support of the motion shall also include the merits of the issues sought to be appealed. The respondent's answer shall be filed within 10 days of service of motion.

6:2-2.4 Emergency relief

(a) Where the Commissioner has granted or denied emergency relief pursuant to N.J.A.C. 1:1-12.6, a party may move for emergency relief before the State Board.

(b) Applications for emergency relief shall conform to the requirements of N.J.A.C. 6:2-1.18. Opposing parties shall be given opportunity under the circumstances to file papers in response to an application for emergency relief.

(c) Applications for emergency relief shall be considered on an expedited basis.

6:2-2.5 Appeal from a decision of the Commissioner on school budget cap waiver applications

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

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

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

6:2-2.6 Issuance of an administrative order creating a State-operated school district

(a) A recommendation made to the State Board by the Commissioner for the issuance of an administrative order creating a State-operated school district shall be deemed filed three days after the date of mailing to the respondent.

(b) The Commissioner shall certify the record upon which the recommendation is based and remit the record, so certified, together with two copies of the recommendation to the State Board within three days after the recommendation is filed.

(c) Within 10 days after the recommendation is filed, a respondent contesting the recommendation shall file a notice of intention to contest with the State Board of Education and with the Commissioner, identifying the recommendation and stating that the respondent intends to contest it. A notice filed on behalf of a district board of education shall have appended thereto a certification that the district board has authorized the filing of the notice by resolution of the district board adopted by roll call vote.

(d) Within 15 days after the filing of notice, the respondent shall file with the State Board an original and 17 copies of its exceptions to the recommendation, and shall serve one copy upon the Commissioner.

1. The exceptions shall specify the basis upon which the respondent contests the recommendation and shall include the respondent's argument, clearly and concisely stated, as to why the State Board should not issue an administrative order creating a State-operated school district.

2. Any transcript or exhibit admitted into evidence, or portion thereof, relied upon shall be specifically identified.

3. The respondent's exceptions may be in letter form, but shall not exceed 30 pages unless leave of the State Board has been obtained.

(e) Within 10 days after the respondent has filed its exceptions, the Commissioner may file a response not exceeding 30 pages, which shall specifically identify any transcript or exhibit admitted into evidence, or portion thereof, upon which the Commissioner relies in the response.

(f) No other papers shall be served or filed without leave of the State Board.

(g) Oral argument before the State Board, or a committee thereof, may be granted on request of the respondent made by a separate captioned paper filed concurrently with its exceptions, or, in the case of any recommendation, upon direction of the State Board.

(h) If no notice is filed as provided by (c) above, or exceptions are not filed within the 15 day period provided by (d) above, the decision of the State Board will be based solely on the record certified to it by the Commissioner.

(i) Except as otherwise provided, the rules included in this chapter are applicable to proceedings pursuant to this section.

(j) Determinations of the State Board made pursuant to this section shall be embodied in a written decision, which shall be certified to the Commissioner and simultaneously mailed to the respondent or its attorney of record.

(k) The decision of the State Board shall be deemed filed three days after the date of mailing.

6:2-2.7 Motions for clarification of a State Board decision

A motion for clarification shall be served and filed within 10 days after the State Board has filed its decision in the matter.

SUBCHAPTER 3. REVIEW AND DECISION

6:2-3.1 Functions of the Legal Committee

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

1. The decision of the Commissioner or Board of Examiners;
2. Appellant's brief, further memoranda and briefs; and
3. Respondent's answering brief, further memoranda and briefs.

(b) Except as otherwise provided, the Legal Committee shall have the authority to accelerate the time schedule established by this chapter, or to stay such time schedule on its own or motion of a party, as it deems necessary to insure that the proceedings are expeditious and that the interests of the parties are protected.

(c) After reviewing a given appeal, the Legal Committee shall report to the State Board at public meeting of the Board, recommending its conclusions.

(d) Prior to the consideration of a given appeal by the State Board, the Legal Committee may submit to the members of the State Board a written report setting forth its recommendations.

1. Whenever there is such a written report of the Legal Committee, it shall be mailed simultaneously to all parties or their attorneys of record, and opportunity for exceptions shall be provided pursuant to N.J.A.C. 6:2-1.17.

2. Each report, along with any exceptions, then shall be transmitted to each member of the State Board in advance of consideration of the matter by the Board.

6:2-3.2 Oral argument

(a) Appeals to the State Board shall be considered without oral argument unless argument is directed by the Legal Committee or the State Board.

(b) Oral argument before the Legal Committee or before the State Board will be granted at the discretion of the Committee or the State Board only if the respective body is convinced that this procedure is necessary for a fair determination of the case.

(c) A party requesting oral argument shall make the request by filing a separate captioned paper within 10 days after service of the respondent's brief concisely presenting the reasons why oral argument is necessary.

(d) Even when reasons are proffered by a party, the Legal Committee and/or the State Board may deny a request for oral argument when not convinced that this procedure is necessary to make a fair determination of the case.

6:2-3.3 Authority to decide applications for emergency relief

The President of the State Board or, in the President's absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6:2-2.4 unless the determination would constitute the final decision with respect to the controversy.

6:2-3.4 Decision of the State Board

(a) The State Board shall make final determinations with respect to each controversy by resolution at open public meeting.

(b) Each final determination of the State Board shall be embodied in a written decision, which shall be mailed to all parties or their attorneys of record.

(c) Decisions of the State Board shall be deemed filed three days after the date of mailing to the parties.

(a)

STATE BOARD OF EDUCATION

Core Proficiencies

Proposed Amendments: N.J.A.C. 6:8-1.1, 4.3, 7.1; 6:39.

Proposed New Rules: N.J.A.C. 6:39-1.3 and 1.6.

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 4-15, as supplemented and amended by N.J.S.A. 18A:7A-1 et seq.

Proposal Number: PRN 1988-576.

Submit comments by December 7, 1988 to:

Irene Nigro, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In the Fall of 1986, a Statewide Panel on High School Proficiencies was convened. The specific charge to the panel was to study the issues of proficiencies—how they should be developed and assessed and their impact—and to report its recommendations to the Commissioner of the Department of Education (Commissioner) by December 1, 1987. The proposed amendments to N.J.A.C. 6:8-1.1, 4.3, 7.1 and N.J.A.C. 6:39, which are a result of the Commissioner's response to the recommendations of the Statewide Panel on High School Proficiencies, are summarized as follows:

N.J.A.C. 6:8-1.1 has been amended to include definitions for the words "core course proficiencies" and "curriculum."

N.J.A.C. 6:8-4.3(a)3i has been amended to include county superintendent review to determine that proficiencies have been developed and that methods for the assessment of these proficiencies have been implemented for all courses that have been established to meet State and local high school graduation requirements.

N.J.A.C. 6:8-7.1(c)2i has been amended to require:

1. The Commissioner to establish uniform Statewide core course proficiencies for those curriculum areas mandated by the State Board of Education for high school graduation and for foreign languages.

2. That the core course proficiencies be developed and recommended to the Commissioner for approval through a collaborative process which shall include curriculum convocations; curriculum panels, composed of outstanding educators and others; and local school district review.

3. District boards of education to establish core proficiencies for each of the courses mandated by the State Board of Education, including the Statewide core course proficiencies.

4. District boards of education to establish core proficiencies for all courses which are taken to meet local graduation course and credit requirements.

5. District boards of education to establish core proficiencies for all courses other than those required for high school graduation in which students are enrolled to meet local graduation course and credit requirements.

6. The Department of Education to assess core proficiencies, using Statewide tests, in the four key curriculum areas (mathematics, science, English, and social studies) mandated by the State Board of Education for high school graduation.

7. District boards of education to be responsible for the specific methods and standards of mastery for Statewide core proficiencies assessment, as mandated by these rules.

8. The State Department of Education to assist school districts in identifying and/or developing school district assessment techniques and instruments through curriculum panels, prepared assessment material, and regional training activities. The Department shall also identify those school districts that have effective assessment programs which can serve as models.

N.J.A.C. 6:39 has been reorganized and amended to include the monitoring of core course proficiencies and the assessment of these proficiencies in the Statewide process for monitoring of school districts.

Social Impact

The proposed amendments are expected to produce several benefits. They will create equity in access to the fundamental knowledge critical to achieving success in the mainstream of American life, and indicate the effectiveness of schools and districts in helping students learn the core proficiencies. The amendments will serve as a basis for assisting schools whose students are not performing well in the core proficiencies. They will further indicate to the public the competency of students Statewide in the core proficiencies for the mathematics, science, English, and social studies courses commonly taken by most students to meet the State Board of Education's high school curriculum graduation requirements.

Economic Impact

District boards of education are currently required to develop and assess course proficiencies. Increased costs to local school districts would vary and depend on the level of upgrading necessary. The proposed development of the proficiencies and Statewide testing is projected to cost the State approximately $1.3 million annually, once fully implemented.

Regulatory Flexibility Statement

The proposed amendments will have no reporting, recording, or compliance requirements for small businesses. All requirements of the amendments impact upon New Jersey public school districts.

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

6:8-1.1 Words and phrases defined

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

...

"Core course proficiencies" means the essential knowledge and skills, as compared to the sum of all knowledge and skills, learned in a course.

"Curriculum" means planned learning opportunities in order for students to achieve the intended outcomes of instruction (that is, all knowledge, abilities, skills, attitudes, values, behaviors, and other attributes intended for acquisition by learners).

...

6:8-4.3 Evaluation of elements and standards

(a) The following [ten] **10** essential elements and the prescribed indicators of standards of acceptable performance shall be evaluated by the monitoring team under the supervision of the county superintendent of schools as specified in this section.

1. The annual educational planning element of the district shall be rated acceptable upon demonstration of performance in three indicators as follows:

i. (No change.)

ii. Three or more written educational objectives which shall include standards of pupil achievement and action plans based upon district needs shall be developed annually in consultation with teaching staff members and the community under the direction of the chief school administrator in accordance with requirements established by the [c]Commissioner.

(1)-(3) (No change.)

iii. (No change.)

2. The school and community relations elements of the district shall be rated acceptable upon documentation of performance in five indicators as follows:

i. (No change.)

ii. The district board of education shall provide parents or guardians as well as other district residents and teaching staff members opportunities for discussion regarding State rules and local [school] **district** procedures for implementation of district goals, objectives and standards through one or more public meetings of the district board of education. The initial meeting shall be held prior to September 30 of each year. The district board shall publish a special notice 10 days in advance of each meeting describing the purpose, listing the items to be discussed and indicating the availability of material relative to such items. The discussion of such meeting(s) shall include, but not be limited to:

(1) (No change.)

2. The result of:

(A) (No change.)

(B) The [s]Statewide and district testing programs including analysis and interpretation of schools and district performance;

(C) (No change.)

(3) The documents listed in (**a**)**2ii** (1) and (2) above shall be accessible to the public for inspection at such meetings and shall be available upon request at the earliest possible time in accordance with the provisions of the public records law, N.J.S.A. 47:1A-1 et seq.;

iii.-v. (No change.)

3. The comprehensive curriculum and instruction element of the district shall be rated acceptable upon documentation of performance in seven indicators as follows:

i. The district board of education shall approve annually a curriculum for all grades from pre-kindergarten through grade 12 for all subjects including all State mandated programs and services.

(1)-(2) (No change.)

(3) In accordance with N.J.A.C. 6:8-7.1(c)2iii and N.J.A.C. 6:39-1.3(b), district boards of education shall provide for:

(A) Development of course proficiencies, which shall include, but not be limited to, those identified and established by the Department of Education as core course proficiencies;

(B) Establishment of a standard of student mastery; and

(C) Annual assessment of all students in those proficiencies necessary to meet all state and local high school graduation requirements.

ii.-vii. (No change.)

4.-10. (No change.)

6:8-7.1 Promotion, remediation, and graduation procedures

(a) District boards of education shall adopt policies and procedures for:

1. Pupil promotion, related to district goals, objectives, and pupil proficiency;

2. (No change.)

3. High school graduation requirements, pursuant to law and rule, which are consistent with the achievement of State and district goals, objectives, and pupil proficiency with particular reference to reading, writing, and mathematics skills as specified in (b), (c), (d), and (e) below;

4. The exemption of handicapped pupils from the high school graduation requirements, pursuant to N.J.A.C. 6:28-3.6 and 4.4, 6:39-[1.5]**1.7**, and (b)6 below.

5. Annual notification to pupils and parent(s) or guardian(s) of the policies and procedures for pupil promotion, remediation, and the high school graduation requirements;

6. Notification to each entering ninth grade pupil and his or her parent(s) or guardian(s) of all State and local high school graduation requirements. In addition, at the beginning of each course required for graduation, each district board of education shall distribute a list of proficiencies required for successful completion of that course to all pupils and their parent(s) or guardian(s). **These proficiencies lists shall include, but not be limited to, the core course proficiencies identified by the Department of Education in N.J.A.C. 6:39-1.3(b).**

7. Notification to each pupil and parent(s) or guardian(s) at appropriate times during the school year of the pupil's progress in meeting the promotion, **course** proficiencies and the high school graduation requirements;

8.-10. (No change.)

(b) District boards of education shall adopt policies and procedures for high school graduation of all pupils, pursuant to law and rule, which shall include, but are not limited to, performing at or above the State minimum levels of pupil proficiency on the State-mandated High School Proficiency Test in reading, writing, and mathematics skills.

1. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test shall be provided with an individual comprehensive assessment, as specified in N.J.A.C. 6:8-6.1. Based on the individual comprehensive assessment, the pupil shall receive the necessary services to remedy the identified deficiencies. Such services shall include, but not be limited to, the development and implementation of an Individual Student Improvement Plan. This individual plan may be carried out through the regular program or through an extended school day, extended school week, or extended school year. Com-

prehensive pupil assessment and re-evaluation of the individual plans shall take place at least once each year until all identified deficiencies have been remediated.

2. Each [local school] district **board of education** shall develop procedures for the development of Individual Student Improvement Plans. These procedures shall include, but not be limited to, those procedures set forth in N.J.A.C. 6:8-6.2.

3. Pupils who perform below State levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test shall be provided an opportunity to demonstrate mastery in each academic year.

4. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Tests and have satisified all other State and local graduation requirements shall be provided an additional evaluation during the twelfth year which is based on the Individual Student Improvement Plan required under [paragraph] (b)1 above. This evaluation, the Special Review Assessment, may include, but is not limited to:

i.-iii. (No change.)

iv. Practical demonstrations of specific skill mastery which occur either in or outside of school, but which are not part of regular course work;

v.-vii. (No change.)

viii. Visual, auditory, and/or medical data, as appropriate;

ix. (No change.)

x. Examination of pupil proficiencies in other areas[:].

5. The findings of the evaluation required in (b)4 above shall be recorded on a Special Review Assessment Student Profile Form developed by the Department of Education. An independent evaluation of these data must be made by a local district review panel comprised of at least three teaching staff members not currently instructing the pupil. On the basis of the evidence listed in (b)4 above and the recommendations of the review panel, the building principal and the chief school administrator may certify satisfactory attainment of the State minimum levels of pupil proficiency in reading, writing, and/or mathematics. Whether or not such certification occurs, the district must retain the Student Profile Form, including all attachments, for one year after the pupil's class graduates. If such certification occurs, the Special Review Assessment Student Profile Form must be forwarded to the county superintendent of schools by March 1 of the regularly scheduled graduation year. Based upon the documentation provided by the local district, the county superintendent of schools must certify whether or not the State minimum levels of proficiency have been achieved and notify, in writing, the chief school administrator of this decision.

6. A handicapped pupil must meet all State and local high school graduation requirements in order to receive a State-endorsed high school diploma, unless exempted in his or her Individualized Education Program and with the written approval of the chief school administrator. An exemption from the High School Proficiency Test **and Statewide testing of the core course proficiencies as required by N.J.A.C. 6:39-1.3** shall be granted if a pupil would be adversely affected by taking these tests. An exemption from the proficiencies **and requirements specified in N.J.A.C. 6:39-1.3** and High School Proficiency Test shall be granted if the pupil's Individualized Education Program does not include the proficiencies measured by the tests:

i. A handicapped pupil who has not been exempted from the proficiency on one or more areas of the [s]State-mandated High School Proficiency Test shall participate in the Special Review Assessment.

7. Any out-of-school youth or adult age 18 or older who has otherwise met all State and local graduation requirements, but has failed to pass the State-mandated High School Proficiency Test, may return at times which have been scheduled and publicly announced by the district for the purpose of taking the necessary test. Upon certification of passing the test, a State-endorsed diploma will be granted by the high school of record.

(c) Minimum high school graduation requirements include the following:

1. District boards of education providing high school diplomas, in cooperation with any sending district(s), shall adopt policies and procedures for defining minimum high school curriculum requirements and locally determined proficiencies, **including the Statewide core course proficiencies** therein, pursuant to law and rule, which shall include, but not be limited to:

i. Requiring the successful completion of a program of study in grades nine through 12, effective with the September, 1987 grade nine class, which shall include, but not be limited to:

(1) (No change.)

(2) Two credit years of mathematics, effective through August, 1990; three credit years of mathematics, effective with the September, 1990 grade nine class;

(3) Two credit years of social studies/United States history, as required by N.J.S.A. 18A:35-1, through August 1988, and one additional credit year of world history/cultures, effective with the September, 1988 grade nine class;

(4) One credit year of natural or physical science through August, 1989; two credit years of natural or physical science, effective with the September, 1989 grade nine class;

(5) One credit year of physical education, health, and safety for each year of enrollment, as required by N.J.S.A. 18A:35-7[.];

(6) (No change.)

(7) One-half credit year of career education. This requirement may be satisfied through the alternative methods of infusion into existing courses, course equivalents, or a career education course. For credit to be awarded, career education shall be offered as a course, as specified in (c)1ii below or in (d) below.

ii. Pupils may meet the curriculum requirements set forth in (c)1i above through demonstration of mastery of [the locally determined] **Statewide core and locally determined course** proficiencies [as determined by the State Department] in each of the above curriculum areas or through program completion procedures noted in (d) below. This determination shall be made by the district board of education.

2. Pupil proficiencies in (c)**1** above shall be developed as follows:

[i. The Commissioner of Education shall provide guidelines to district boards of education for the development of local proficiencies for each curriculum area.]

i. The Commissioner shall establish uniform Statewide core course proficiencies for those curriculum areas mandated by the State Board for high school graduation and for foreign languages. The core course proficiencies shall be developed by the Commissioner through a collaborative process which shall include:

(1) Curriculum convocations;

(2) Curriculum panels, composed of outstanding educators and others; and

(3) Local school district review.

ii. Core course proficiencies shall be developed within the following timelines for the respective curriculum areas:

(1) Mathematics, beginning August 1, 1989 and concluding October 1, 1990;

(2) Natural or physical science, beginning August 1, 1989 and concluding October 1, 1990;

(3) English, beginning August 1, 1990 and concluding October 1, 1991;

(4) Social studies, beginning August 1, 1990 and concluding October 1, 1991;

(5) Foreign languages, beginning August 1, 1991 and concluding October 1, 1992;

(6) Fine, practical, and/or performing arts, beginning August 1, 1992 and concluding October 1, 1993;

(7) Career education, beginning August 1, 1992 and concluding October 1, 1993; and

(8) Health, safety, and physical education, beginning August 1, 1993 and concluding October 1, 1994.

iii. For each of those courses mandated by the State Board of Education, local school districts shall establish course proficiencies, including, but not limited to, the Statewide core proficiencies in the following curriculum areas:

(1) Mathematics by September 1, 1991;

(2) Natural or physical science by September 1, 1991;

(3) English by September 1, 1992;

(4) Social studies by September 1, 1992;

(5) Foreign languages by September 1, 1993;
(6) Fine, practical, and/or performing arts by September 1, 1994;
(7) Career education by September 1, 1994; and
(8) Health, safety, and physical education by September 1, 1995.

[ii.]**iv.** District boards of education shall establish **course** proficienc[y]**ies** [requirements in] **for** each **course in all** curriculum areas. Upon approval of these proficiencies by the district board of education, [demonstration of] **all students shall demonstrate** mastery [will be required] **through specified annual methods and instruments of assessment in all courses** as a condition of graduation.

v. The Statewide core course proficiencies in the content areas set forth in (c)2ii above shall be reviewed by panels of outstanding local educators convened by the Commissioner every five years following their establishment. Based upon the recommendations of the panel, the Commissioner shall consider the revision of the core course proficiencies.

(d) Subject to approval of the State Board of Education:

1. Each district board of education shall establish graduation requirements on the basis of either course credits, program completion, or a combination of course credits and program completion.

i. Course credit requirements shall be established as follows:

(1) Each four-year high school shall establish a minimum number of not less than 92 credits to be required for graduation, effective with the September, 1987 grade nine class; not less than 110 credits effective with September, 1988 grade nine class.

(2) Each three-year high school shall establish a minimum number of not less than 69 credits to be completed in grades 10 to 12 inclusive, effective with the September, 1987 grade [ten] **10** class; not less than 82.5 credits, effective with the September, 1987 grade [ten] **10** class.

(3) (No change.)

(4) Credit toward graduation shall be awarded by the following method:

(A) (No change.)

(B) Credit may be assigned by each district board of education for curricular activities, as defined in N.J.A.C. 6:27-1.13.

ii. Credit year requirements set forth in (c) above may be met in whole or in part through program completion as follows:

(1)-(3) (No change.)

(4) Group programs based on specific instructional objectives shall be approved in the same manner as other approved courses. Individual programs shall be on file in the local district and subject to review by the [c]Commissioner or his or her designee.

3. (No change.)

(e) Successful completion of the requirements set forth in (b), (c), and (d) above and any local requirements shall be required as conditions for awarding a State-endorsed diploma, except as provided for seniors entering military or naval service, pursuant to N.J.S.A. 18A:36-17, and handicapped pupils exempted from the requirements. No district board of education may issue a high school diploma without State endorsement.

(f) Review and reporting rules including the following:

1.-2. (No change.)

3. District boards of education shall submit their graduation requirements on forms provided by the [State] Department of Education to the [c]Commissioner or his or her designee. District boards of education shall update this filed copy as their graduation policies are revised;

4. The Commissioner [of Education] or his or her designee shall review and approve the district board of education policies and procedures for pupil promotion, remediation, and high school graduation requirements;

5. The Commissioner [of Education] or his or her designee shall monitor the implementation of the promotion, remediation, and high school graduation policies and procedures; and

6. From time to time, but at least once every five years, the State Board of Education and district boards of education shall review and update their promotion and graduation requirement policies, as a result of the State and local goal review processes noted in N.J.S.A. 18A:7A-8 and N.J.A.C. 6:8-2.3 and 6:8-4.3(a)1i.

CHAPTER 39
EVALUATION

SUBCHAPTER 1. STATEWIDE ASSESSMENT

6:39-1.1 Authority of the [c]Commissioner

(a) The Commissioner of Education, with the approval of the State Board of Education, shall conduct an assessment of pupil achievement in the public school system of the State and of any grades therein by such means, tests, and examinations which he or she deems proper, and shall report to the State Board the results of such inquiries and such other information with regard thereto as the State Board may require.

(b) All such means, tests, if determined to be appropriate by the [c]Commissioner, and examinations to be administered pursuant to this [rule] **section** shall be conducted by and in all operating school districts in New Jersey and shall meet State criteria.

(c) School districts shall conduct such means, tests, and examinations in the manner and at the times prescribed by the [c]Commissioner.

(d) School districts shall report to the Department of Education the results of such means, tests, and examinations in the manner and at the times prescribed by the [c]Commissioner.

6:39-1.2 [Levels of pupil proficiency] **Basic skills proficiency in reading, writing, and mathematics (HSPT)**

(a) The State Board of Education, after consultation with the [c]Commissioner, shall establish uniform Statewide levels of pupil proficiency in reading, writing, and mathematics skills on the Statewide assessment instruments pursuant to N.J.S.A. 18A:7A-6.

(b) In the event that certain grades are not administered the [s]Statewide assessment instruments, the Department of Education shall establish, for those grades, equivalent standards of pupil proficiency on tests which measure performance in reading, writing, and mathametics skills and meet State criteria.

(c) All pupils performing below the established levels of pupil proficiency in reading, writing, and mathematics skills, as determined **by** [under N.J.A.C. 6:39-1.2](a) and (b) **above**, shall be provided appropriate instructional services according to the district's basic skills improvement plan, pursuant to N.J.S.A. 18A:7A-6.

1. A waiver of this requirement may be granted if the program of needs assessment conducted pursuant to N.J.A.C. 6:8-7.1(b)4 clearly demonstrates such enrollment is unnecessary or **if** enrollment of a pupil above the levels of pupil proficiency as established in (a) and (b) above is necessary.

6:39-1.3 Core course proficiencies assessment

(a) The Department of Education shall assess the core course proficiencies established in N.J.A.C. 6:8-7(c)2ii. The assessment shall occur using statewide tests in the following areas and according to the schedule of administration specified below:

1. Mathematics courses, with tests to be administered in 1992 and reoccur once every four years thereafter;

2. Science courses, with tests to be administered in 1993 and reoccur once every four years thereafter;

3. English courses, with tests to be administered in 1994 and reoccur once every four years thereafter; and

4. Social studies courses, with tests to be administered in 1995 and reoccur once every four years thereafter.

(b) The specific methods and standards for annually assessing student mastery of course proficiencies, as mandated by N.J.A.C. 6:8-7.1(c), shall be the responsibility of each local school district.

(c) The Department of Education shall assist school districts in identifying and/or developing school district assessment techniques and instruments through curriculum panels, prepared assessment material, and regional training activities. The Department shall also identify those school districts that have effective assessment programs which can serve as models.

(d) The Statewide tests will be reviewed as part of the process required in N.J.A.C. 6:8-7.1(c).

(e) A handicapped pupil must meet all State and local high school graduation requirements in order to receive a State-endorsed high school diploma unless exempted in his or her Individualized Education Program and with the written approval of the chief school adminis-

trator. An exemption from the core course proficiencies testing shall be granted if the pupil would be adversely affected by taking the tests. An exemption from the proficiencies and tests specified in (a), (b), and (c) above shall be granted if the pupil's Individualized Education Program does not include the proficiencies measured by the test.

6:39-[1.3]**1.4** Dissemination of information

(a) **Dissemination of information procedures relative to basic skills proficiency in reading, writing, and mathematics as measured by the High School Proficiency Test (HSPT) shall be as follows:**

[(a)]**1.** Notwithstanding the provisions of N.J.A.C. 6:3-2, individual pupil data shall be released only to a pupil, his or her parent or legal guardian, and school personnel and school officials deemed appropriate by the [c]Commissioner.

[(b)]**2.** The [State] Department of Education shall produce and distribute to chief school administrators as uninterpreted reports for tests developed by the Department[:], rosters of pupil performance and other reports as deemed appropriate by the [c]Commissioner.

3. Rosters of pupil performance for tests developed by the Department of Education shall be distributed to chief school administrators, as indicated in (a)2 above in such a manner as to provide a 30-day interpretation period prior to reporting to the district board of education and to the public. Following this 30-day period, the Commissioner shall make available to the public records about each district which at a minimum shall list the number of pupils tested and percentage of pupils at or above the established levels of pupil proficiency:

i. By grade and by test for tests developed by the Department; and

ii. By grade, for certain other tests administered by each district, as deemed appropriate by the Commissioner.

[(c)]**4.** The [State] Department of Education shall provide an interpreted State report to the State Board [and the Commissioner] of Education.

5. At the time the Commissioner makes available to the public the information stated in (a)3 above, all districts shall make available to the public the number of pupils tested and the percentage of pupils at or above the established levels of pupil proficiency for each school and for the district, by grade and by test.

[(d)]**6.** Summary reports for the class(es), school(s), and district shall be distributed to chief school administrators, as indicated in [(b)](**a**)**2** above, in such a manner as to provide a 45-day period from receipt of all reports for the analysis of data. During this period, such material shall not be available for public distribution.

[(e)]**7.**Upon completion of the analysis, as indicated in [(d)] (**a**)**6** above, but in no case later than the 45-day period established by the [c]Commissioner, and upon approval by the district board of education, summary reports for class(es), school(s), and district shall be made available to the public.

[(f)]**8.** Individual pupil reports for tests developed by the Department **of Education** shall be returned to districts in duplicate for all pupils tested. One copy of the report shall be maintained with the pupil's permanent records, and one copy shall be made available to the pupil, his or parent or legal guardian in a timely fashion.

[(g) Rosters of pupil performance for tests developed by the Department shall be distributed to chief school administrators as indicated in (b) above in such a manner as to provide a 30-day interpretation period prior to reporting to the district board of education and the public. Following this 30-day period, the commissioner shall make available to the public reports about each district which at a minimum shall list the number of pupils tested and percent of pupils at or above the established levels of pupil proficiency, by grade and by tests for tests developed by the Department and for certain other grades as deemed appropriate by the commissioner on tests administered by each district.

(h) At the time the commissioner makes available to the public the information stated in (g) above, all districts shall make available to the public the number of pupils tested and the percent of pupils at or above the established levels of pupil proficiency for each school and the district, by grade and by test.]

[(i)]**9.** The [c]Commissioner may make exceptions to the above [rules] **paragraphs**, such as those required by the provisions of the Public School Education Act of 1975 (N.J.S.A. 18A:7A-1 et seq.), as well as special reports requested by [local] school districts.

(b) Dissemination of information procedures relative to the Statewide tests of the core course proficiencies identified in N.J.A.C. 6:39-1.3(a) shall be as follows:

1. Notwithstanding the provisions of N.J.A.C. 6:3-2, individual pupil data shall be released to the pupil, his or her parent(s) or legal guardian, and school personnel and school officials deemed appropriate by the Commissioner.

2. For those tests developed by the Department of Education, the Department shall provide the chief school administrators with reports of test results. Such reports may include rosters of pupil performance and other reports as deemed appropriate by the Commissioner.

3. The Statewide core course test results shall be returned to the school district by September 1. The Commissioner shall make a public report of the test results by November 1. The report shall include Statewide, school district, and school data.

4. The Department of Education shall provide an interpreted State report to the State Board of Education.

5. All analyses, reports, and assessment compilations for course proficiencies which do not contain personal and identifiable education information shall be considered a public record and shall be made available to the general public upon request.

6. The Commissioner may make exceptions to the above rules, such as those required by the provisions of the Public School Education Act of 1975 (N.J.S.A. 18A:7A-1 et seq.), as well as special reports requested by school districts.

6:39-[1.4]**1.5** Interpretation of data

(a) The [State] Department of Education will provide technical assistance in the development of essential interpretative material by local districts.

(b) The [State] Department of Education may provide interpretations for local, county, and State use.

(c) (No change.)

6:39-1.6 Recognition of excellence

District boards of education shall be encouraged to develop programs which give recognition to students who achieve academic excellence in the course proficiencies.

6:39-[1.5]**1.7** Exclusion of pupils

(a) Any pupil who has been classified as handicapped, pursuant to N.J.S.A. 18A:46-1 et seq., shall participate in the testing programs**, High School Proficiency Test and the Statewide tests of core proficiencies and related tests mandated under this subchapter,** unless specific exemption from participating in [this] **these** programs is provided **for** within that pupil's Individualized Education Program (**see** N.J.A.C. 6:28). A handicapped pupil shall be exempted **from one or both testing programs** if:

1. The pupil would be adversely affected by taking **these** tests; or

2. The pupil's Individualized Education Program does not include the proficiencies measured by the [High School Proficiency] **individual** [T]tests.

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL

Drug Evaluation and Acceptance Criteria

Proposed New Rule: N.J.A.C. 8:70-1.5

Authorized By: Drug Utilization Review Council, Sanford Luger, Chairman.

Authority: N.J.S.A. 24:6E-7(g).

Proposal Number: PRN 1988-548.

A public hearing concerning this proposed new rule will be held on November 29, 1988 at 10:00 A.M. at:

Board Room, Room 103
First Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit comments by December 7, 1988 to:
Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 108, CN 360
Trenton, New Jersey 08625-0360
609-984-1304

The agency proposal follows:

Summary

The Drug Utilization Review Council is empowered to make reasonable rules in order to carry out its statutorily mandated functions, which specifically encourage the use of less expensive, but therapeutically equivalent, generic drugs in place of their branded counterparts.

Confusion has arisen among pharmacists as to whether they should substitute a generic for certain brand-name drugs, essentially identical to those listed in the formulary, but possessing either a newly marketed brand name, or a brand name very similar to one listed in the List of Interchangeable Drug Products. Examples include newly marketed brands, such as Pediotic®, or modified brand names such as Lidex-E® and Aristocort-A®.

The Drug Utilization Review Council proposes to make explicit, for pharmacists' guidance, the substitutable nature of such new or modified brand names.

Social Impact

The social impact of this proposed new rule would affect the public in that this rule would increase generic substitution for branded drugs. However, the primary impact would be on manufacturers of branded products, whose new brands or modified brands would become explicitly substitutable.

Economic Impact

The effect would be positive for consumers in that additional products would be substituted. This would increase savings for consumers, but to a degree which is unable to be estimated.

Some manufacturers of branded products will suffer economically because their products will become substitutable; however, this is the primary intended effect of the statute. Consumer savings are at the expense of the brand-name manufacturer.

Regulatory Flexibility Statement

Small manufacturers, which may be considered small businesses within the meaning of the term in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are not involved in this proposed new rule and therefore will have no increased paperwork or other requirements. This new rule affects only the manufacturers of branded products, none of which are small businesses. Therefore, a regulatory flexibility analysis is not required. However, larger manufacturers will have to provide clinical data proving any contention that their new or modified brands are clinically superior, and thus not substitutable without compromising therapeutic efficacy.

Full text of the proposed new rule follows:

8:70-1.5 Substitution for products similar to those listed in the List of Interchangeable Drug Products

All branded products which contain the same active ingredient(s) as a substitutable brand listed in the List of Interchangeable Drug Products, in the same strength and dosage form, which possess a "therapeutically equivalent" rating from the FDA, and which have similar or identical indications, shall be considered presumptively substitutable. Such branded products will therefore be subject to mandatory generic substitution, as per N.J.S.A. 24:6E-1 et seq., unless the manufacturer of such a brand claims, in writing, a therapeutic difference to the Drug Utilization Review Council and presents clinical data satisfactorily establishing such a difference.

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Garden State Graduate Fellowship Program Approved Programs

Proposed Amendment: N.J.A.C. 9:7-6.4.

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.
Authority: N.J.S.A. 18A:71-26.5 and 18A:71-26.8.
Proposal Number: PRN 1988-558.

Submit comments by December 7, 1988 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to the Garden State Graduate Fellowship Program will limit new fellowships to students who enroll in graduate programs in recognized fields in the arts and humanities beginning with the 1989-90 academic year. Students receiving fellowships prior to the 1989-90 academic year for programs of study outside of the arts and humanities will be grandfathered for the remaining years of their eligibility.

Social Impact

The original purpose of the Garden State Graduate Fellowship (GSGF) Program was to provide financial assistance to students in areas of minimal graduate fellowship support, such as the arts and humanities, and where expected earnings of graduates would be relatively low. Within the past six years, the number of master's degrees conferred by New Jersey colleges and universities in the arts and humanities has decreased by 15 percent while the number in engineering has increased by 38 percent and in computer science by 54 percent. This program could help to strengthen graduate programs in the arts and humanities by attracting highly qualified master's and doctoral degree candidates into these programs.

In 1983, five years after the GSGF Program was initiated, "A Survey of Garden State Graduate Fellows" was conducted and described the fields of study and the employment patterns of the fellows as well as the financial importance of the fellowships to the recipients. The survey showed that 75 percent of the students pursuing degrees in the humanities and social sciences considered the fellowship to be extremely important in contrast to only 30 percent of the students pursuing degrees in engineering and science or mathematics. The survey suggested that graduate students pursuing advanced degrees in the high technologies might have available to them other sources of funding not available to students in other disciplines. The findings also indicated that of the 29 fellows who had completed the degree program for which they received an award, the majority of employed fellows remained within the State, with most of these employed by educational institutions.

The Student Assistance Board now has the opportunity through the GSGF Program to encourage outstanding undergraduate students to pursue master's and doctoral degrees in English, languages, literature, the fine and performing arts, history, philosophy, and similar areas of study. This will increase the pool of highly qualified researchers in these areas, as well as provide educators with advanced degrees for New Jersey's secondary schools and postsecondary institutions.

The financial assistance provided through the fellowships to individuals who pursue graduate study in the arts and humanities should reduce the necessity of borrowing to finance these advanced degrees. This also recognizes that the salary ranges for individuals with degrees in these areas of study are generally lower than in the high technologies and the professions, which could discourage students from pursuing graduate study if borrowing is necessary.

Economic Impact

The Department's budget request for Fiscal Year 1990 includes $900,000 to support 120 new and renewal fellowships valued at $7,500 annually.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The Department is proposing to limit new fellowships to students pursuing graduate programs in the arts and humanities and to help reduce the necessity of their borrowing to finance these advanced degrees.

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

9:7-6.4 Approved programs

Fellowships shall be awarded only for attendance at institutions in New Jersey offering graduate programs approved by the State Board of Higher Education, except in the case of exempt institutions pursuant to N.J.S.A. 18A:68-6. Approved programs are graduate programs in recognized fields in the **arts and** humanities.[, social sciences, and natural and physical sciences. Studies in such areas as law, medicine, and theology shall not be approved programs for Graduate Fellowship support. Degrees within excluded studies areas are: M.D., D.D.S., D.M.D., O.D., D.O., D.Phar., Pod D., D.P., D.P.M., D.V.M., D.C., D.C.M., LL.B., J.D., B.D., M.Div.] **Students who received fellowships prior to the 1989-90 academic year for programs of study outside of the arts and humanities shall remain eligible to participate in the program.**

(a)

STUDENT ASSISTANCE BOARD

Vietnam Veterans Tuition Aid Program
Eligible Vietnam Veteran
Proposed Amendment: N.J.A.C. 9:7-8.1.

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.

Authority: P.L.1988, c.98 and N.J.S.A. 18A:71-76.6.

Proposal Number: PRN 1988-557.

Submit comments by December 7, 1988 to:

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

The agency proposal follows:

Summary

On August 5, 1988, Governor Thomas H. Kean signed legislation, P.L. 1988 c. 98, which extended eligibility for the Vietnam Veterans Tuition Aid Program to Vietnam veterans who received an Armed Forces Expeditionary Medal. These are veterans who participated in the Vietnam conflict prior to 1968 and before Vietnam Service Ribbons were awarded. This proposed amendment is necessary in order to incorporate the eligibility of these veterans within current program rules.

Social Impact

It is estimated that this proposed amendment could provide awards to approximately 100 deserving veterans who were previously ineligible under the Vietnam Veterans Tuition Aid Program. Their eligibility for this tuition assistance will help them in pursuing an undergraduate education at a New Jersey college or university.

Economic Impact

Available funding for this program for the 1989 fiscal year will be sufficient to support the additional awards which will be provided by this proposed amendment.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment merely provides additional eligibility under this program for those veterans who have been awarded an Armed Forces Expeditionary Medal.

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

9:7-8.1 Eligible Vietnam veteran

(a) For purposes of the Vietnam Veterans Tuition Aid Program, an eligible Vietnam veteran shall have:

1. Served in the Armed Forces of the United States in Southeast Asia in the Vietnam conflict and received a Vietnam Service Ribbon **or an Armed Forces Expeditionary Medal;** and

2.-3. (No change.)

LABOR

The following proposals are authorized by Charles Serraino, Commissioner, Department of Labor.

Submit comments by December 7, 1988 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

(b)

DIVISION OF EMPLOYMENT SECURITY

Contributions, Records and Reports
Zip Code Reporting
Proposed New Rules: N.J.A.C. 12:16-21

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 43:21-11, 43:21-14, 43:21-14(a) and 43:21-14(b) (P.L. 1987 c.450).

Proposal Number: PRN 1988-567.

The agency proposal follows:

Summary

The proposed new subchapter is a result of legislation (P.L. 1987 c.450) which was approved in January, 1988, requiring all employers to submit the residential and workplace zip codes of all current employees. The Department of Transportation is expected to analyze the data in developing plans and programs for traffic control, highway maintenance and construction, and mass transit.

The Department of Labor is responsible for mailing the forms to employers, as the Department has access to employers' addresses from Unemployment Compensation data.

Social Impact

The data provided from the forms mailed by the Department of Labor pursuant to the proposed new rules will provide the Department of Transportation with the information necessary to develop more efficient travel routes and methods of transportation. This will decrease the traffic problems on New Jersey roads, and ultimately reduce travel and commuting times.

Economic Impact

The economic impact of the proposed new rules to employers will vary according to their size and the capabilities of their data processing systems. However, the Legislature has determined that this impact will be outweighed by the utility of the information and its importance to the Department of Transportation.

The proposed new rules will impact economically on the Department of Transportation, in that they will be responsible for processing and analyzing the data received from employers. The Department of Labor will experience costs associated with mailing the forms, but this cost will be covered by the appropriation granted to the Department of Labor by the Legislature.

Regulatory Flexibility Statement

The proposed new rules will impose recordkeeping, reporting and compliance requirements on employers, some of which will be small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The extent to which the requirements will affect employers will depend on the sophistication of the employers' data gathering process and the number of individuals employed by the employer. However, the reporting requirements are required by statute to be applied to all employers.

Full text of the proposal follows:

SUBCHAPTER 21. ZIP CODE REPORTING

12:16-21.1 Scope

This subchapter is applicable to all employers subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

12:16-21.2 Definitions

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

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

"Department" means the New Jersey Department of Labor.

"Employee" means any individual who performs services as defined at N.J.S.A. 43:21-19(i), for an employer, whether on a full-time or regular part-time basis.

"Employer" means employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

12:16-21.3 Reporting requirement

(a) Every employer shall report, on an annual basis, the Zip Code of the following:

1. The residence of each employee; and

2. The location where the employee regularly works.

(b) The information specified in (a) above is required only for employees who are employed by the employer at the time of receipt of the report form.

(c) The employer shall submit the information required under this section, on a form prescribed by the Commissioner, to the Department of Transportation. An envelope imprinted with the address of the Department of Transportation shall be provided to the employer with the information form.

(d) Any questions concerning the provisions of this subchapter may be addressed to:

Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625-0600

(a)

DIVISION OF EMPLOYMENT AND TRAINING

Job Training Partnership Act
Non-Criminal Complaint/Grievance, Hearing and Review Procedures at the Employer, SDA, State and Federal Level

Proposed New Rules: N.J.A.C. 12:41-1.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 29 U.S.C.A. §1554 and 20 CFR §629.51 et seq.

Proposal Number: PRN 1988-521.

The agency proposal follows:

Summary

The Federal Job Training Partnership Act (JTPA) was enacted in 1982 "to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment" (see 29 U.S.C.A. §1501).

Under the JTPA, the Governor of each state is responsible for planning, administration, coordination and oversight of job training programs. In New Jersey, the Governor has delegated his responsibility under the JTPA to the Commissioner of the Department of Labor. Within the Department of Labor, the Division of Employment and Training was established to specifically handle the responsibilities under the JTPA.

Pursuant to 29 U.S.C.A. §1554, each administrative entity, contractor, and grantee under the JTPA must establish and maintain a grievance procedure for grievances or complaints about its programs and activities from participants, subgrantees, subcontractors, and other interested persons. Also, each employer of participants who receives funds under JTPA must continue to operate or establish and maintain a grievance procedure relating to the terms and conditions of employment.

20 CFR §629.52(b) implements 29 U.S.C.A. §1554 and requires the State to maintain a State level grievance procedure and to insure that each Service Delivery Area (SDA) maintains grievance and hearing procedures. 20 CFR §629.53 requires the State, SDA grant recipients and other subrecipients to assure that employers, including private-for-profit employers of participants under the JTPA, have a grievance procedure relating to the terms and conditions of employment available to their participants.

The purpose of these proposed new rules is to set forth the grievance, hearing and review procedures that apply at the employer, SDA, State and Federal level for non-criminal complaints and appeals. These proposed new rules are necessary to implement 29 U.S.C.A. §1554 and 20 CFR §629.51 et seq.

N.J.A.C. 12:41-1.1 sets forth the purpose of the proposed new rules.

N.J.A.C. 12:41-1.2 sets forth the scope. Specifically, the procedures at the employer level apply to any JTPA participant who has been aggrieved by his or her employer. The procedures at the SDA level apply to JTPA participant appeals from decisions at the employer level; JTPA participant complaints; subgrantee complaints; and complaints from other interested persons. There are two procedures at the State level. The State review procedures apply to JTPA participant appeals from decisions at the SDA level, subgrantee appeals from decisions at the SDA level and appeals by other interested persons from decisions at the SDA level. The State hearing procedures apply to any subrecipient adversely affected by the results of monitoring and/or investigations and to any other complainant who must seek resolution initially at the State level. The State hearing procedures also apply to any participant, subcontractor or any other interested party who has been aggrieved by a subrecipient.

N.J.A.C. 12:41-1.2(d) sets forth that subrecipients adversely affected by the results of an audit must use the audit resolution procedures set forth in N.J.A.C. 12:5-1 et seq.

N.J.A.C. 12:41-1.2(f) sets forth that complainants have a right to appeal to the Federal level if the Director of the Division of Employment and Training (Director) does not issue the decision required at the State level.

N.J.A.C. 12:41-1.3 sets forth the definitions of terms used in proposed new rules.

N.J.A.C. 12:41-1.4 sets forth the time deadline for filing complaints. The deadline for filing non-criminal complaints at the employer, SDA and State level is one year from the date of the alleged occurrence.

N.J.A.C. 12:41-1.5 sets forth the grievance and hearing procedures at the employer level. Under the requirements of this section, employers may establish their own procedures or adopt the procedures used by the SDA.

N.J.A.C. 12:41-1.6 sets forth the minimum grievance and hearing requirements at the SDA level. Under this section, an SDA can adopt its own procedures provided it follows the minimum requirements or adopts the procedures set forth in this section. The minimum grievance and hearing requirements under this section include: a written notice of the date, time and place of the hearing; a right to be represented by an attorney; a right to bring evidence and witnesses; a right to cross-examine witnesses; a right to an impartial hearing; a right to a tape recorded hearing; a right to a written decision within 60 days of the filing of the complaint; and a written notice of the right to appeal an adverse decision by the SDA to the State level.

N.J.A.C. 12:41-1.7 sets forth the review procedures at the State level. Under this section, a request for a review of a decision or lack of decision at the employer or SDA level must be submitted within 10 days from the date on which the adverse decision was received or should have been received. After a review of the matter, the Director will issue a decision within 30 days of the receipt of the request for the review.

N.J.A.C. 12:41-1.8 sets forth the hearing procedures at the State level. Under the requirements of this section, any subrecipient adversely affected by the results of monitoring and/or investigations or any other complainant who must seek resolution initially at the State level because the complaint is not reviewable at the SDA level, may request a hearing. Also, any participant, subcontractor or any other interested person aggrieved by a subrecipient may request a hearing. Upon receipt of the request for a hearing, the Director will provide the complainant and respondent with written notice of the time, date and place of the hearing. The Director will also include on the notice information concerning the complainant's and respondent's right to be represented by counsel, right to present evidence, right to cross-examine witnesses, right to an impartial hearing, and the right to a tape recorded or verbatim hearing. The hearing will be conducted within 30 days of the hearing request and a final

decision will be issued by the impartial hearing officer within 60 days of the hearing request.

If the decision of the hearing officer is adverse to either party or the decision is not rendered within 60 days, the complainant or respondent may request an independent review. The independent review will be conducted and the Commissioner will issue his final decision within 30 days of the hearing.

N.J.A.C. 12:41-1.9 sets forth the Federal review procedures. If the Commissioner fails to issue a decision as required by N.J.A.C. 12:41-1.7 and 8, then a complainant or respondent can request a review by the United States Secretary of Labor (Secretary). The request for a review must be made within 10 days from the date the complainant or respondent should have received a decision from the Commissioner. The Secretary will take action within 90 days of the request for a review.

Finally, N.J.A.C. 12:41-1.10 sets forth that recipients cannot discriminate against or discharge any participant who files a complaint under the JTPA.

Social Impact

The proposed new rules will benefit JTPA participants who are aggrieved by their employers as they provide JTPA participants with procedures that can be used to address grievances. The proposed new rules similarly benefit any other interested person, organization or agency who challenges the legality of State, SDA grant recipient or other subrecipient action under the JTPA.

The proposed new rules will benefit employers, SDAs, and the Department of Labor (Department) as they provide standards for conducting the required hearings and reviews under the JTPA.

Economic Impact

The proposed new rules will benefit employers, SDAs and the State as they set forth standard procedures to be followed. Standard procedures will eliminate confusion concerning hearing and review procedures and result in greater efficiency at all levels.

Regulatory Flexibility Statement

The proposed new rules will not impose any reporting, recordkeeping or compliance requirements upon small businesses, as the rules merely implement the requirements of JTPA and the regulations that implement the JTPA, which employers, SDAs and the State have been following through Department Directives. The JTPA and its implementing regulations do not provide for a business size related differentiation in requirements. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

CHAPTER 41
DIVISION OF EMPLOYMENT AND TRAINING

SUBCHAPTER 1. JOB TRAINING PARTNERSHIP ACT (JTPA): NON-CRIMINAL COMPLAINT/GRIEVANCE, HEARING AND REVIEW PROCEDURES AT EMPLOYER, SDA, STATE AND FEDERAL LEVEL

12:41-1.1 Purpose

The purpose of this subchapter is to set forth the grievance, hearing and review procedures required under the Job Training Partnership Act (JTPA) at 29 U.S.C.A. §1554 and the regulations that implement the JTPA at 20 CFR §629.51 et seq.

12:41-1.2 Scope

(a) Employers of JTPA participants shall follow the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.5. The employer grievance and hearing procedures shall apply to any JTPA participant aggrieved by his or her employer.

(b) Each SDA shall follow, at a minimum, the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.6. The SDA grievance and hearing procedures shall apply to the following:

1. JTPA participant appeals from decisions at the employer level;
2. JTPA participant complaints;
3. Subgrantee complaints (schools; and employers with on the job training contracts); and
4. Complaints from other interested persons.

(c) The State review procedures set forth at N.J.A.C. 12:41-1.7 shall apply to the following:

1. JTPA participant appeals from decisions at the SDA level;
2. Subgrantee appeals from decisions at the SDA level; and
3. Appeals by other interested persons from decisions at the SDA level.

(d) The State hearing procedures set forth at N.J.A.C. 12:41-1.8 shall apply to subrecipients adversely affected by the results of monitoring and/or investigations and to any other complainants who must seek resolution initially at the State level (complaint not subject to review at the SDA level), and any other participant, subcontractor or other interested party aggrieved by a subrecipient.

1. Each subrecipient shall provide its participants, upon their enrollment in the subrecipient's program, with a copy of the State hearing procedures.
2. Each subrecipient shall also provide subcontractors and subgrantees with a copy of the State hearing procedures no later than the date of the contract between the subrecipient and the subcontractor or subgrantee.

(e) The audit resolution procedures set forth at N.J.A.C. 12:5-1 shall apply to subrecipients adversely affected by the results of an audit.

(f) The Federal review procedures set forth at N.J.A.C. 12:41-1.9 shall apply to appeals from complainants who did not receive a decision at the State level.

12:41-1.3 Definitions

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

"Commissioner" means the Commissioner, New Jersey Department of Labor.

"Director" means the Director of the Division of Employment and Training, New Jersey Department of Labor.

"Grantee/contractor/subrecipient" means any person or government department, agency or establishment (private-for-profit/nonprofit) that receives Federal JTPA funds to carry out JTPA programs through a State or local government but does not include an individual who is a beneficiary of such a program.

"JTPA" means Job Training Partnership Act, 29 U.S.C.A. §1501 et seq.

"Participant" means any individual who has been determined eligible for participation upon intake, and has started receiving employment, training, or services (except post-termination services) funded under the JTPA, following intake. Individuals who receive only outreach and/or intake and assessment services or postprogram followup are excluded.

"Recipient" means the State of New Jersey.

"SDA" means Service Delivery Area as defined in 29 U.S.C.A. §1511.

"SDA grant recipient" means the entity that receives JTPA funds for a SDA directly from the State.

"Secretary" means the United States Secretary of Labor.

12:41-1.4 Deadline for filing complaints

The deadline for filing non-criminal complaints at the employer, SDA and State level shall be one year from the date of the alleged occurrence.

12:41-1.5 Grievance and hearing procedures at the employer level

(a) Each employer, including private-for-profit employers under the JTPA, shall maintain a grievance and hearing procedure relating to the terms and conditions of employment available to its participants.

1. Each employer may operate its own grievance and hearing system or may utilize the grievance and hearing system established by the SDA or the Department at N.J.A.C. 12:41-1.6.

(b) Each employer system shall provide for, upon request of the complainant, a review of an employer's decision by the SDA and the Director, if necessary, in accordance with N.J.A.C. 12:41-1.6 and 1.7, respectively.

12:41-1.6 Grievance and hearing procedures at the SDA level

(a) Each SDA shall establish and maintain grievance and hearing procedures for grievances or complaints about its programs and activities from participants, subgrantees, subcontractors and other

interested persons. The procedures shall include the resolution of complaints alleging a violation of the JTPA, regulations, grant or other agreements under the JTPA.

(b) The grievance and hearing procedures shall contain, at a minimum, the following requirements:

1. Upon enrollment into a JTPA program, the SDA shall provide participants with a written description of the grievance procedures which shall include the requirements set forth in (b) 4 through 7 below. The SDA shall also provide subcontractors and subgrantees with these procedures no later than the date of execution of the contract between the SDA and the subcontractor.

2. The SDA shall maintain evidence that the grievance and hearing procedures have been provided to participants and to subcontractors.

3. The grievance and hearing procedures shall provide that the identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the JTPA shall be kept confidential to the extent possible, consistent with a fair determination of the issues.

4. The SDA may provide for an informal resolution of a complaint/grievance which, if provided, shall be completed prior to the hearing date.

5. The SDA shall provide for a hearing on a complaint/grievance to be conducted in the locale of the complainant within 30 days of the filing of the complaint or grievance and a written decision shall be provided not later than 60 days after the filing of a complaint/grievance.

6. The SDA shall provide participants and subcontractors with the name, address and telephone number of the local official to whom complaints and grievances can be directed.

7. At a minimum, the SDA shall also provide participants and subcontractors with the following:

i. A written notice of the date, time and place of the hearing;

ii. An opportunity to be represented by an attorney or other representative of the complainant's choice;

iii. An opportunity to bring witnesses and documentary evidence (SDA recipients or other subrecipients shall cooperate in making available any persons under their control or employ to testify, if such persons are requested to testify by the complainant, and to release requested documents unless privacy laws or other laws intervene to take precedence);

iv. An opportunity to question any witnesses or parties;

v. An impartial hearing;

vi. A verbatim or tape recording of the hearing;

vii. Written notice that the complainant is entitled to a hearing within 30 days of filing the written grievance and that a written decision shall be made by the hearing officer or designated representative of the SDA grant recipient within 60 days of the filing of the complaint/grievance;

viii. Written notice that the complainant has a right of appeal to the Director if the decision is adverse or is not made within 60 days of the filing of the complaint;

ix. The name and address of the State agency to whom the appeal is to be addressed and other information needed to file an appeal to the State;

x. Written notice that the complainant must file the appeal to the Director within 10 days of receiving the adverse decision or within 10 days of the date the decision should have been made by the SDA, and that the decision of the Director shall be final;

xi. Written notice that the complainant has one year to submit a complaint after the date of the occurrence (except for complaints regarding discrimination, which have a 180 day limitation);

xii. Written notice that the complainant has a right to request a review by the Secretary if the State does not render a decision, and that the Federal review is confined to allegations of violations of law under the JTPA; and

xiii. Written notice that the complainant must exhaust the remedies at each level prior to making an appeal to the next higher level.

8. The SDA may require the complainant to notify the SDA when an appeal is made to the State or to the United States Department of Labor.

12:41-1.7 Review procedures at the State level

(a) If a participant, subgrantee, or other interested person does not receive a decision at the SDA level within 60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant may file a written request for a review at the State level.

1. The request for a review shall be filed within 10 days of receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision.

(b) Each request for a review shall be submitted to:

New Jersey Department of Labor
Director, Division of Employment and Training
CN 055
Trenton, New Jersey 08625-0055

(c) Upon filing the request for review, the complainant shall simultaneously submit the following:

1. The full name, address and phone number of person(s) making the complaint/grievance;

2. The full name and address of the respondent (if any) against whom the complaint or grievance was made;

3. A clear and concise statement of the facts of the grievance;

4. Pertinent dates including the date the grievance was filed at the local level, the date of the alleged occurrence or act for which the complaint was filed and the date a written decision was reached or should have been reached;

5. If applicable, citations to the provisions of the JTPA or other agreements under the Act believed to have been violated;

6. A statement disclosing other steps pursued at any level regarding the complaint/grievance in question; and

7. A copy of the local written decision if such was rendered.

(d) The Director shall issue a written decision within 30 days. The Director's decision is final.

(e) If the complaint or grievance is based upon alleged discrimination regarding handicapped status, the appeal shall be submitted to:

New Jersey Department of Labor
Office of Monitor Advocate and
Affirmative Action Programs
John Fitch Plaza—Room 1309
Trenton, New Jersey 08625
Attention: Director, Monitor Advocate and EEO Programs

1. The Office shall assist the complainant in his or her appeal.

(f) If the Director fails to issue a decision at the State level, the complainant or appellant may request a review at the Federal level.

12:41-1.8 Hearing procedures at the State level

(a) Any subrecipient adversely affected by the results of monitoring and/or investigations, or any other complainant who must seek resolution initially at the State level, having a complaint not subject to review at the SDA level, may submit to the Commissioner a written request for a hearing.

1. Any participant, subcontractor or other interested party aggrieved by a subrecipient may submit to the Commissioner a written request for a hearing.

(b) Upon receipt of the written request for a hearing, the Commissioner shall provide the complainant or respondent with written notice of the time, date and place of the hearing. The written notice shall also set forth the following, that:

1. The complainant or respondent has the right to be represented by an attorney or a representative of his or her choosing;

2. The complainant or respondent may bring witnesses and documentary evidence;

3. The complainant or respondent has the right to question any witness;

4. The complainant or respondent has the right to an impartial hearing; and

5. A verbatim or tape recording of the hearing will be made.

(c) The hearing shall be conducted within 30 days from the date the Commissioner received the written request for a hearing. The hearing officer shall issue a written decision in the matter within 60 days of the receipt of the written request for a hearing.

1. The Commissioner shall attempt to resolve the complaint informally prior to the hearing date.

2. The Commissioner may, upon agreement of both parties, extend the time period for the hearing by 15 days if an informal resolution seems imminent.

(d) If the decision of the hearing officer is adverse to either party or the decision is not made within 60 days, the complainant or respondent may request an independent review.

1. The request for an independent review shall be submitted to the Commissioner within 10 days of the receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision.

(e) The Commissioner shall issue a written decision within 30 days of the hearing. The Commissioner's decision shall be final.

(f) If the Commissioner fails to issue a written decision within 30 days of the hearing, the complainant or respondent may appeal to the Secretary utilizing the procedures set forth in N.J.A.C. 12:41-1.9.

(g) If the complaint or grievance is based upon alleged discrimination regarding handicapped status, the complaint/grievance shall be submitted to:

New Jersey Department of Labor
Office of Monitor Advocate and
Affirmative Action Programs
John Fitch Plaza—Room 1309
Trenton, New Jersey 08625
Attention: Director, Monitor Advocate and EEO Programs

1. The office shall assist the complainant in his or her appeal.

12:41-1.9 Federal review procedures

(a) If the Director or Commissioner fails to issue a decision as required by N.J.A.C. 12:41-1.7 and 1.8, respectively, the complainant or respondent may request a determination from the United States Secretary of Labor whether reasonable cause exists to believe that the JTPA or its regulations have been violated.

(b) A complainant or respondent making a request to the Secretary due to non-decision by the Director or Commissioner on a grievance shall use the following procedures and submit the following information when filing the appeal:

1. The request shall be filed no later than 10 days from the date on which the complainant should have received a decision. Appeals shall be submitted to:

Secretary of Labor
United States Department of Labor
Washington, D.C. 20210

2. The full name, address and telephone number of the person making the complaint;

3. The full name and address of the respondent against whom the complaint is made;

4. A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

5. Citations to the provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;

6. A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case; and

7. A statement of the date the complaint was filed with the Director or Commissioner, the date on which the Director or Commissioner should have issued a decision, and an attestation that no decision was issued.

(c) A request shall be considered filed when the Secretary receives from the complainant or respondent a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State and SDA grant recipient.

(d) The Secretary shall act within 90 days of the receipt of the request. When there is cause to believe that the JTPA or regulations have been violated, the Secretary shall direct the Department to issue a decision to adjudicate the dispute pursuant to State and local procedures. The Commissioner or his or her designee shall issue a decision within 60 days of the Secretary's order.

(e) A complainant or respondent shall notify the Commissioner if he or she plans to submit an appeal to the United States Department of Labor. Any subrecipient or SDA upon learning of a complainant's or respondent's intention of filing an appeal to the United States Department of Labor shall inform the Commissioner.

12:41-1.10 Protection of complainants

(a) Pursuant to 29 U.S.C.A. §1574(g), no recipient shall discriminate against or unlawfully deny JTPA benefits to any participant or individual connected with the administration of the program who has filed a complaint or instituted or caused to be instituted any proceeding related to the JTPA, or has testified or is about to testify in any such proceeding or investigation under or related to the JTPA.

(b) The Secretary shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Filing of Annual Reports and Customer Lists (Solid Waste)

Proposed Amendment: N.J.A.C. 14:3-10.15

Authorized By: Board of Public Utilities, Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13, 48:13A-4 and 48:13A-11.
BPU Docket Number: SX8810 1101.
Proposal Number: PRN 1988-577.

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

December 8, 1988 at 10:00 A.M.
Board's Hearing Room
Two Gateway Center—10th Floor
Newark, New Jersey

Submit comments by December 8, 1988 to:

Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment is in two parts. The first would denominate the existing rule as subsection (a) and would clarify it by stating the date annual reports by solid waste utilities are due to be filed. The second and more important amendment, denominated subsection (b), would require the annual filing of customer lists by solid waste collectors.

The proposed amendment, N.J.A.C. 14:3-10.15(b), would require each solid waste utility engaged in the business of collecting solid waste in the State of New Jersey to, no later than March 31 of each year, file with the Secretary of the Board of Public Utilities detailed information regarding its customers. Such information shall be made under oath and shall include a complete and sequentially numbered list of all residential, commercial, industrial and institutional customers. The list shall include the name and address (including street, P.O. Box, city, Zip Code and any other identifying data) of each customer as of December 31 of the preceding year. The utility will also be required to provide the following information for each customer: rate charged, rate schedule(s) applied, frequency and type of service supplied and the number and size of each container. If a change in the customer information supplied in the preceding year occurs, the collector shall provide an explanation for the change and the date and docket number of the Board's Order authorizing such change.

The Board will maintain these lists in confidence by providing adequate safeguards against their public disclosure. Such safeguards will include placing the lists in a locked filing cabinet and limiting access to agents, employees and attorneys of the Board of Public Utilities and to those public entities responsible for enforcement of laws relating to the collection and disposal of solid waste.

Scope Of Board's Jurisdiction

There are numerous provisions contained in Title 48 which form the basis for the Board's authority to compel the production of customer lists.

The Board's general powers over public utilities, including those engaged in solid waste collection and disposal, are found in N.J.S.A. 48:2-13 which provides in part as follows:

The Board shall have general supervision and regulation of and jurisdiction and control over all public utilities as hereinafter in this section defined and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Title.

Additionally:

Pursuant to N.J.S.A. 48:13A-2, the Board is charged with the duty of setting and enforcing standards and rates for regulating the economic aspects of solid waste collection and disposal.

N.J.S.A. 48:13A-6 empowers the Board to issue certificates of public convenience and necessity for solid waste collection and disposal.

N.J.S.A. 48:13A-7 enables the Board to direct those engaged in the business of solid waste collection and disposal to furnish proof that the charges or rates received for service do not exceed just and reasonable rates or charges for such service.

N.J.S.A. 48:13A-10 prohibits monopolistic practices in the solid waste collection and disposal business.

N.J.S.A. 48:13A-11 empowers the Board to ". . . compel the attendance of witnesses and the production of tariffs, contracts, papers, books, accounts and all the documents necessary to enable the board to administer its duties as prescribed by law . . ."

In *In re Solid Waste Utility Consumer Lists,* 106 N.J. 508(1987), the State Supreme Court held that the Board of Public Utilities has authority to compel production of customer lists so long as adequate safeguards against public disclosure are provided.

Social Impact

The proposed amendment requiring the production of customer lists will assist the Board in implementing its statutory mandate set forth in N.J.S.A. 48:13A-2.

N.J.S.A. 48:13A-2 provides in pertinent part as follows:

". . . the health, safety and welfare of the people of this State require efficient and reasonable solid waste collection, disposal and utilization service; that such service will more likely be achieved if the Public Utility Commission is charged with the duty of setting and enforcing standards and rates for regulating economic aspects of solid waste collection, disposal and utilization service . . ."

The production of customer lists will enable the Board and its staff to investigate possible consumer fraud by providing the Board with the identities of customers and the rates charged for services rendered to said customers.

Economic Impact

The proposed amendment is essential in order for the Board to effectively regulate the economic practices of the solid waste industry.

The utilization of these lists will facilitate the protection of the economic interests of the public by placing the Board in a better position to identify, and take appropriate action to prevent, actual and potential anticompetitive practices and abuses of the rate structure.

The proposed amendment will not impose an undue economic burden upon solid waste collection utilities as the mere duplication and dissemination of existing records involves a minimal capital outlay and is clearly outweighed by the public interest.

Regulatory Flexibility Statement

The majority of solid waste collectors which this amendment will affect are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the utility would use its existing records to provide the required data, there would be minimal initial capital cost and minimal annual cost of compliance.

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

14:3-10.15 Filing of Annual Reports **and Customer Lists.**

(a) Every utility enaged in solid waste collection and solid waste disposal shall file **no later than March 31 of each year** an annual report on forms to be prescribed by the Board for filing, showing its financial condition on a calendar year basis. Such reports shall also contain a statement of income and expenses for a calendar year period.

(b) Every solid waste utility engaged in solid waste collection shall, no later than March 31 of each year, file with the Secretary of the Board of Public Utilities a complete and sequentially numbered list, made under oath, of all its residential, commercial, industrial and institutional customers. The list shall include the complete name and address (including street, P.O. Box, city, Zip Code and any other identifying data) of each customer as of December 31 of the preceding year. Such list shall include for each customer: rate schedule(s) applied, frequency and type of service supplied and number and size of each container. If a change in the customer information supplied in the preceding year occurs, the collector shall provide an explanation for the change and the date and docket number of the Board's Order authorizing such change.

1. The customer lists shall not be deemed to be public records subject to the Right to Know Law, N.J.S.A. 47:1A-1 et. seq., and therefore shall not be subject to inspection by the public, by other solid waste utilities or other utilities. Upon receipt of the customer lists the Board shall take appropriate measures to maintain the lists in confidence. Access to such lists shall be limited to agents, employees, and attorneys of the Board of Public Utilities and, in the discretion of the Board, public entities responsible for enforcement of laws relating to the collection and disposal of solid waste. All such public entities shall be subject to the confidentiality requirements contained in this paragraph.

TRANSPORTATION

The following proposals concerning Transportation Operations, Regulatory Affairs, and Aeronautical Facilities are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by December 7, 1988 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Routes U.S. 40 in Salem County, N.J. 33 in Monmouth County and N.J. 27 in Middlesex County

Proposed Amendments: N.J.A.C. 16:28-1.6, 1.14 and 1.44.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1988-545.

The agency proposal follows:

Summary

The proposed amendments will establish speed limit zones along Route U.S. 40 in Pilesgrove Township and Woodstown Borough, Salem County; N.J. 33 in the Townships of Wall and Neptune, Boroughs of Tinton Falls and Neptune City, Monmouth County; and N.J. 27 in the Township of Edison and Boroughs of Highland Park and Metuchen, Middlesex County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from local governments, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of speed limit zones along Routes U.S. 40 in Salem County, N.J. 33 in Monmouth County, and N.J. 27 in Middlesex County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.6, 1.14 and 1.44, based upon the requests from local governments and the traffic investigations.

Social Impact

The proposed amendments will establish speed limit zones along Routes U.S. 40 in Pilesgrove Township and Woodstown Borough, Salem

County; N.J. 33 in the Townships of Wall and Neptune, Boroughs of Tinton Falls and Neptune City, Monmouth County; and N.J. 27 in the Township of Edison and Boroughs of Highland Park and Metuchen, Middlesex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit zone signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility anaylsis is not required. The amendments primarily affect the motoring public.

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

16:28-1.6 Route U.S. 40

(a) The rate of speed designated for the certain parts of State highway [r] Route [number] U.S. 40 described in this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i.-iv. (No change.)

v. Zone 5:

(1) 50 miles per hour in Elmer Borough[,] **and** Upper Pittsgrove Township, [Pilesgrove Township, Woodstown Borough] Salem County, to 150 feet east of Kresswold Lane; thence

(2) 40 miles per hour in Pilesgrove Township and Woodstown Borough, Salem County, between East Lake Drive and Kresswood Avenue; thence

vi.-xi. (No change.)

16:28-1.14 Route 33 including Old Route 33 and Route 33 Freeway

(a) The rate of speed designated for the certain parts of State highway Route 33 described [herein below] **in this subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i.-xii. (No change.)

[xiii. Zone 13: 50 mph in Wall Township extending through New Shrewsbury Borough in Neptune Township to Locust Street (milepost 39.7); thence

xiv. Zone 14: 45 mph in Neptune Township and Neptune City Borough to Brighton Avenue (milepost 40.5); thence

xv. Zone 15: 40 mph in Neptune Township and Neptune City Borough to Route 15 (milepost 41.8); thence]

xiii. Zone 13:

(1) In Wall Township, Monmouth County: 50 miles per hour within the corporate limits (mileposts 35.64 to 36.64); thence

(2) In Tinton Falls Borough, Monmouth County: 50 miles per hour within the corporate limits (mileposts 36.64 to 38.24); thence

xiv. Zone 14:

(1) In Neptune Township, Monmouth County:

(A) 50 miles per hour between the Tinton Falls Borough-Neptune Township line and Rodgers Drive (mileposts 38.24 to 38.30); thence

(B) 40 miles per hour between Rodgers Drive and Jumping Brook Road (mileposts 38.30 to 38.73); thence

(C) 45 miles per hour between Jumping Brook Road and Maple Avenue (mileposts 38.73 to 39.83); thence

xv. Zone 15: In Neptune Township and Neptune City Borough, Monmouth County, 40 miles per hour between Maple Avenue and Route N.J. 35 (mileposts 39.83 to 41.82).

xvi.-xvii. (No change.)

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

16:28-1.44 Route 27

(a) The rate of speed designated for certain parts of State highway Route 27 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-xi. (No change.)

[xii. 30 miles per hour from the southerly end of the Bridge over the Raritan River and Bridge Street, Highland Park Borough, Edison Township and Metuchen Borough, Middlesex County; (mileposts 16.71 to 20.94) thence

xiii. 35 miles per hour between Bridge Street and Kentnor Street, Borough of Metuchen, Middlesex County; (mileposts 20.94 to 21.28) thence

xiv. 30 miles per hour between Kentnor Street and Oak Street, Borough of Metuchen, Middlesex County; (mileposts 21.28 to 22.33) thence

xv. 35 miles per hour between Oak Street and Wakefield Drive, Borough of Metuchen, Middlesex County (mileposts 22.33 to 22.94) thence

xvi. 40 miles per hour between Oak Street and Frederic Street, Edison Township and Borough of Metuchen, Middlesex County; (mileposts 22.94 to 23.86) thence]

xii. In Highland Park Borough, Middlesex County:

(A) 30 miles per hour between the southerly end of the bridge over the Raritan River and Eight Avenue (mileposts 16.71 to 17.61); thence

(B) 40 miles per hour between Eight Avenue and the Highland Park Borough-Edison Township line (mileposts 17.61 to 18.08); thence

xiii. In Edison Township, Middlesex County: 40 miles per hour between the Highland Park Borough-Edison Township line and the Edison Township-Metuchen Borough line (mileposts 18.08 to 20.83); thence

xiv. In Metuchen Borough, Middlesex County:

(A) 40 miles per hour between the Edison Township-Metuchen Borough line and Bridge Street (mileposts 20.83 to 20.95); thence

(B) 35 miles per hour between Bridge Street and Kentnor Street (mileposts 20.95 to 21.27); thence

(C) 30 miles per hour between Kentnor Street and Oak Avenue (mileposts 21.27 to 22.34); thence

(D) 35 miles per hour between Oak Avenue and Wakefield Drive (mileposts 22.34 to 22.94); thence

(E) 40 miles per hour between Wakefield Drive and the Metuchen Borough-Edison Township line (mileposts 22.94 to 23.25); thence

xv. In Edison Township, Middlesex County: 40 miles per hour between the Metuchen Borough-Edison Township line and Frederic Street (mileposts 23.25 to 23.87); thence

Renumber xvii.-xxi. as **xvi.-xx.** (No change in text.)

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Route 20 in Passaic County

Proposed Amendment: N.J.A.C. 16:28-1.13

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1988-546.

The agency proposal follows:

Summary

The proposed amendment will establish a speed limit zone for southbound traffic and correct milepost designation along Route 20 in the City of Paterson, Passaic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local government, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a speed limit zone and the redesignation of mileposts, as a result thereof, along Route 20 in the City of Paterson, Passaic County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.13, based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish a speed limit zone and correct milepost designations along Route 20 in the City of Paterson, Passaic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily affects the motoring public.

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

16:28-1.13 Route 20 including Route 20 Freeway

(a) The rate of speed designated for the certain parts of State highway Route 20 described in this subsection [is] **shall be** established and adopted as the maximum legal rate of speed:

1. (No change.)

2. In the City of Paterson, Passaic County:

i. For northbound traffic:

(1)-(3) (No change.)

(4) Zone four: 35 miles per hour between 36th Street and 9th Avenue (mileposts [11.94] **11.54** to [13.21] **11.94**); thence

(5) 45 miles per hour between 9th Avenue and [Madison] **Maple** Avenue (mileposts 11.94 to [13.21] **13.07**); thence

ii. For southbound traffic:

(1) Zone one: 25 miles per hour between 24th Street and 25th Street (mileposts 13.00 to 12.94); thence

[(1)](**2**) Zone [one] **two**: 45 miles per hour between [Madison Avenue] **25th Street** and 9th Avenue (mileposts [13.21] **12.94** to 11.94); thence

Renumber (2)-(5) as (**3**)-(**6**) (No change in text.)

(b) (No change.)

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Routes N.J. 49 in Salem County and N.J. 94 in Sussex County

Proposed Amendments: N.J.A.C. 16:28-1.79 and 1.81

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1988-561.

The agency proposal follows:

Summary

The proposed amendments will establish speed limit zones along Routes N.J. 49 in the Townships of Pennsville, Quinton and Salem City, Salem County, and N.J. 94 in Fredon Township, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of speed limit zones along Routes N.J. 49 in the Townships of Pennsville, Quinton and Salem City, Salem County, and N.J. 94 in Fredon Township, Sussex County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.79 and 1.81 based upon the requests from local governments and the traffic investigations.

Social Impact

The proposed amendments will establish speed limit zones along Routes N.J. 49 in the Townships of Pennsville, Quinton and Salem City, Salem County, and N.J. 94 in Fredon Township, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments primarily affect the motoring public.

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

16:28-1.79 Route 94

(a) The rate of speed designated for the certain parts of State highway Route 94 described in this subsection shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i.-xii. (No change.)

xiii. In Sussex County:

(1)-(5) (No change.)

(6) Fredon Township:

(A) 35 miles per hour school speed zone in zone 9 within the Fredon Township school zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

2.-3. (No change.)

16:28-1.81 Route 49

(a) The rate of speed designated for the certain parts of State highway Route 49 described in this **sub**section shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic **in Salem County**:

[i. Zone one: 45 mph in Pennsville Township from the beginning of Route 49 at the New Jersey Turnpike underpass to 850 feet west of Church Landing Road (milepost 0.7); thence

ii. Zone two: 35 mph to 140 feet east of Dunns Lane (milepost 3.0); thence

iii. Zone three: 45 mph to 200 feet east of Corson Avenue (milepost 3.9); thence

iv. Zone four: 50 mph to the bridge over Salem River (milepost 8.3); thence

v. Zone five: 30 mph in Salem City to Oak Street (milepost 8.9); thence

vi. Zone six: 25 mph to Ninth Street (milepost 9.3); thence

vii. Zone seven: 30 mph to Keasby Street (milepost 9.8); thence

viii. Zone eight:

(1) City of Salem: 35 miles per hour between Keasby Street and the City of Salem-Township of Quinton Corporate Line (milepost 9.8 to 10.11); thence

(2) Quinton Township: 45 miles per hour between the Township of Quinton-City of Salem Corporate Line and 1,300 feet east of Sherron Avenue (milepost 10.11 to 11.00); thence

ix. Zone nine: 50 mph in Quinton Township to 300 feet west of the bridge over Alloway Creek (milepost 12.3); thence

x. Zone ten: 35 mph to 850 feet west of Quinton-Jericho Road (milepost 12.9); thence

xi. Zone 11: 50 mph to the Salem County-Cumberland County Line (milepost 18.7);

xii. School zones: 25 mph in the Pennsville Memorial High School, Pennsville Junior High School and Pennsville Christian Elementary School zones, in zone two, during recess or while children are going to or leaving school, during opening or closing hours.]

i. Pennsville Township:

(1) Zone one: 40 miles per hour from the beginning of Route 49 at the New Jersey Turnpike underpass to 850 feet west of Church Landing Road (mileposts 0.0 to 0.7); thence

(2) Zone two: 35 miles per hour between 850 feet west of Church Landing Road and Fort Mott Road (County Road 630), except with 25 miles per hour school speed zones in the Pennsville Memorial High School, Pennsville Christian Elementary School and the Pennsville Junior High School zones during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 0.7 to 3.44); thence

(3) Zone three: 40 miles per hour between Fort Mott Road (County Road 630) and Patterson Avenue (mileposts 3.44 to 4.09); thence

(4) Zone four: 50 miles per hour between Patterson Avenue and the Pennsville Township-Salem City line (bridge over the Salem River) (mileposts 4.09 to 8.26); thence

ii. City of Salem:

(1) Zone one: 30 miles per hour between the Pennsville Township-Salem City line (bridge over the Salem River) and Oak Street (mileposts 8.26 to 8.87); thence

(2) Zone two: 25 miles per hour between Oak Street and Ninth Street (mileposts 8.87 to 9.3); thence

(3) Zone three: 30 miles per hour between Ninth Street and Yorke Street (County Road 658) (mileposts 9.3 to 9.76); thence

(4) Zone four: 35 miles per hour between Yorke Street (County Road 658) and the Salem City-Quinton Township line (Keasby Creek) (mileposts 9.76 to 10.1); thence

iii. Quinton Township:

(1) Zone one: 45 miles per hour between the Salem City-Quinton Township line (Keasby Creek) and 1300 feet east of Sherron Avenue (mileposts 10.1 to 11.0); thence

(2) Zone two: 50 miles per hour between 1300 feet east of Sherron Avenue and 500 feet west of Action Station Road (County Road 653) (mileposts 11.0 to 12.23); thence

(3) Zone three: 35 miles per hour between 500 feet west of Action Station Road (County Road 653) and Jericho Road (County Road 626) except with a 25 miles per hour school speed zone in the Quinton Township Elementary School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours (mileposts 12.23 to 13.05); thence

(4) Zone four: 50 miles per hour between Jericho Road (County Road 626) and the Salem County-Cumberland County line (mileposts 13.05 to 18.78);

(b) (No change.)

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Route 66 in Monmouth County

Proposed Amendment: N.J.A.C. 16:28-1.130

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1988-533.

The agency proposal follows:

Summary

The proposed amendment will establish speed limit zones along Route N.J. 66 in the Borough of Tinton Falls and the Townships of Neptune and Ocean, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Additionally, the amendment deletes the major provisions of the present rule, in view of new construction along Route N.J. 66 in Monmouth County.

Based upon requests from local governments, in the interest of safety and the newly constructed section of Route N.J. 66, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a 50 miles per hour speed zone in the Borough of Tinton Falls and the Townships of Neptune and Ocean, Monmouth County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.130, based upon the request from local governments and the traffic investigation.

Social Impact

The proposed amendment will establish a 50 miles per hour speed limit zone along Route N.J. 66 in the Borough of Tinton Falls and the Townships of Neptune and Ocean, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel, and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily affects the motoring public.

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

16:28-1.130 Route 66

(a) The rate of speed designated for the certain parts of State highway [r]Route [number] 66 described in this section shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat:].

1. For both directions of traffic **in Monmouth County**:

[i. 50 miles per hour from the Route 35-Route 66 traffic circle to a point 600 feet east of the center of the northbound overpass of the Garden State Parkway; thence

ii. 40 miles per hour to the center of the intersection of Route 66 and Shark River Road;

iii. The legal speed limits through school zones shall be subject to the provisions of N.J.S.A. 39:4-98(a).]

i. Eastbound:

(1) Borough of Tinton Falls: 50 miles per hour within corporate limits (mileposts 0.00-0.66); thence

(2) Neptune Township: 50 miles per hour within corporate limit (mileposts 0.66-3.67); thence

ii. Westbound:

(1) Ocean Township: 50 miles per hour within corporate limits (mileposts 3.67-2.55); thence

(2) Neptune Township: 50 miles per hour within corporate limits (mileposts 2.55-0.62); thence

(3) Borough of Tinton Falls: 50 miles per hour within corporate limits.

(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Routes U.S. 9 in Ocean County; N.J. 31 in Mercer County; U.S. 46 in Morris County; and N.J. 49 in Salem County

Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.22, 1.32 and 1.34

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1988-560.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along U.S. 9 in Tuckerton Borough, Ocean County, and "no stopping or standing" zones along Routes N.J. 31 in Hopewell Township, Mercer County; U.S. 46 in Mountain Lakes Borough, Morris County; and N.J. 49 in Pennsville Township, Salem County, for the safe and efficient flow

of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Route U.S. 9 in Tuckerton Borough, Ocean County, and "no stopping or standing" zones along Routes N.J. 31 in Hopewell Township, Mercer County; U.S. 46 in Mountain Lakes Borough, Morris County; and N.J. 49 in Pennsville Township, Salem County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.22, 1.32, and 1.34 based upon the requests from local governments and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Route U.S. 9 in Tuckerton Borough, Ocean County, and "no stopping or standing" zones along Routes N.J. 31 in Hopewell Township, Mercer County; U.S. 46 in Mountain Lakes Borough, Morris County; and N.J. 49 in Pennsville Township, Salem County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs and the local governments will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments primarily affect the motoring public.

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

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-36. (No change.)

37. Along the northbound (easterly) side in Tuckerton Borough, Ocean County:

i. (No change.)

ii. Mid-block bus stop:

(1) Between Cable Road and Admiral Way: Beginning 550 feet south of the prolongation of the southerly curb line of Cable Road and extending 180 feet southerly therefrom.

iii. Near side bus stop:

(1) Leifried Lane: Beginning at the southerly curb line of Leifried Lane and extending 105 feet southerly therefrom.

38. Along the southbound (westerly) side in Tuckerton Borough, Ocean County:

i. (No change.)

ii. Mid-block bus stop:

(1) Between Cable Road and Admiral Way: Beginning 550 feet south of the southerly curb line of Cable Road and extending 135 feet southerly therefrom.

iii. Far side bus stop:

(1) Leifried Lane: Beginning at the prolongation of the southerly curb line of Leifried Lane and extending 100 feet southerly therefrom.

39.-42. (No change.)

16:28A-1.22 Route 31

(a) The certain parts of State highway Route 31 described in this subsection shall be designated and established as ["no parking"] **"no stopping or standing"** zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-6. (No. change.)

7. No stopping or standing in Hopewell Township, Mercer County:

i. Along both sides for the entire length within the corporate limits of the Township of Hopewell including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs are to be posted only in areas where an official township resolution has been submitted.

(b) (No change.)

16:28A-1.32 Route U.S. 46

(a) The certain parts of the State highway Route U.S. 46 described in this subsection shall be designated and established as ["no parking"] **"no stopping or standing"** zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-7. (No change.)

8. No stopping or standing in Mountain Lakes Borough, Morris County: [along both sides from the Boulevard to the Borough of Mountain Lakes-Denville Township corporate line.]

i. Along both sides:

(1) From the Boulevard to the Borough of Mountain Lakes-Denville Township corporate line.

(2) Within the entire corporate limits of the Borough of Mountain Lakes, including all ramps and connections under the jurisdiction of the Commissioner of Transportation except at approved bus stops.

9.-17. (No change.)

(b) (No change.)

16:28A-1.34 Route 49

(a) The certain parts of State highway Route 49 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-5. (No change.)

6. Within the Township of Pennsville, Salem County:

i.-iv. (No change.)

v. Along both sides:

(1) Within the entire length of the corporate limits of the Township of Pennsville including all ramps and connections under the jurisdiction of the Commissioner of Transportation except at approved designated bus stops. Signs are to be posted only in areas where an official Township Resolution has been submitted.

7. (No change.)

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

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route N.J. 47 in Gloucester County

Proposed Amendment: N.J.A.C. 16:28A-1.33

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1.

Proposal Number: PRN 1988-547.

The agency proposal follows:

Summary

The proposed amendment will establish a "no stopping or standing" zone along Route N.J. 47 in Franklin Township, Gloucester County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from local officials, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "no stopping or standing" zone along Route N.J. 47 in Franklin Township, Gloucester County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.33 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish a "no stopping or standing" zone along Route N.J. 47 in Franklin Township, Gloucester County, for

the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory analysis is not required. The amendment primarily affects the motoring public.

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

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 described in this subsection shall be designated and established as ["no parking"] **"no stopping or standing"** zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-2. (No change.)

3. No stopping or standing in Franklin Township, Gloucester County:

i.-ii. (No change.)

iii. Along the eastbound side: Delsea Drive—Between Cloves Mills Road and McArthur Avenue.

4.-10. (No change.)

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

(a)

TRANSPORTATION OPERATIONS

Mid-block Crosswalks
Route U.S. 9 in Atlantic County
Proposed New Rule: N.J.A.C. 16:30-10.9

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-34.
Proposal Number: PRN 1988-534.

The agency proposal follows:

Summary

The proposed new rule will establish a mid-block crosswalk along Route U.S. 9 in Galloway Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The rule establishes a designated area for pedestrians to safely cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device.

Based upon a request from the local government, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a mid-block crosswalk along Route U.S. 9 in Galloway Township, Atlantic County, was warranted.

The Department therefore proposes N.J.A.C. 16:30-10.9, based upon the request from the local government and the traffic investigation.

Social Impact

The proposed new rule will establish a mid-block crosswalk along Route U.S. 9 in Galloway Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Additionally, this rule establishes a designated area for pedestrians to safely cross a roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel, and equipment requirements. The Department will bear the costs for the appropriate striping along the roadway. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed new rule does not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

Full text of the proposal follows.

16:30-10.9 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated as mid-block crosswalk.

1. In the Township of Galloway, Atlantic County: From a point 130 feet north of the northerly curb line of Bartlett Avenue to a point 10 feet northerly therefrom, and from a point 220 feet north of the northerly curb line of Bartlett Avenue to a point eight feet northerly therefrom.

(b)

OFFICE OF REGULATORY AFFAIRS

Practices and Procedures before the Office of Regulatory Affairs
General Provisions; Petitions; Motions: Interventions; Offices; Disposition of Motions to Intervene in Regular Route Operations Petitions; Disposition of Motions to Intervene in Proceedings Involving Charter and/or Special Operations Petitions; Disposition of Motions to Intervene in Proceedings involving Regular Route in the Nature of Special or Casino Bus Operations Petitions; and Reclassification Proceedings
Proposed Amendments: N.J.A.C. 16:51-1.3, 1.4, 1.6, 3.1 and 4.3 through 4.6
Proposed New Rule: N.J.A.C. 16:51-4.7

Authority: N.J.S.A. 27:1A-5, 27:1A-6; and 48:4-1 et seq.
Proposal Number: PRN 1988-530.

Summary

The proposed amendments and new rule will govern practices and procedures before the New Jersey Department of Transportation's Office of Regulatory Affairs concerning Certificates of Public Convenience and Necessity for autobus operations, other than contested case matters. The proposed amendments also prescribe the operational and administrative responsibilities of autobus companies under the Department's jurisdiction. Additionally, the amendments and new rule explain the classification of services; formalize a course of prior practice; and set forth specific provisions for the definition of casino bus service; petition and intervention for such service; and the reclassification procedures for existing regular route service to Atlantic City casino hotels.

The amendments to N.J.A.C. 16:51-1.3, 1.4 and 1.6 provide new definitions and the new location of the Office of Regulatory Affairs.

The amendment to N.J.A.C. 16:51-3.1 outlines the requirements concerning petitions for certificates of public convenience and necessity to conduct autobus operations and adds new subsections establishing requirements for the granting of a certificate to conduct casino route operations or regular route operations.

The amendments to N.J.A.C. 16:51-4.3 through 4.6 and proposed new rule N.J.A.C. 16:51-4.7 contain the rules on proper content and filing of motions, affidavits, briefs and supporting statements regarding proceedings at the Office of Regulatory Affairs, and a new section concerning casino bus operations.

Social Impact

The proposed amendments and new rule expand the classification of services, formalize a course of prior practice, set forth specific provision for the definition of casino bus service and the reclassification procedures for existing regular route service to Atlantic City casino hotels. Additionally, these amendments and rule clarify the role of the Department in the regulation of autobuses and insure receipt of adequate notice of licensed proceedings by interested or affected parties, such as municipal and county officials, the general public and other passenger carriers.

Economic Impact

The proposed amendments are expected to add predictability to the autobus regulatory application and, hence, result in time and cost savings for petitioners and other parties to proceedings before the Office of Regulatory Affairs.

Regulatory Flexibility Statement

Since the proposed amendments and new rule do not place any reporting or recordkeeping requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., these small businesses which may decide to act as certificate applicants under proposal N.J.A.C. 16:51-3.1(j), petitioners under proposal N.J.A.C. 16:51-3.1(k) or intervenors under proposal N.J.A.C. 16:51-4.7, have only to comply with the information requirements specified for each procedure. As this information is necessary for a determination by the Office of Regulatory Affairs, an elimination or reduction in these requirements for small businesses would be detrimental to the regulatory process, and hence, is not provided.

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

16:51-1.3 Definitions

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

. . .

"Autobus" means **and includes** any motor vehicle or motorbus operated over public highways or public places in this State for the transportation of passengers for hire in intrastate business, [including vans having passenger capacities of greater than nine persons, excluding the driver, small buses and sedans that are used in regular route for hire transportation] **whether used in regular route, casino, charter or special bus operations**, notwithstanding that such motor vehicle or motorbus may be used in interstate commerce.

"Autobus [C]company" **or "autobus carrier"** means any person [that] **or party who** [possessed] **possesses** a valid Certificate of Public Convenience and Necessity to conduct autobus operations. Such a Certificate shall have been issued by the New Jersey Department of Transportation or, if issued prior to January 1, 1979, by the State's Board of Public Utilities.

. . .

"Charter" [means "charter bus operation," as defined in N.J.S.A. 48:4-1.] **or "charter bus operation" means and includes the operation of an autobus, not on a regular schedule, by the person owning or leasing such bus or buses pursuant to a contract, agreement or arrangement to furnish an autobus or autobuses and a driver or drivers thereof to a person, group of persons or organization (corporate or otherwise) for a trip designated by such person, group of persons or organization for a fixed charge per trip, per trip, per autobus, per period of time or per mile.**

. . .

"Complaint [P]petition" means a petition or a letter, by which a party seeks to have the Department invoke its jurisdiction for the purpose of enforcing one or more provisions of the New Jersey Revised Statutes [or] , the New Jersey Administrative Code **or Departmental directives and orders** against an autobus company.

. . .

"Petitioner" means a person [that] **who** has filed a petition with the Office of Regulatory Affairs, New Jersey Department of Transportation or [except] in **the case of a** [transfer] petition [cases] **for transfer**, the person who is the proposed certificate holder.

"Proposed [S]service [A]area" means, in the case of a petition primarily concerning regular route service, the proposed or the [prescribed] **approved** route plus that area within one and one-quarter miles of any pickup or drop off point on the petitioner's proposed or [prescribed] **approved** route; and, in the case of a petition primarily concerning charter or special service, any county in which the petitioner seeks authority from the Department to make pickups.

"Regular [R]route" **or "regular route bus operation"** means ["autobus" service, as described in N.J.S.A. 48:4-1.] **and includes the operation of an autobus between fixed termini, on a regular schedule and with a provision for convenient one-way fare/transportation in either direction and shall also include all existing regular route operations to and from any casino licensed under the Casino Control Act, P.L. 1977, c.110 (N.J.S.A. 5:12-1 et seq.) unless that operation to and from casinos has been determined by the Commissioner to be other than a regular route operation.**

"Regular route in the nature of special bus operation" or "casino route bus operation" means and includes the operation of an autobus to or from any casino licensed under the Casino Control Act, P.L. 1977, c.110 (N.J.S.A. 5:12-1 et seq.) unless that operation has been determined by the Commissioner to be a regular route bus operation.

"Special" **or "special bus operation"** means ["special bus operation," as described in N.J.S.A. 48:4-1.] **and includes the operation by the owner or lessee of an autobus or autobuses for the purpose of carrying passengers for hire, not on a regular schedule, each passenger paying a fixed charge for his or her carriage, on a special trip arranged and designated by such owner or lessee, which fixed charge may or may not include special premiums.**

"Special premiums" means and includes the provision of meals, gifts, lodging, entertainment, sightseeing services or similar inducements in connection with the purchase or issuing of a ticket. No casino bonuses shall be included in this definition.

16:51-1.4 Offices

The Office of Regulatory Affairs is located at [McCarter Highway and Market Street, Newark, New Jersey 07101] **744 Broad Street, Suite 1502, Newark, New Jersey 07102** or such other location as publicly noticed.

16:51-1.6 Communications

(a) All pleadings, correspondence and other papers shall be addressed to the Director, Office of Regulatory Affairs, New Jersey Department of Transportation, [McCarter Highway and Market Street, P.O. Box 10009, Newark, New Jersey 07101] **744 Broad Street, Suite 1502, Newark, New Jersey 07102 and shall include the appropriate Department docket number.**

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

16:51-3.1 Petitions for the granting of a certificate of public convenience and necessity to conduct autobus operations and complaint petitions

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

(c) The following information shall also be included in all petitions requesting the granting of a certificate to conduct autobus operations:

1. Proof of publication of public notice, twice, one week apart, in a newspaper of general and regular circulation in the proposed service area which:

i. Briefly describes the purpose of the petition and the type(s) of equipment to be used in the proposed service area;

ii. States that a petition for approval to operate the proposed service has been filed with the Department;

iii. States that objections and other comments should be addressed to the Office of Regulatory Affairs, New Jersey Department of Transportation;

iv. Furnishes the address of said Office;

v. Includes the appropriate Department docket number; and

vi. Lists each municipality (in the case of a petition for regular **and/or casino** route authority) or county (in the case of a petition for charter and/or special authority) in which the petitioner seeks to provide pickup [(and, in the case of regular route petitions, drop off)] **and/or drop off** service.

2. A schedule of equipment, including but not limited to type and passenger capacity of the vehicle(s) to be used in the subject service (or in the case of **a petition for** sale or lease of property, a schedule of the equipment to be sold or leased **and identification of the owner/lessor**.)

3.-4. (No change.)

5. A copy of **the** petitioner's (or in the case of **a petition for** sale or lease of property, the [transferer's] **transferee's**) current balance sheet and income statement.

6.-7. (No change.)

8. The names and addresses of officers, directors and shareholders, that have five percent or more [rating] **voting** control, partners or

owners, as the case may be, of the petitioner and the extent of their respective interests in the petitioner.

9.-13. (No change.)

(d) (No change.)

(e) The following information shall be included in all petitions for either the granting of a certificate to conduct regular route operations or the approval of extensions to existing regular route operations.

1.-5. (No change.)

6. A list of all proposed passenger pickup and/or drop off locations together with **the following:**

i. Certification that said locations are state or municipally approved pickup and/or drop off points [as per] **in accordance with** N.J.S.A. 27:1A-44 and N.J.S.A. 39:4-197; **or**

ii. Proof of the owner's or authorized lessee's written approval to access private property.

7.-9. (No change.)

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

(h) Upon written request of any of the following parties, a petitioner for charter and/or special operations shall serve said party or parties with a copy of the petition:

1. (No change.)

2. Other persons [that] **who** have petitions pending before the Department for authority to provide charter and/or special service in the proposed service area; and

3. (No change.)

(i) The petitioner shall not be required to honor any request **of any party** for a copy of the petition made later than 20 days after the last date of publication of public notice as required under N.J.A.C. 16:51-3.1(c)1.

(j) The following information shall be included in all petitions for the granting of a certificate to conduct casino route operations or for the approval of extensions to existing authorized regular route operations to Atlantic City licensed casino hotels.

1. The names of:

i. All casino route and regular route carriers to Atlantic City licensed casino hotels operating in the proposed service area; and

ii. Other petitioners seeking to conduct autobus operations as noted in (j)1i above;

2. Proof of service of the petition upon those persons as noted in (j)1 above;

3. Proof of service of the petition upon the clerk(s) of all municipalities in which the petitioner proposes to establish pickup and/or drop off locations;

4. A clear and concise statement as to how the proposed service will serve public convenience and necessity in each municipality in which the petitioner proposes to make a pickup;

5. An accurate and complete street-by-street description of the route for which authority is sought;

6. A list of all proposed passenger pickup and/or drop off locations together with the following:

i. Certification that said locations are state or municipally approved pickup and/or drop off points in accordance with N.J.S.A. 27:1A-44 and N.J.S.A. 39:4-197; or

ii. Proof of the owner's or authorized lessee's written approval to access private property.

7. A copy of the proposed schedule of operations;

8. The schedule of the fares proposed to be charged; and

9. A map of the proposed route, as well as the routes operated by any other carrier partially or wholly within the proposed service area.

(k) The following information shall be included in all complaint petitions initiated by the Department for reclassification of regular route autobus operations and answers thereto:

1. Proof of regular route authority;

2. Proof of continuous regular route operation since date of approval or within 60 days of said approval;

3. A copy of the current schedule of operations;

4. A copy of the approved tariff and proof of existing convenient one-way fare/transportation in either direction;

5. A list of all approved passenger pickup and/or drop off locations together with the following:

i. Certification that said locations are state and/or municipally approved pickup and/or drop off points, in accordance with N.J.S.A. 27:1A-44 and N.J.S.A. 39:4-197; or

ii. Proof of owner's written approval to access private property.

6. A map of the approved route, as well as the routes operated by any other carrier partially or wholly within the approved service area;

7. The total number of shares of the petitioner's capital stock issued and outstanding, if applicable; and

8. The names and addresses of officers, directors and shareholders, that have five percent or more voting control, partners or owners, as the case may be, of the petitioner and the extent of their respective interests in the petitioner.

16:51-4.3 Affidavits; briefs and supporting statements

(a) Motions and answering papers, [i.e.] **that is**, answers and replies, shall be accompanied by all necessary supporting affidavits and briefs or supporting [statements] **documents, clearly delineating material facts in contest**. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

(b) (No change.)

16:51-4.4 Disposition of motions to intervene; generally

(a) If a movant demonstrates, **through the introduction of documentary evidence clearly delineating material facts,** that it has a substantial and specific interest in the subject matter which will be affected by the proceeding, and if such interest with respect to the proceeding would not otherwise be adequately represented, the Commissioner or the Director may grant the motion to intervene by written order or decision on such terms as the Commissioner or the Director, as the case may be, may prescribe.

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

16:51-4.5 Disposition of motions to intervene in **proceedings involving** regular route **operations** petitions

(a) With respect to petitions for regular route service (original authority or modification requests), in order for a movant to demonstrate that it has an interest in the subject matter that will be substantially and specifically affected by the proceeding, its motion must clearly [indicate that] **show, through the introduction of documentation, evidence delineating material facts, as follows**:

1.-5. (No change.)

(b) (No change.)

16:51-4.6 Disposition of motions to intervene in proceedings involving charter and/or special operations **petitions**

(a) With respect to petitions for charter and/or special autobus service, in order for a movant to demonstrate that it has an interest in the subject matter that will be substantially and specifically affected by the proceeding, its motion must clearly [indicate:] **show, through the introduction of documentation, evidence delineating material facts, as follows:**

1.-3. (No change.)

(b) (No change.)

16:51-4.7 Disposition of motions to intervene in proceedings involving regular route in the nature of special or casino bus operations petitions

(a) With respect to petitions for regular route in the nature of special or casino autobus service, in order for a movant to demonstrate that it has an interest in the subject matter that will be substantially and specifically affected by the proceeding, its motion must clearly show, through the introduction of documentation, evidence delineating material facts, as follows:

1. It operates an authorized regular route service to and from Atlantic City casino hotels in the proposed service area, and that the granting of the relief sought may jeopardize the profitability of said movant's regular route service(s);

2. There is insufficient public need for the proposed casino bus service;

3. The petitioner has failed to make a request for which the Department can grant relief;

4. The petition lacks veracity; or

5. That the petitioner is unfit to conduct the proposed casino bus service.

(b) For purposes of (a)5 above, items relating to fitness shall include, but are not limited to:

1. The availability of the requisite equipment or personnel to provide the proposed casino bus service;

2. Whether petitioner has a history of illegal operations such that to grant the relief requested by petitioner might disserve the public interest;

3. Whether petitioner has been convicted of an offense listed in N.J.S.A. 5:12-86(c); and

4. Whether petitioner has otherwise acted in such a way that it would be inimical to the public interest to grant petitioner's relief request.

(a)

DIVISION OF AERONAUTICS

Licensing of Aeronautical Facilities
General Requirements for Licensing
Proposed Amendment: N.J.A.C. 16:54-1.4

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29 and 6:1-44.
Proposal Number: PRN 1988-339.

The agency proposal follows:

Summary

The proposed amendment will relieve the Department from the financial burden of providing legal notice to the public of the intent to license an aeronautical facility, establish new requirements for persons proposing to operate a new aeronautical facility and to advertise same through at least two local newspapers serving the city, township, or municipality in which the facility is proposed, at least one of which serves as the official newspaper designated by the affected political subdivision. Additionally, this amendment requires the cost of such advertising or public notice to be borne by the applicant, and requires the applicant to present proof of this notice as part of the application process. The Department's Division of Aeronautics incurred such costs in the past.

The Division of Aeronautics, in review and analysis of the current application procedure, determined it to be more cost effective and expeditious for the applicant to absorb the costs incurred for the advertising or public notice.

The Department therefore proposes to amend N.J.A.C. 16:54-1.4(a) to incorporate the new requirements.

Social Impact

The proposed amendment will establish new requirements for persons proposing to operate a new aeronautical facility, to advertise same through at least two local newspapers which serve the city, township or municipality in which the facility is being proposed. Additionally, the amendment relieves the Division of Aeronautics from the responsibility and cost of such notice, and reduces the time required in the processing of notices, thus expediting the application process.

Economic Impact

The Department will incur direct and indirect costs in processing applications but will realize relief from the financial burden of providing legal notice to the public of the intent to license aeronautical facilities and a reduction in the time required to process applications.

Persons proposing a new aeronautical facility will incur costs involved with the requirement for the publication of notices in newspapers and the forwarding of proof to the Division of Aeronautics. Individuals presently operating aeronautical facilities will not be affected by this proposed amendment.

Regulatory Flexibility Statement

The proposed amendment will apply to small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., if they apply for the license required to operate a new aeronautical facility or to demolish or modify an existing facility.

Small businesses should not be exempt from these amended requirements, as the public notice of intent to obtain license is an integral part of planning for land use and it is in the public interest to receive information regarding such construction activities as are involved in the operation, modification or demolition of an aeronautical facility.

Only a small percentage of small businesses would be affected, and only if they apply for a license. Most applications are by major corporations or by private individuals for personal use. There would be no need for professional services, as the public notice text would be provided by the Department and certification would be provided by the newspaper used. Normal recordkeeping would suffice.

The only cost would be for the publication of the legal notice, which would be approximately $40.00, depending upon the fee charged by the newspaper used. There is no further cost anticipated.

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

16:54-1.4 General requirements for licensing

(a) All persons proposing to operate a new aeronautical facility or demolish and/or modify an existing facility listed in N.J.A.C. 16:54-1.2(a)1, 2, 3, and 4 shall:

1.-6. (No change.)

7. Publish a legal notice, when required by the Office of Aviation, the text of which will be provided by the Office of Aviation, in at least two newspapers serving the city, township, municipality, county or other political subdivision.

i. One of the papers shall be the primary one designated by the political subdivision for public notices and the second shall be the newspaper designated as secondary, or, if not so designated, shall be a newspaper circulated widely in that community.

ii. The notice shall contain the text prepared by the Department and shall provide a 30-day period for public comment and response, after which the Office of Aviation may take further action as necessary to license the facility or to continue processing the application.

iii. The applicant shall submit certified proof of publication in at least two newspapers to the Office of Aviation. Where the publication dates differ, the later publication date will be used by the Division in determining the public's opportunity to comment on the proposed construction, demolition or modification.

8. Be prepared to provide relevant data and information regarding the application at a public hearing or at any proceeding requested by the Office of Aviation.

OAL NOTE: Paragraph 8, above, is missing from the New Jersey Administrative Code. The text has been proposed at 12 N.J.R. 289(a) and adopted at 13 N.J.R. 374(c).

(b)

NEW JERSEY TRANSIT CORPORATION
Private Carrier Capital Improvement Program
Proposed Readoption: N.J.A.C. 16:76

Authorized By: New Jersey Transit Corporation, Jerome C. Premo, Executive Director.
Authority: N.J.S.A. 27:25-5(e), 5(h) and 5(k).
Proposal Number: PRN 1988-555.

Submit comments by December 7, 1988 to:
Albert R. Hasbrouck, III
Assistant Executive Director for
Legal Affairs and Labor Relations
New Jersey Transit Corporation (NJ TRANSIT)
P.O. Box 10009
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 16:76 expires on December 19, 1988. NJ TRANSIT has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. NJ TRANSIT proposes to readopt these rules without change.

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State government responsible to establish and provide for the oper-

ation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the programs by which NJ TRANSIT has fulfilled this responsibility is through the purchase of capital improvements for lease to eligible private bus carriers throughout New Jersey.

N.J.A.C. 16:76 established guidelines and procedures pursuant to which NJ TRANSIT has leased such capital improvements during the past four years. All subchapters were simultaneously filed and became effective March 19, 1984, as R.1984 d.72 (see 16 N.J.R. 554(b)).

N.J.A.C. 16:76-1 pertains to the purpose of the private carrier capital improvement program. The rules have functioned well in setting forth a clear understanding of the program and its elements. A summary of each section in subchapter 1 follows:

16:76-1.1 Sets forth the basic purpose of the program.

16:76-1.2 Provides definitions of the words and terms used throughout the subchapters.

N.J.A.C. 16:72-2 pertains to the guidelines under which the program operates. The rules have functioned well to provide all carriers with a clear understanding of program requirements. A summary of each section of subchapter 2 follows:

16:76-2.1 Sets forth eligibility requirements.

16:76-2.2 Sets forth additional applicable requirements of NJ TRANSIT, the Federal government, and the Port Authority of New York and New Jersey.

16:76-2.3 Describes procedures for disposal of capital equipment.

16:76-2.4 Sets forth reasons which render a carrier ineligible for participation.

N.J.A.C. 16:76-3 pertains to the procedures employed by NJ TRANSIT in determining eligibility or ineligibility. The rules have functioned well in providing fair procedures for program administration. A summary of each section of subchapter 3 follows:

16:76-3.1 Sets forth notification requirements concerning a finding of ineligibility.

16:76-3.2 Sets forth factors to be considered in determining eligibility.

Social Impact

Once readopted, the rules will continue to provide reasonable criteria and procedures for the allocation of capital equipment to private bus carriers throughout the State. It is important to note that the Federal government, through the Department of Transportation's Urban Mass Transportation Administration, has encouraged NJ TRANSIT to continue in its vigorous efforts to improve the quality of transit service offered by the private sector.

The specific purpose of NJ TRANSIT's private carrier capital improvement program is to assist the private bus carriers in the State of New Jersey in maintaining healthy and efficient transportation services and providing improved and more reliable mass transit service to the public. The rules were designed to distribute capital improvements to private carriers based on a variety of factors so that the capital improvements are made available to riders who will benefit the most from the new improvements. While most private carriers are in fact allocated capital improvement, the rules continue to permit NJ TRANSIT to consider the capabilities (including financial) and responsibility of carriers requesting capital improvements and to consider whether the leasing of such improvements to specific carriers would be consistent with an efficient, effective, coordinated and coherent public transportation system. Thus, there may be situations where some private carriers will not receive capital improvements because the lease of improvements to such carriers is not consistent with sound transportation policy. Procedures remain unchanged for consideration of the impact of not leasing capital improvements in specific circumstances where NJ TRANSIT staff makes a preliminary determination that a carrier is not eligible to receive such improvements.

Economic Impact

The primary economic impact of this chapter and the leasing of capital improvements has been to improve the quality of service provided by private bus carriers receiving such improvements from NJ TRANSIT. Under this program, NJ TRANSIT has provided carriers with equipment such as computers, two-way radios, software, service vehicles, and portable lifts. Since 1984, NJ TRANSIT has contracted for equipment valued at nearly $15 million.

By reducing the need of carriers to use their own financial resources for capital improvements, the program has most likely helped private carriers mitigate fare increases. NJ TRANSIT will continue to consider all potential private bus companies for participation in this program provided they meet the specific eligibility requirements and are not disqualified because of specific ineligibility actions.

Regulatory Flexibility Statement

Regarding a reduction in the regulatory burden upon businesses employing less than 100 people, in this instance the smaller carriers must meet the same requirements due to the need to ensure a safe, coordinated, efficient, and coherent statewide transportation system. Both the large and small carriers falling within the purview of these rules have the same responsibility to provide safe and efficient service; therefore, a reduction of the regulatory burden would not apply to this case.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:76.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Administration

Disbursement Limitations

Proposed Amendment: N.J.A.C. 17:1-1.8

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1988-535.

Submit comments by December 7, 1988 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will provide the capability of the Director of the Division of Pensions to detour disbursement checks issued by the Division within the normal mailing process in order to react to emergency situations so as to avoid economic hardship to the recipient.

Social Impact

The proposed amendment may positively affect current and future recipients of disbursement checks issued by the Division of Pensions, in that their check delivery will be more responsive to emergency situations.

Economic Impact

This proposed amendment will not have any adverse effect upon the members of the retirement systems, the retirement systems themselves or the taxpaying public. By providing for alternative delivery methods, the possibility of non-delivery of checks, with the resultant recipient hardship, may be avoided.

Regulatory Flexibility Statement

Since the rules of the Division of Pensions only impact upon public employers and/or employees, this proposed amendment will not have any adverse effect upon small businesses or private industry in general.

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

17:1-1.8 Disbursement; limitations

All disbursements returned by the Federal post office as "undelivered" shall be redeposited promptly[, and in no event shall any disbursement be made except by check delivered by the post office]. **Disbursements shall be made by check, delivered by the Federal post office or as provided by the Director of the Division of Pensions.**

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Reporting and Recordkeeping

Proposed Amendments: N.J.A.C. 19:25-1.7, 4.6, 6.1, 8.1, 9.8, 10.6, 10.8, 11.6, 11.8, 12.4, 15.14 and 16.11

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Authority: N.J.S.A. 19:44A-6.
Proposal Number: PRN 1988-565.

Submit comments by December 7, 1988 to:
Gregory E. Nagy, Esq., Legal Director
Election Law Enforcement Commission
28 West State Street, CN-185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The New Jersey Election Law Enforcement Commission (hereafter, the Commission) proposes to amend its rules as follows:

1. N.J.A.C. 19:25-1.7, Definitions, has been amended to delete certain contributing entities from the definition of "political committee." Under the existing text, a contributor that is not undertaking fundraising or other financial election activity, does not come within the definition by virtue of the fact that it made campaign contributions unless the aggregate amount of such campaign contributions in any election exceeds $10,000 (see paragraph 2 of the definition of "political committee"). The proposed amendment removes the qualification concerning contributions in an election exceeding $10,000 from this exemption and thereby expands the scope of the exemption to any entity not undertaking fundraising or other financial election activity other than making campaign contributions.

The text of paragraph 2 cited above was originally proposed at 16 N.J.R. 1044(a) (May 7, 1984) and was intended to exempt business entities from campaign filing requirements if they confine their political participation to the making of campaign contributions not in excess of $10,000. The Commission believes that no campaign reporting purpose is served by compelling such entities to file reports. This is because such entities themselves are not soliciting campaign contributions, and in the event that they make a contribution in excess of $100.00 that contribution must be disclosed in the campaign reports filed by the recipient candidate or committee. Therefore, a member of the public could determine what campaign contributions had been made by such an entity by examining the reports required of candidates and committees.

In adopting the text of this rule in 1984, the Commission specifically noted that it would remove the filing requirements for all such entities, including those expending more than $10,000, at some future point when its automated data processing capacity was enhanced (see 16 N.J.R. 2154(a) (August 6, 1984)). The computer capacity of the Commission permits it to produce lists of contributors giving to State-wide and legislative candidates. Therefore, the contributions made by such an entity to such candidates appear on the computer-generated list of contributions and the necessity of such entities to file reports is largely obviated.

In Advisory Opinion 12-1987 (January 26, 1988), the Commission wrote that its computer program being developed will assist in identification of those entities which have been major contributors in the immediately preceding election so as to facilitate identification of probable large contributors by anyone wishing to review preelection or postelection reports. Therefore, the Commission decided that a business entity should not become a continuing political committee or a political committee solely by reason of the fact that it made political contributions, regardless of the total amount of those contributions. This proposed amendment promulgates the holding of that Advisory Opinion.

In addition to the amendment proposed for the definition of "political committee", the Commission also proposes to amend N.J.A.C. 19:25-4.6, Statement of organization: continuing political committee, and N.J.A.C. 19:25-12.4, Computation of expenditures by continuing political committees, by deleting similar reporting requirements on peripheral continuing political committees expending more than $10,000 in a calendar year. The intent of these proposed amendments is to carry out the ruling contained in Advisory Opinion 12-1987 to the effect that a business entity will not become a continuing political committee or a political committee based solely on the fact that it is making political contributions.

2. The proposed amendment to N.J.A.C. 19:25-8.1, Recordkeeping requirements, clarifies that among the records that an organizational or campaign treasurer must keep is the date a contribution was received. The existing text states only that the date of a contribution must be recorded. The amendment is intended to clarify that the date that must be recorded is the date that the campaign actually received the contribution, not necessarily the date appearing on the written instrument or check that is being contributed.

3. The proposed amendment to N.J.A.C. 19:25-10.8(a), Short form for certain continuing political committees, raises from $1,000 to $2,500 in a 12-month period the amount of money that a continuing political committee may spend and still be eligible to file a short form report (Form A-3) rather than a quarterly report (Form R-3). Also, the filing date of the short form report is changed from January 15 and July 15 to a single filing on September 15 of the pertinent 12-month period. The purpose of the proposed amendment is to reduce the filing burden on small political party committees and other continuing political committees of filing detailed quarterly reports if their expenditures are at a relatively low level.

Nothing contained in this amendment will change the obligation of a continuing political committee to file a report identifying any contribution of more than $100.00, as set forth in subsection (c). However, the Commission proposes to amend subsection (c) by providing that any such contribution received in a calendar quarter, rather than in a calendar year as is currently provided in the text, shall be reportable.

4. A new subsection (c) at N.J.A.C. 19:25-11.6, Anonymous contributions, is proposed to codify the New Jersey Supreme Court opinion in *New Jersey Election Law Enforcement Commission v. Citizens to Make Mayor-Council Government Work*, 107 N.J. 380 (1987). The new subsection (c) provides that a contribution shall not be deemed anonymous if the identity of the contributor was known to the recipient candidate or treasurer at the time it was made even if that identity is never disclosed on campaign reports. Prior to the Supreme Court opinion in this case, the Commission practice was to regard a contribution that was not identified on a campaign report as anonymous.

5. The proposed amendments to N.J.A.C. 19:25-6.1(a), 9.8, 10.6(a), 10.8(c), 11.8(b), 15.14(c), and 16.11(d) are to conform the "date of contribution" language in those provisions with the contribution receipt amendment proposed at N.J.A.C. 19:25-8.1(a).

Social Impact

The proposed amendments affect reporting and recordkeeping requirements of candidates and certain committees. The amendments removing filing requirements for contributing entities will not jeopardize campaign disclosure because those contributors are identified in computer-generated contributor lists for gubernatorial and legislative candidates. The proposed change concerning the filing requirement of small continuing political committees primarily affects municipal political party committees because other types of continuing political committees have no quarterly report filing obligations if they do not exceed $2,500.00 in annual expenditures (see N.J.S.A. 19:44A-3(n)). By raising from $1,000 to $2,500 the threshold for qualifying for short form (Form A-3) reporting, a greater number of small municipal political party committees will be relieved of the more onerous and detailed quarterly reporting (Form R-3). The proposed amendment concerning recordkeeping has no significant impact other than clarifying for treasurers that a contribution must be reported as received based on the date an agent of the campaign receives it, not based on the date of the check or other written instrument. Finally, the proposed amendment concerning restrictions on the circumstances under which the Commission may deem a contribution as anonymous and thereby subject to escheat pursuant to N.J.S.A. 19:44A-11 is mandated by a recent State Supreme Court opinion.

Economic Impact

The Commission does not anticipate any significant economic impact. A few entities that might otherwise be required to file a campaign report by virtue of contributing more than $10,000 to candidates will be spared that expense, but that fact is not a significant factor in the Commission's decision to eliminate such filings. Also, relaxation of the quarterly filing obligation on small municipal political party committees may result in some savings to such entities.

Regulatory Flexibility Statement

The proposed amendments do not impose campaign reporting or recordkeeping requirements on small businesses, as that 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]).

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 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. (No change.)

2. A contributor not involved in fund raising or other election-related activity does not become a political committee solely by virture of having made a contribution with respect to a candidate or public question [, unless the aggregate amount of contributions in any election exceeds $10,000.00].

. . .

19:25-4.6 Statement of organization: continuing political committee

(a) (No change.)

(b) A peripheral continuing political committee shall not be required to file a statement of organiztion (Form CPC-1) provided that [:] **the committee has not undertaken any election-related activity other than making contributions to candidates.**

[1. The committee has not undertaken any election-related activity other than making contributions to candidates, and

2. The committee's aggregate contributions to candidates in any calendar year do not exceed $10,000.]

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

19:25-6.1 Deposits of funds by candidates or committees

(a) An organizational or campaign treasurer or deputy organizational or campaign treasurer of a candidate, political committee or continuing political committee shall make a written record of all funds which he receives as contributions to the candidate, political committee or continuing political committee, including in that record the name and address of the contributor and the amount and date of **receipt of** the contribution, and shall retain that record for a period of not less than four years.

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

19:25-8.1 Record keeping requirements

(a) An organizational or campaign treasurer or deputy organizational or campaign treasurer of a candidate, of a political committee, or of a continuing political committee shall make a written record of all funds which he or she receives as contributions to the candidate, political committee or continuing political committee, including in that record the name and address of the contributor and the amount and date [of] the contribution **was received**.

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

19:25-9.8 Contributions made immediately before election

Each campaign treasurer of a candidate or a political committee shall file a written notice with the [c] Commission of a contribution in excess of $250.00 received during the period between midnight on the 13th day prior to the election and the date of the election. The notice shall be filed in writing or by telegram with the commission within 48 hours of the receipt of the contribution, and the notice shall set forth the amount and the date **of receipt** of the contribution and the name and address of the contributor.

19:25-10.6 Contributions made immediately before election

(a) Each organizational treasurer of a continuing political committee shall file a written notice with the commission of a contribution in excess of $250.00 received after the final day of the quarterly report and on or before the date of an election as to which it has made or intends to make a contribution, or otherwise intends to or does participate or intends to participate in. The notice shall be filed in writing or by telegram with the commision within 48 hours of the receipt of the contribution, and the notice shall set forth the amount and the date of **receipt of** the contribution and the name and address of the contributor.

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

19:25-10.8 Short form for certain continuing political committees

[(a) A continuing political committee may satisfy its quarterly reporting obligation for a calendar year if it files with the commission no later than January 15 and no later than July 15 of a calendar year a certified statement (Form A-3) to the effect that the total amount to be expended in that calendar year shall not exceed $1,000.]

(a) A continuing political committee may satisfy its reporting obligation for the 12-month period commencing July 1 if it files with the commission no later than September 15 of that year a certified statement (Form A-3) to the effect that the total amount to be expended in that 12-month period shall not exceed $2,500.

(b) (No change.)

(c) If a continuing political committee files with the [c]Commission a certified statement pursuant to (a) above, and during [the calendar year] **any calendar quarter** it receives contributions from any one source aggregating more than $100.00, it shall report that fact by filing with [c]Commission a report (Form C-3) identifying the name and address of the contributor, the date or dates of **receipt of** the contribution or contributions, and the aggregate amount of the contribution or contributions. Such report shall be filed with the [c] Commission no later than the date on which quarterly reports are due for filing pursuant to N.J.A.C. 19:25-10.3(a).

(d) (No change.)

19:25-11.6 Anonymous contributions

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

(c) A contribution shall not be deemed anonymous if the identity of the contributor was known to the candidate or treasurer at the time when the contribution was made, even though the campaign may later be unable to identify the contributor because of loss or destruction of records. Nothing in this subsection shall prohibit the Commission from proceeding against any candidate or campaign for failure to keep proper records.

19:25-11.8 Currency contributions

(a) (No change.)

(b) Cumulative currency contributions of up to $100.00 may be made to a candidate, political committee or continuing political committee if the contributor submits, with his contribution, a written record containing the name and address of the contributor, the date **of receipt** and amount of the contribution and the signature of the contributor.

19:25-12.4 Computation of the expenditures by continuing political committees

(a) (No change.)

(b) Expenditures shall be reported as follows:

1.-3. (No change.)

4. If the committee is a peripheral continuing political committee, no reporting shall be required with respect to expenditures, including contributions and in-kind contributions, unless:

i. The committee is engaged in fund raising and solicitation expenses with respect to election-related activity; or[,]

[ii. The amount of contributions by such committee for any calendar year exceeds $10,000. In such cases, the activity is reportable in full; or,]

[iii.] **ii.** (No change in text.)

5.-6. (No change.)

19:25-15.14 Contributions eligible for match: generally

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

(c) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of **receipt of** the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his campaign committee, if such check, money order or instrument contains all of the foregoing information.

19:25-16.11 Contributions eligible for match: generally

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

(d) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, and amount and date of **receipt of** the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his or her campaign committee, if such check, money order or instrument contains all of the foregoing information.

(e) (No change.)

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of General Election for Governor

Proposed Repeals and New Rules: N.J.A.C. 19:25-15.4 and 15.5.

Proposed Amendments: N.J.A.C. 19:25-15.14, 15.16, 15.17, 15.20, 15.26 and 15.46.

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-38.

Proposal Number: PRN 1988-566.

A **public hearing** concerning these proposed amendments will be conducted on November 15, 1988, at 10:00 A.M., at the office of the Election Law Enforcement Commission, 28 West State Street, Suite 1215, Trenton, New Jersey.

Submit comments by December 7, 1988 to:

Gregory E. Nagy, Esq., Legal Director
Election Law Enforcement Commission
28 West State Street, CN-185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The New Jersey Election Law Enforcement Commission (hereafter, the Commission) proposes to amend its rules concerning the public financing of general election candidates for Governor N.J.A.C. 19:25-15. These proposed new rules and amendments are derived from the Commission's experience in administering past program and from past advisory opinions issued by the Commission. Commission review of the rules affecting public financing of the primary election for Governor resulted in the adoption of amendments which became effective on September 19, 1988 (see 20 N.J.R. 2395(a)). The proposed amendments which follow will ensure that procedures in the general election for the office of Governor parallel those which are now required of candidates in the primary election. The specific changes are as follows:

1. N.J.A.C. 19:25-15.4(a) concerning the appointment of treasurers and depositories has been combined with N.J.A.C. 19:25-15.5, Designation of principal campaign committee; contribution limit. No substantive change has been made. N.J.A.C. 19:25-15.4(b) and (c) have been incorporated into a new N.J.A.C. 19:25-15.5.

2. N.J.A.C. 19:25-15.5 has been retitled "Pre-candidacy activity" and includes the text of current N.J.A.C. 19:25-15.4(b) and (c). Individuals, or committees on their behalf conducting pre-candidacy fundraising or spending (that is, "testing the waters") will be required to file with the Commission within 10 days after receipt of funds for such activity a statement identifying the name, address and account number of the bank account established for that purpose.

3. A new subsection (a) has been added to N.J.A.C. 19:25-15.14, Contributions eligible for match; generally, to provide that a contribution will not be matched with public funds unless it was deposited and received in either a pre-candidacy ("testing the waters") account or was received by a person who was a candidate in the general election for the office of Governor. It is the Commission's intention to exclude from matching fund eligibility any contribution received by a candidate at a time when that candidate was seeking an elective office other than Governor.

4. A new subsection (e) has been added to N.J.A.C. 19:25-15.14 permitting the matching of contributions received from persons or entities who are also contributing to bona fide continuing political committees with at least 15 contributing members, which continuing political committees in turn are making contributions eligible for match to the same gubernatorial candidate. Therefore, a member of such an organization may contribute up to the maximum contribution of $800.00 to a gubernatorial candidate notwithstanding the fact that the organization to which the member belongs has also contributed a full maximum $800.00 contribution to the same candidate.

5. N.J.A.C. 19:25-15.16, Limitation on contributions eligible for match, has been amended to establish the purchase price of a ticket to a fund raising event or lottery ticket as the amount of the contribution eligible for match, and has established an additional requirement that tickets for such events or lotteries and their promotional material must state that the price represents a contribution to the candidate conducting the event or lottery. The existing rule requires the Commission to determine the fair market value of any entertainment event or lottery conducted by a gubernatorial candidate. Only the difference between the purchase price and the fair market value, under the existing rule, can be treated as eligible for matching public funds. The Commission believes that tickets for entertainment events and lotteries present substantial valuation problems beyond the ability of the Commission to establish in the short time frame of a matching fund application for a gubernatorial candidacy. Further, the Commission is persuaded that the current rule is overly complex and difficult for candidates or the Commission to apply. The proposed amendment would be predicated on the reasonable assumption that any contributor purchasing a ticket to a fund raising event or a lottery sponsored by a candidate or committee is doing so as an expression of political support, and not for the value of attending the event or participating in the lottery.

6. A new subsection (i) has been added to N.J.A.C. 19:25-15.17, Matching of funds, requiring that statements submitted by candidates concerning applications for public funds cannot be handwritten.

7. New subsections (b), (c) and (d) have been added to N.J.A.C. 19:25-15.20, Special account for public funds, to require the campaign treasurer of a candidate receiving public funds to file reports with the Commission which identify disbursements made out of any public funds account established for the candidate's campaign. This reporting obligation begins once a candidate has made a submission for public matching funds and continues for as long as the candidate's public fund account is open. The reports must identify each disbursement made from the public fund account and must give a complete statement of the purpose of the expenditure, indicating which permitted use of public funds is applicable (see N.J.A.C. 19:25-15.24). For any reported expenditures for media consultants or other services in the aggregate exceeding $5,000, a certification from the payee must be provided which categorizes the services provided, incurred, or contemplated, and certifies that those funds have been expended in compliance with N.J.A.C. 19:25-15.24, Use of public funds. Failure to file complete or timely reports, or failure to expend public funds in compliance with statutory and regulatory requirements may result in immediate cessation of further public fund deposits by the Commission. New subsection (d) specifically provides that the reports of public fund account disbursements submitted shall not be made available for public inspection.

8. N.J.A.C. 19:25-15.26, Expenses not subject to expenditure limits, has been amended to provide that expenses incurred for an election night celebration or event as defined in proposed N.J.A.C. 19:25-15.46(c) shall

not be subject to the overall expenditure limit on candidates receiving public funds. The Commission believes that expenses for election night events are a traditional part of the campaign process and are not intended to be part of the overall campaign expenditure limit provided in N.J.S.A. 19:44A-7, particularly because they generally are conducted after the close of the polls.

9. New subsection (b) has been added to N.J.A.C. 19:25-15.46, Repayment of public or other funds, to the effect that a publicly funded candidate cannot incur new debt or make expenditures after the date of the election other than to satisfy preexisting campaign obligations or to pay the reasonable and necessary costs of closing the campaign. This amendment is intended to protect the interest of the State in the return to the State of any unexpended balance remaining in the account of a publicly funded candidate (see N.J.S.A. 19:44A-35(c)). A publicly financed candidate is therefore prohibited from using any remaining balance for expenses not strictly related to campaign activity, or closing of the campaign account.

10. A new subsection (c) has been added to N.J.A.C. 19:25-15.46, Repayment of public or other funds, to provide that an election night celebration conducted on the date of the general election is a permissible campaign expenditure.

Social Impact

The proposed new rules and amendments will affect gubernatorial candidates and their campaign treasurers in general elections. However, the Commission does not believe that these rules and amendments affect the public at large. The rules and amendments are intended to enhance the Commission's ability to administer the statutory requirements of the public funding program, particularly the requirements that public funds awarded to gubernatorial candidates must be spent for purposes specifically enumerated in the statute. Also, the Commission believes that gubernatorial campaign reporting will be enhanced by requiring prospective candidates to identify their bank accounts and by requiring candidates to identify and categorize disbursements made from public fund accounts established for the candidates' campaigns. In the absence of these new rules and amendments, the Commission is concerned that public funds could be spent in violation of the specific uses enumerated for such public funds.

Economic Impact

The Commission believes that the proposed new rules and amendments will have only a nominal economic impact on prospective and actual candidates for governor in the general election. New minimal filing responsibilities are imposed upon prospective candidates, and enhanced filing responsibilities are imposed upon actual candidates who are receiving public funds. The Commission believes that the public benefit from these additional requirements far outweighs any nominal economic cost to prospective or actual candidates. Further, the Commission believes its proposed amendment requiring publicly funded candidates to avoid new debt after the date of the election and limiting expenditures to preexisting outstanding campaign obligations or reasonable and necessary campaign closing costs will increase the amount of funds ultimately remaining as unexpended and returned to the State at the close of the campaign.

Regulatory Flexibility Statement

The proposed new rules and amendments affect the campaign financing of gubernatorial candidates in a general election, and as such do not affect, impact or impose reporting or other compliance requirements on small businesses other than those imposed on any entity making a contribution to a gubernatorial candidate. Therefore, a regulatory flexibility analysis is not required because these rules and amendments do not impose reporting, record keeping or other compliance requirements on small businesses.

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

19:25-15.4 Appointment of treasurers and depositories

[(a) Each candidate in a general election, whether or not publicly declared and whether or not intending to participate in public funding, must appoint a campaign treasurer and designate a depository bank account and must notify the commission pursuant to N.J.A.C. 19:25-5.2 (Appointment by candidates) of such appointment and designation no later than the tenth day after receipt of any contribution or incurring or making any expenditure, whichever comes first.

(b) All funds received by an individual, or a committee in his or her behalf, solely for the purpose of determining whether that individual should become a candidate (for example, "testing the waters") shall be deposited in a separate depository established solely for that purpose.

(c) In the event the individual on whose behalf funds are received and payments made solely for the purpose of determining whether the individual should become a candidate does in fact become a candidate, the separate depository established under (b) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-15.17(b), provided that the account and all of the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-15.17(b).]

(a) Each candidate in a general election, whether or not publicly declared and whether or not intending to participate in public funding, shall on or before the first Monday following the date of the primary election for nomination for the office of Governor designate to the Commission the name and address of his or her principal campaign committee for the general election. A candidate may designate as his or her principal campaign committee a committee which has engaged in campaign activity prior to the designation date specified in this subsection.

(b) Each candidate in a general election, whether or not publicly declared and whether or not intending to participate in public funding, shall appoint a campaign treasurer and designate a depository bank account and shall notify the Commission pursuant to N.J.A.C. 19:25-5.2, Appointment by candidates, of such appointment and designation no later than the tenth day after receipt of any contribution or after incurring or making any expenditure, whichever comes first.

(c) No political committee, other than the principal campaign committee designated pursuant to (a) above, may contribute to any candidate or expend on behalf of such candidate more than $800.00.

19:25-15.5 [Designation of principal campaign committee; contribution limit] **Pre-candidacy activity**

[(a) On or before the first Monday following the date of the primary election for nomination for the office of Governor, each gubernatorial general election candidate, whether or not intending to participate in public funding, shall designate to the commission the name and mailing address of his or her principal campaign committee for the general election. A candidate may designate as his or her principal campaign committee a committee which has engaged in campaign activity prior to the designation date specified in this subsection.

(b) No political committee, other than the principal campaign committee designated pursuant to (a) above may contribute to any candidate or expend on behalf of such candidate more than $800.00.]

(a) All funds received by an individual, or a committee in his or her behalf, solely for the purpose of determining whether that individual should become a candidate (for example, "testing the waters") shall be deposited in a separate depository established solely for that purpose.

(b) An individual, or a committee on that individual's behalf, shall file with the Commission a notice containing the name, address and account number of the depository established pursuant to N.J.A.C. 19:25-15.5(a) above not later than 10 days after the receipt of funds for the purpose of determining whether that individual should become a candidate.

(c) In the event the individual on whose behalf funds are received and payments made solely for the purpose of determining whether the individual should become a candidate does in fact become a candidate, the separate depository established pursuant to N.J.A.C. 19:25-15.5(a) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-15.17(b), provided that the account and all of the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-15.17(b).

19:25-15.14 Contributions eligible for match; generally

(a) To be eligible for matching with public funds for a gubernatorial general election, a contribution must have been received by a candidate at a time when that candidate was seeking or had sought election for the office of Governor, except that a contribution received and deposited pursuant to N.J.A.C. 19:25-15.7, Separately maintained primary and general bank accounts, or pursuant to N.J.A.C. 19:25-15.5, Pre-candidacy activity, for the purpose of determining whether an individual

should become a candidate for election for the office of Governor shall be eligible. Any funds received prior to the inception of such a candidacy, or prior to the inception of fund raising activity to determine whether an individual should become a candidate for election for the office of Governor and not deposited pursuant to N.J.A.C. 19:25-15.5 or pursuant to N.J.A.C. 19:25-7(a) shall not be eligible for match.

[(a)](b) (No change in text.)

[(b)](c) (No change in text.)

[(c)](d) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his **or her** campaign committee, if such check, money order or instrument contains all of the foregoing information.

(e) A contribution received from a contributing member of a political committee which has made a prior contribution to the candidate shall be eligible for matching funds, provided that the political committee is a bona fide political entity with at least 15 contributing members and was not created to circumvent the contribution limit contained in the act.

19:25-15.16 Limitation on contributions eligible for match

(a) Any contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) [or in the form of a purchase price paid for a chance to participate in a raffle, lottery or similar drawing for valuable prizes, or in the form of a purchase price paid for the admission to any activity that primarily confers private benefits to the contributor in the form of entertainment (such as a concert, motion picture or theatrical performance)] shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the $800.00 contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the $800.00 limitation.

(c) The purchase price paid to a candidate for a fund raising event, lottery, raffle, or admission to any activity that primarily confers private benefits to the contributor in the form of entertainment (such as a concert, motion picture or theatrical performance) shall be deemed the amount of the contribution made to such candidate. The tickets for such an event or lottery and the promotional materials shall state that the purchase price represents a political contribution to the candidate.

19:25-15.17 Matching of funds

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

(i) Any statement or list submitted pursuant to this section cannot be handwritten.

19:25-15.20 Special account for public funds

(a) The [c]Commission shall maintain for each qualified candidate a separate segregated public fund account for deposit of public funds. All public funds received by the [c]Commission from the General Treasury of the State shall be promptly deposited by the [c]Commission into such separate segregated public fund account. No funds other than such public funds shall be deposited in such separate segregated public fund account, and all expenditures from such account shall be separately identified in reports filed with the [c]Commission.

(b) The campaign treasurer of a candidate on whose behalf a public fund account has been established shall file with the Commission on each date upon which a submission for public matching funds has been made pursuant to N.J.A.C. 19:25-15.17, Matching of funds, and N.J.A.C. 19:25-15.18, Date of submission, and for as long as said public fund account is open and such submissions are being made, a report identifying each disbursement made out of the public fund account since the last such submission for public matching funds. The initial report shall identify all such disbursements. The identification of each disbursement from the public fund account shall include the check number, date of payment, amount of payment, full name of payee, full payee mailing address and a complete statement of purpose of the expenditure indicating which of the permitted purposes set forth in N.J.A.C. 19:25-15.24, Use of public funds, is applicable. Failure to file any such report, failure to provide the identification information required in such report, or failure to expend public funds in compliance with N.J.A.C. 19:25-15.24 may result in immediate cessation of public fund deposits by the Commission.

(c) Any report filed pursuant to this section disclosing an expenditure in an aggregate sum exceeding $5,000 for the purpose of purchase of media consultant services or other services shall be accompanied by a certification from the payee categorizing media advertising purchases or other services provided, incurred or contemplated, and certifying that such funds have been or will be expended in compliance with N.J.A.C. 19:25-15.24.

(d) The reports of disbursements made from the public fund account submitted pursuant to this section shall not be available for public inspection.

19:25-15.26 Expenses not subject to expenditure limits

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in N.J.A.C. 19:25-15.11(a)3[;]:

1.-3. (No change.)

4. Election night celebration or event expenses as defined in N.J.A.C. 19:25-15.46(c).

19:25-15.46 Repayment of public or other funds

(a) All public moneys received by a qualified candidate remaining after the liquidation of all lawful obligations with **respect to their election shall be repaid to the** [c]Commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such general election. All moneys other than public moneys, remaining available to any qualified candidate after the liquidation of all obligations, shall also be repaid to the [c]Commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such general election; provided, however, that nothing herein contained shall require any candidate to pay to the State Treasurer, a total amount of moneys in excess of the total amount of public moneys received by such qualified candidate from the public fund.

(b) No candidate who has received public funds shall incur any debt or make any expenditure after the date of the election for any purpose other than the following:

1. To satisfy outstanding obligations incurred on or before the date of the election made for appropriate campaign purposes; or

2. To pay the reasonable and necessary costs of closing the campaign.

(c) An election night celebration or event conducted by a candidate who has received public funds will be deemed a reasonable and necessary cost of closing the campaign provided that it is conducted on the date of the general election.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls; General Provisions and Junkets

Complimentary Services or Items; Junket Reporting Requirements; Licensure Standards and Junket Representative Definition

Proposed Amendments: N.J.A.C. 19:40-1.2; 19:45-1.9; 19:49-1.1, 1.2, 1.3, 2.1, 3.1, 3.2, 3.5 and 3.6.

Proposed New Rule: N.J.A.C. 19:49-2.4

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69, 70(l) and 102.
Proposal Number: PRN 1988-563.

Submit comments by December 7, 1988 to:
Carole R. Jacobson
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following amendments to the Commission's junket rules are being proposed as the result of a petition for rulemaking filed by the Division of Gaming Enforcement ("Division").

The proposed amendment to N.J.A.C. 19:40-1.2 would expand the definition of "junket representative" to include those individuals who derive no compensation from their junket activities, other than complimentaries, and is proposed in order to conform the rule to a recent amendment to the Casino Control Act ("Act"), N.J.S.A. 5:12-29.2.

The proposed amendment to N.J.A.C. 19:45-1.9(c)2 would affect the categorization and reporting of complimentary services by casino licensees by adding a separate category for entertainment.

The proposed amendment to N.J.A.C. 19:49-1.1 would add language to the definition of "agent" in order to emphasize that the term includes individuals acting as a junket representative directly or indirectly on behalf of a casino licensee, regardless whether such persons are actually licensed as a junket representative.

The proposed amendments to N.J.A.C. 19:49-1.2(a), 1.2(d)2 and 1.3 are definitional changes proposed in order to conform the rules to the recently amended language of the Act, N.J.S.A. 5:12-29.

The proposed amendment to N.J.A.C. 19:49-2.1 would expand the definition of junket representative by eliminating the exception for persons who derive no compensation from their junket activities, other than complimentaries, and are proposed in order to conform the rule to the amended Act, N.J.S.A. 5:12-29.2.

The amendment to N.J.A.C. 19:49-2.1(b) addresses and clarifies the fact that, though a person licensed as a casino key employee may, under certain conditions, act as a junket representative without having a license endorsed as a junket representative, this does not excuse the casino licensee or any other person from meeting any other licensing or reporting obligation which may exist as a result of the conduct of the junket activity.

The proposed amendment to N.J.A.C. 19:49-2.1(c)3 would preclude "casino employees in a position directly related to gaming activity" from acting as junket representatives, and is proposed to conform the rule to the Act, N.J.S.A. 5:12-102(b).

N.J.A.C. 19:49-2.4 is a proposed new rule which would require any junket representative or sole owner/operator junket enterprise, while engaged in the performance of junket-related activities in Atlantic City, to prominently display his or her license credential.

The proposed amendments to N.J.A.C. 19:49-3.1 would eliminate the current requirement that casino licensees file pre-arrival reports and instead require that each casino licensee file a less detailed junket schedule with the Division on a monthly basis. The amendments to N.J.A.C. 19:49-3.2, 3.5 and 3.6 address other junket reporting requirements, for example, junket arrival reports, and would delete the requirement that such reports be filed with the Division. The proposed amendments would merely require that such reports be prepared and maintained by the casino licensee on the casino premises and be available to the Division for inspection.

Social Impact

The Division anticipates that the proposed modifications to the junket pre-arrival reporting requirements would enhance the Division's ability to fulfill its role as an investigative body, since it would be easier for the casino industry to prepare and the Division to analyze the new junket schedules. The Division asserts that its proposed new rule requiring the prominent display of credentials would facilitate regulatory and compliance control over junket representatives and sole owner/operator junket enterprises while performing junket activities in Atlantic City. The social effects of other changes, that is, changes in the licensure standard and the broadening of the junket representative definition, are imposed by the Casino Control Act, and, thus, any social impact may be attributed to the legislative authorization for such changes as opposed to the implementing rules which are now being proposed.

Since the junket area has historically been susceptible to the influence of unsuitable individuals, the Division maintains that the proposed regulatory modifications would provide the Commission and the Division with additional instruments with which to prevent the entry into junket operations of persons with unacceptable backgrounds or reputations. Thus, the Division asserts that the regulatory scheme would more effectively uphold the public interest in maintaining the integrity of junket operations and, consequently, of the casino industry as well.

Economic Impact

The Division perceives that the proposed modifications of the reporting rules would clearly involve cost savings to the Division, since the Division would no longer be required to maintain and store the reports generated by the casino licensees. In addition, the Division anticipates that the substitution of junket schedules for pre-arrival reports will result in cost savings to the industry by reducing the amount of paper work generated and the amount of time spent in preparation of the report.

Regulatory Flexibility Statement

The proposed regulatory modifications will affect those persons who were previously able to act as junket representatives without compensation, other then the receipt of complimentaries, but who will now incur the costs associated with being licensed. The inclusion of such individuals in the licensing scheme, however, is imposed by the Casino Control Act, and, thus, any economic impact may be attributed to the legislative authorization for such licensure as opposed to the implementing regulations which are now being proposed.

The Commission has balanced the necessity for a thorough investigation of all individuals acting as junket representatives in a sensitive, highly regulated industry against the economic impact of the rules, and has determined that to minimize the impact of the rules on any individual acting as a junket representative would undermine the regulatory system governing the casino industry as a whole, and endanger the public safety and welfare. Therefore, no exemption from coverage is provided.

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

19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in these rules [and regulations] as defined in that Act. The following words and terms, when used in these rules [and regulations], shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Junket representative" means any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the participants in, any junket to a licensed casino regardless of whether or not those activities occur within the State of New Jersey[; provided, however, that the terms shall not include any person who does not receive any direct or indirect compensation from any person for performing those services other than the same complimentary services and items of value provided by a casino licensee to other participants pursuant to the terms of the particular junket].

. . .

19:45-1.9 Complimentary services or items

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

(c) The licensee shall accumulate both the dollar amount of and number of persons provided with each category of complimentary services.

1. (No change.)

2. The complimentary services shall, at a minimum, be separated into categories for rooms, food, beverage, travel, **entertainment** and other services.

19:49-1.1 Definitions

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

"Agent" means any person, including a junket representative, [or] junket enterprise **or casino key employee acting as a junket representative**, acting directly or indirectly on behalf of a casino licensee.
. . .

19:49-1.2 Definition of junket: scope of activities included

(a) A junket, as defined in N.J.S.A. 5:12-29, is an arrangement the purpose of which is to induce any person, selected or approved for participation therein on the basis of his **or her** ability to satisfy a financial qualification obligation related to his **or her** ability or willingness to gamble or on any other basis related to his **or her** propensity to gamble, to come to a licensed casino hotel for the purpose of gambling and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging[,] **and** entertainment [and other services and items of value] for said person is directly or indirectly paid by a casino licensee or employee or agent thereof.

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

(d) For purposes of (a) above, but without limitation of (c) above, a rebuttable presumption that a person has been selected or approved for participation in an arrangement on a basis related to his **or her** propensity to gamble shall be created whenever said person is provided with:

1. (No change.)

2. Complimentary [services or items] **food, entertainment or transportation** which [have] **has** a value of $200.00 or more calculated in accordance with the provisions of N.J.A.C. 19:45-1.9.

19:49-1.3 Open-ended or conditional complimentary offers

An offer by a casino licensee to pay for the cost of transportation, food, lodging[,] **and** entertainment [and other services and items of value] for a person in an amount to be determined by the actual gaming activities of that person after his **or her** arrival at the casino hotel shall be deemed to be an offer of complimentary services or items for the purposes of determining whether an arrangement involving such an offer is a junket within the meaning of Section 29 of the Act and [these regulations] **this chapter**.

19:49-2.1 Junket representative licensure

(a) [Unless exempted pursuant to (b) below, a] **A** junket representative, as defined in the Act, is any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the participants on, any junket to a licensed casino, regardless of whether or not those activities occur within the State of New Jersey. [1.] If a person performs any one of [the] **these** functions [listed above] in connection with a junket to a licensed casino, that person is a junket representative for the purposes of the Act and [these regulations] **this chapter**.

[(b) Any person who performs the services of a junket representative but receives no direct or indirect compensation from any person for performing such services shall not be considered a junket representative for the purposes of the Act and these regulations.

1. In applying the provisions of this subsection, the term "compensation" shall not include the receipt by a junket participant of the same complimentary services and items of value provided by a casino licensee to other participants pursuant to the terms of the particular junket.]

[2.] **(b)** The fact that a person [may not be considered a junket representative pursuant to the provisions of this subsection] **licensed as a casino key employee may, pursuant to N.J.S.A. 5:12-102 and (c)3 below, act as a junket representative while employed by a casino licensee without further endorsement of his or her license** does not excuse the casino licensee or any other person from meeting any other licensing or reporting obligation which may exist as a result of the conduct of the junket activity.

(c) **Except as otherwise provided by N.J.S.A. 5:12-102o,** [N] **n**o person shall act as a junket representative in connection with a junket to a licensed casino unless:

1. He **or she** has been licensed as a junket representative in accordance with the provisions of the Act and is employed by either:

i.-ii. (No change.)

2. He **or she** has been licensed as a sole owner/operator junket enterprise in accordance with the provisions of the Act and [these regulations] **this chapter**; or

3. He **or she** is the holder of a current and valid casino key employee license [or casino employee license in a position directly related to gaming activity] and is currently employed by the casino licensee for whom such junket representative services are being rendered.

(d)-(e) (No change.)

19:49-2.4 Displaying licenses

A junket representative or a sole owner/operator junket enterprise, while acting as a junket representative as that term is defined by the Act, must prominently display on his or her person the license credential issued by the Commission from the time he or she arrives in Atlantic City until departure therefrom.

19:49-3.1 Junket [prearrival reports] **schedules**

(a) A [prearrival report] **junket schedule** shall be prepared by a casino licensee for each junket which involves either:

1.-2. (No change.)

(b) A [prearrival report] **junket schedule** shall be filed with the Division by the casino licensee [at least five days prior to the scheduled arrival date of the junket] **by the 15th day of the month preceding the month in which the junket is scheduled**. If a junket for which a [prearrival report] **junket schedule** is required by (a) above is arranged [within five days of its scheduled arrival date] **after the 15th day of the month preceding the arrival of the junket,** [the prearrival report on said junket] **an amended junket schedule** shall be immediately filed with the Division by the casino licensee.

(c) [Prearrival reports] **Junket schedules** shall be certified by an authorized agent of the casino licensee and shall include:

[1. The name of every junket enterprise and junket representative involved in the junket;

2. The scheduled arrival date of the junket;

3. The scheduled departure date of the junket;

4. The origin of the junket;

5. The terms of any direct or indirect compensation arrangement with junket enterprises or junket representatives;

6. The value and type of complimentary services and items to be provided to the junket participants calculated in accordance with the provisions of N.J.A.C. 19:45-1.9;

7. A description of the financial obligations to be imposed on junket participants, if any; and

8. A sequential junket number assigned by the casino licensee consisting of three entries: the last two digits of the year in which the junket arrived; a sequential number assigned by the casino licensee to each particular junket to be reported; and a coded entry to indicate if a junket enterprise was involved in the junket.]

1. The origin of the junket;

2. The number of participants in the junket;

3. The arrival time and date of the junket;

4. The departure time and date of the junket; and

5. The name and license number of all junket representatives and junket enterprises involved in the junket.

(d) Any change in the information required by (c) [1 or 2] **3 or 5** above which occurs after the filing of a [prearrival report] **junket schedule or amended junket schedule** with the Division shall be immediately reported in writing to the Division by the casino licensee. These changes, plus any other material change in the information provided in a [prearrival report] **junket schedule**, shall also be noted on the arrival report [filed] **maintained** pursuant to N.J.A.C. 19:49-3.2.

(e) (No change.)

19:49-3.2 Junket arrival reports

(a) (No change.)

(b) Arrival reports shall be [filed at locations to be designated by the Division,] **prepared and maintained by the casino licensee on the premises of its casino hotel** in accordance with the following:

1. An arrival report on a junket involving complimentary guest room accommodations shall be [filed with the Division] **prepared** within 12 hours of the registration of the junket participant.

2. An arrival report on a junket required by (a)1 through 3 above shall be [filed with the Division] **prepared** by 5:00 P.M. of the next calendar business day following arrival. A junket arrival which occurs after 12:00 A.M. but before the close of gaming operations shall be deemed to have occurred on the preceding calendar day. For the purposes of this section, a business day shall be defined as any day except a Saturday, Sunday or State and Federal holiday.

(c) Arrival reports shall be certified by an authorized agent of the casino licensee and shall include:

1. (No change.)

2. Any information required by N.J.A.C. 19:49-3.1(c) which has not been previously provided to the Division in a [prearrival report] **junket schedule** pertaining to that particular junket, or an amendment thereto filed pursuant to N.J.A.C. 19:49-3.1(d).

19:49-3.5 Purchases of patron lists

(a) Each casino licensee, junket representative or junket enterprise shall [file] **prepare and maintain** a report [with the Division] with respect to each list of names of junket patrons or potential junket patrons purchased from any source whatsoever.

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

19:49-3.6 Monthly reports: employee junket activities

Each casino licensee shall, on or before the 15th day of the month, [file] **prepare and maintain** a report [with the Division] listing the name and license number of each person employed by that casino licensee who performed the services of a junket representative during the preceding month, but whose license was not endorsed as such. The report shall be [filed at a location to be designated by the Division] **maintained by the casino licensee on the premises of its casino hotel and made available to the Division for inspection.**

(a)

CASINO CONTROL COMMISSION

Applications
Fees; Employee License Position Deletions
Proposed Amendment: N.J.A.C. 19:41-9.16.

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

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-141.

Proposal Number: PRN 1988-549.

Submit comments by December 7, 1988 to:

Mark Neary
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would require the holder of an employee license to pay $15.00 for the deletion of an endorsement from the license. The $15.00 charge would permit the Commission to recover the costs of processing the deletion, just as the Commission now recovers the cost for the addition of an endorsement.

The proposed amendment would also make clear that, in order to have a deleted endorsement added back to a license, the holder of the employee license would be required to pay the fee required by N.J.A.C. 19:41-9.16(a).

Social Impact

The proposed amendment is not anticipated to have any significant social impact.

Economic Impact

The proposed amendment will affect those applicants for or holders of employee licenses who wish to have endorsements deleted from or added back to their licenses. The charges imposed by the proposed amendment, however, will help to ensure that those requesting the deletion or addition of endorsements pay their fair share of the costs incurred by the regulatory agencies.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting or compliance requirements on entities which qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed amendment follows (additions indicated in boldface **thus**).

19:41-9.16 Employee license position additions **and deletions**

(a) (No change.)

(b) A request to delete a position from a license shall require a payment of $15.00 for each such request. A request to endorse a previously deleted authorized position upon a license shall require payment as set forth in (a) above.

Reletter (b) through (d) as (c) **through** (e) (No change in text.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Table Inventories
Rules of the Games: Baccarat-Punto Banco
Payout Odds: Vigorish
Proposed Amendments: N.J.A.C. 19:45-1.20 and 19:47-3.3.

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

Authority: N.J.S.A. 5:12-70(f) and 5:12-100(e).

Proposal Number: PRN 1988-550.

Submit comments by December 7, 1988 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
Princeton Pike Office Park
Building No. 5, CN-208
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:45-1.20 and 19:47-3.3 would permit the casinos to use coin for the purpose of marking vigorish at the game of Baccarat-Punto Banco. These amendments formalize a practice that is already used by the casinos.

Social Impact

There will be no social impact from these amendments since the casinos already use coin to mark vigorish. The proposed amendments merely provide convenient, alternative manner for marking vigorish.

Economic Impact

There will be no economic impact from these amendments since the casinos already use coin to mark the vigorish. The alternative method for marking vigorish has no economic impact on the casino industry or players.

Regulatory Flexibility Statement

These proposed amendments will only affect the operations of casino licensees and will not impact on any small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

19:45-1.20 Table inventories

(a) Whenever a gaming table in a casino is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino shall cause or permit gaming chips, coins or plaques to be added to or removed from such table inventory during the gaming day except:

1.-2. (No change.)

3. In exchange for gaming chips or plaques received from a patron having an equal aggregate face value; [and]

4. In conformity with the Fill and Credit Slip procedures described in N.J.A.C. 19:45-1.22 and 1.23[.]; **and**

5. In conformity with N.J.A.C. 19:47-3.3 and 7.3, coin may be used for the purpose of marking baccarat vigorish.

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

19:47-3.3 Payout odds; vigorish

(a) (No change.)

(b) A winning wager made on the "Banker's Hand" shall be paid off by a casino licensee at odds of 1 to 1 except that the casino licensee may extract a charge (to be known as a "[C]commission" or "vigorish") on the amount won not to exceed five percent of such amount provided however a casino licensee may round off the [C] commission or vigorish to [twenty-five] **25** cents or the next highest multiple of [twenty-five] **25** cents when the [C]commission or vigorish is not exactly [twenty-five] **25** cents or a multiple thereof. A casino licensee may collect the vigorish from a player at the time the winning payoff is made or may defer it to a later time provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe and in no event shall the collection of any vigorish be deferred beyond such point. The amount of any vigorish not collected at the time of the winning payouts shall be evidenced by the placing of a **coin or** marker button containing the amount of the vigorish owed in a rectangular space in front of the dealer on the layout imprinted with the number of the participant owing such vigorish.

(c) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Inspection of Slot Machine Jackpots
Proposed New Rule: N.J.A.C. 19:45-1.40B

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

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(f), and 5:12-100.

Proposal Number: PRN 1988-551.

Submit comments by December 7, 1988 to:

Mark Neary
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed new rule requires casino licensees to notify the Division of Gaming Enforcement (Division) prior to paying any slot machine jackpot which has a value of $25,000 or more, which consists of merchandise or a thing of value, or which presents evidence of a malfunction. Should the Division choose to investigate the jackpot, the casino licensee must await direction from the Division prior to the payment of the jackpot. The proposed new rule is essentially a codification of an informal procedure which has been in place for approximately three years.

The Division filed a rulemaking petition which included a similar proposed new rule in October of 1987 (see 19 N.J.R. 2071(a)). That proposal was published by the Commission at 20 N.J.R. 1069(a). The Division subsequently withdrew that proposal on August 31, 1988 (see 20 N.J.R. 2468(a)). Those wishing to comment upon the instant proposed new rule are requested to submit new comments, and not to rely upon any comments which were submitted in response to the Division's prior proposal.

Social Impact

This proposed new rule will enhance the integrity and security of slot machine operations in the casinos. The rule should prevent the improper distribution of casino assets following slot machine jackpots which actually resulted from tampering or machine malfunction.

Inspection of slot machine jackpots by the Division may delay the payment of some jackpots. Such delays could inconvenience patrons awaiting payment of these jackpots. The Division has been successful in reducing the delays since the voluntary program was begun. Because the proposed new rule does not significantly expand the inspection requirement beyond those jackpots which are already covered under the voluntary program, any inconvenience due to delays should be minimal.

Economic Impact

The proposed new rule is not anticipated to have any significant economic impact. The present level of staffing at the Division should be sufficient to administer the proposed rule. Delays in the payment of jackpots may cause the casino licensees to forego some revenue, as the slot machines will not be operable during the inspection by the Division. Nevertheless, the rule will also serve to protect the revenues of casino licensees by uncovering incidents of slot machine tampering or malfunction.

Regulatory Flexibility Statement

This proposed new rule will only affect the operation of casino licensees, none of which qualify as small businesses under the Regulatory Flexibility Act.

Full text of the proposal follows:

19:45-1.40B Inspection of slot machine jackpots

(a) Prior to the payment of any slot machine jackpot paid pursuant to N.J.A.C. 19:45-1.40 which has a value of at least $25,000, any jackpot of merchandise or a thing of value to be paid pursuant to N.J.A.C. 19:45-1.40A, or any jackpot where there is evidence of a malfunction, a casino licensee shall notify the Division that a winning combination has been registered and permit the Division to inspect any slot machine, progressive equipment or related equipment involved. Upon notification by the casino licensee, the Division shall advise the casino licensee whether the Division will conduct an inspection. When an inspection is conducted, the casino licensee may award payment of the jackpot to the winning patron upon completion of the inspection absent a contrary direction from the Division pursuant to its authority under the Act. Failure of the Division to object to the payment of the jackpot upon completion of its inspection shall not constitute waiver or estoppel of any charge, issue or claim raised in any criminal or regulatory complaint subsequently filed against any person in connection with the winning or payment of that jackpot.

(b) Nothing in (a) above shall be deemed to limit the obligation of a casino licensee under the Act and the Commission's rules to cooperate with the Division or Commission in any inquiry or investigation concerning slot machine jackpots.

(b)

CASINO CONTROL COMMISSION

Junkets
Reporting Requirements
Proposed Repeals: N.J.A.C. 19:49-3.1 and 3.3
Proposed Amendment: N.J.A.C. 19:49-3.2

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

Authority: N.J.S.A. 5:12-63(c), 69, 70(l) and 102.

Proposal Number: PRN 1988-564.

Submit comments by December 7, 1988 to:

Carole R. Jacobson
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following repeals and amendment to the Commission's junket rules are being proposed as the result of a joint petition for rulemaking filed by Boardwalk Regency Corporation and Resorts International Hotel, Inc. ("Petitioners").

The proposed repeals of N.J.A.C. 19:49-3.1 and 3.3 and amendment to N.J.A.C. 19:49-3.2 would eliminate the current requirement that casino licensees file a junket prearrival, a junket arrival and a junket final report for each junket involving either a junket enterprise or a sole owner/operator junket enterprise. Instead, the amendment would establish a single consolidated "junket report", which would replace the three reports required by the current rules. This single "junket report" would be maintained in the casino licensee's files rather than be filed with the Division of Gaming Enforcement ("Division").

In addition, the proposed amendment would raise the monetary threshold for complimentaries used in determining when a junket report needs to be prepared from $200.00 to $1,000, as well as eliminate the junket reporting requirement for any junket involving complimentary guest room accommodations. Finally, the proposed repeal of N.J.A.C. 19:49-3.3 would eliminate the requirement that casino licensees prepare and maintain junket acknowledgment forms for junkets involving complimentary guest room accommodations.

Social Impact

Petitioners assert that the proposed modifications to the junket rules would have no adverse impact on the Division's ability to fulfill its role as an investigative body, since, by merging three reports into one, the repeals and amendment would merely streamline the existing junket reporting requirements as well as conform the rules to existing practice. Petitioners maintain that the proposed revised "junket report" would contain all pertinent information.

According to petitioners, the Division does not utilize the prearrival reports required by current N.J.A.C. 19:49-3.1, but relies instead on monthly schedules of proposed junket activity provided by casino licensees. Petitioners assert that the elimination of junket final reports would have no adverse impact since the information concerning complimentaries contained therein is already provided to the Division and the Commission in various daily, monthly and quarterly reports.

Petitioners assert that the elimination of junket reporting for junkets which only involve guest room accommodations or in instances where complimentaries do not exceed $1,000 would have minimal, if any, effect on Division investigations since the amendment would only eliminate the reporting of casino-initiated or patron-initiated low dollar value junkets, which, according to petitioners, is not the primary investigative focus of the Division.

Finally, the petitioners maintain that the elimination of patron acknowledgments for junkets involving complimentary guest room accommodations would have no adverse social impact, since the acknowledgments are burdensome for casino licensees to obtain and merely serve to inconvenience patrons.

Economic Impact

Boardwalk Regency Corporation and Resorts believe that the proposed modifications to the junket reporting rules would have a beneficial economic impact on casino licensees through a reduction in the administrative costs currently associated with preparing, maintaining and filing the three separate junket reports required under the existing rules.

Regulatory Flexibility Statement

These proposed repeals and amendment will only affect the operations of casino licensees and therefore will not impact upon any small businesses protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 19:49-3.1 and 3.3.

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

19:49-[3.2]**3.1** Junket [arrival] reports

(a) [An arrival]**A junket** report shall be prepared by a casino licensee for each junket which involves either:

1. A junket enterprise; or
2. A sole owner/operator junket enterprise; or
3. An offer of complimentary services or items which have a value in excess of [$200.00] **$1,000** per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9[; or].

[4. Complimentary guest room accommodations.

(b) Arrival reports shall be filed by the casino licensee, at locations to be designated by the Division, in accordance with the following:

1. An arrival report on a junket involving complimentary guest room accommodations shall be filed with the Division within 12 hours of the registration of the junket participant.
2. An arrival report on a junket required by (a)1 through 3 above shall be filed with the Division by 5:00 P.M. of the next calendar business day following arrival. A junket arrival which occurs after 12:00 A.M. but before the close of gaming operations shall be deemed to have occurred on the preceding calendar day. For the purposes of this section, a business day shall be defined as any day except a Saturday, Sunday or State and Federal holiday.]

[(c)](**b**) [Arrival]**Junket** reports shall be certified by an authorized agent of the casino licensee and shall include:

1. A junket guest manifest listing the names and addresses of junket participants; [and
2. Any information required by N.J.A.C. 19:49-3.1(c) which has not been previously provided to the Division in a prearrival report pertaining to that particular junket, or an amendment thereto filed pursuant to N.J.A.C. 19:49-3.1(d).]

2. The name of every junket enterprise and junket representative involved in the junket;

3. The arrival date of the junket;

4. The scheduled departure date of the junket;

5. The origin of the junket;

6. The terms of any direct or indirect compensation arrangement with junket enterprises or junket representatives;

7. The value and type of complimentary services and items to be provided to the junket participants calculated in accordance with the provisions of N.J.A.C. 19:45-1.9;

8. A description of the financial qualification obligations to be imposed on junket participants, if any; and

9. A sequential junket number assigned by the casino licensee consisting of the following three entries:

i. The last two digits of the year in which the junket arrived;

ii. A sequential number assigned by the casino licensee to each particular junket to be reported; and

iii. A coded entry to indicate if a junket enterprise or sole owner/operator junket enterprise was involved in the junket.

(c) Junket reports shall be placed in the casino licensee's files within 12 hours of the arrival of the junket and maintained there as a permanent record.

Renumber existing 19:49-3.4 through 3.6 as **3.2 through 3.4** (No change in text.)

(a)

CASINO CONTROL COMMISSION

Entertainment
General Provisions
Proposed Amendment: N.J.A.C. 19:52-1.3.

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

Authority: N.J.S.A. 5:12-63(c), 5:12-69(c) and 5:12-70(p).

Proposal Number: PRN 1988-552.

A **public hearing** concerning the proposed amendment will be held on **December 8, 1988,** at 10:00 A.M., in the Commission's offices, Tennessee Avenue and Boardwalk, Atlantic City, New Jersey.

Interested persons are invited to participate through oral argument and are requested to notify the Commission by November 21, 1988 of their intent to do so, by contacting Carole R. Jacobson at the following address or by telephone (609-530-4966).

Submit written comments by December 7, 1988 to:

Carole R. Jacobson
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following amendment to the Commission's entertainment rules is being proposed as the result of a petition for rulemaking filed by the Atlantic City Musicians' Union Local 661-708 ("Musicians' Union").

The proposed amendment to N.J.A.C. 19:52-1.3 would require that any musical entertainment provided in a lounge or showroom which seats at least 350 people be provided by live musicians instead of taped or mechanically reproduced music. Further, the casino licensee would be required to post in its description of any show in which music is provided whether that music is taped or recorded.

Social Impact

The Musicians' Union anticipates that the proposed modification to the entertainment rules would enhance the type of entertainment offered by casino licensees by providing a broader spectrum of entertainment, thereby attracting additional patrons to Atlantic City. In addition, the Musicians' Union anticipates that there would be an increase in employment demand for professional and semi-professional musicians.

Economic Impact

The Musicians' Union anticipates that its proposed amendment would benefit musicians seeking employment in Atlantic City casinos, thereby improving Atlantic City's economy and contributing to the area's revitalization. The amendment may, however, increase the business costs of the casino industry, since casino licensees might have to increase their entertainment budgets in order to provide the mandated live entertainment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since these rules do not impose any reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:52-1.3 General requirements concerning entertainment

(a) (No change.)

(b) Every casino hotel shall post the hours of shows, costs of admission, availability of food and drink, the description of entertainment, and the duration of shows, in, on or about the casino hotel complex. **The description of entertainment shall include whether any music provided is live or recorded and shall be prominently displayed.**

(c)-(f) (No change.)

(g) Each casino hotel that provides musical entertainment in a showroom or lounge in which the seating capacity exceeds 350 people shall provide only live musical entertainment in that room.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Financial Assurance for Closure and Post-Closure

Proposed Amendments: N.J.A.C. 7:14A-5.12 and 7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, 9 Appendix A, 12.3, and 12.5

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., specifically 13:1E-6, and N.J.S.A. 58:10A-1 et seq., specifically 58:10A-4.

DEP Docket Number: 040-88-10.

Proposal Number: PRN 1988-569.

Submit written comments by December 7, 1988 to:

Carl Will
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes several amendments to the New Jersey Hazardous Waste Management Program rules. The amendments make the State's hazardous waste management rules equivalent to the corresponding Federal regulations. The proposed amendments to N.J.A.C. 7:14A-5.12 and 7:26-9.8, 9.9, 9.10, 9.11, 9.13, 9 Appendix A, 12.3, and 12.5 reflect revisions to Federal regulations promulgated pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (1976), at 40 C.F.R. Parts 264 and 265, which were published as a final rule by the United States Environmental Protection Agency (USEPA) on May 2, 1986, at 51 Fed. Reg. 16,422.

The proposed amendment to N.J.A.C. 7:14A-5.12 defines the terms "plugging and abandonment plan" and "current plugging cost estimate" as used in that section addressing requirements for hazardous waste injection wells. The amendment also requires owners or operators to include closure cost estimates in closure plans for plugging and abandonment of hazardous waste injection wells.

The proposed amendment to N.J.A.C. 7:26-1.4 adds definitions of "active life", "final closure", "hazardous waste management unit", and "partial closure" to the existing list of definitions for use in N.J.A.C. 7:26. Closure and post-closure requirements must be met for partial closure as well as for final closure.

The proposed amendment to N.J.A.C. 7:26-9.8 expands upon existing closure requirements, including the level of detail required in the closure plan. The closure plan must include an estimate of the maximum inventory of wastes ever on-site at any given time during the active life of the facility and a detailed description of the activities required during partial and final closures, such as ground water monitoring, leachate collection, and run-on and run-off control, to ensure that closure requirements are satisfied. Timeframes during which owners and operators are required to complete closure activities are established. Certification of closure by the owner or operator and an independent registered professional engineer is also required. Owners or operators of surface impoundments who intend to remove all hazardous wastes during closure are required to submit a contingent closure plan in case some hazardous wastes remain on-site after closure and the facility or unit has to be closed as a landfill. Procedures are established for submission, revision, review, and approval of plans.

The proposed amendment to N.J.A.C. 7:26-9.9 expands upon existing post-closure care requirements. Owners and operators of surface impoundments intending to remove all hazardous wastes during closure are required to prepare contingent post-closure plans, in case the facility or unit has to be closed as a landfill. Owners and operators wishing to change approved post-closure plans must submit a written request to the Department to authorize the change. The owner or operator must also submit a modified post-closure plan no later than 60 days after a Departmental request to modify the plan.

The Department also proposes to require owners and operators to estimate the year of closure. Owners and operators will be given deadlines for filing records pertaining to closure of each hazardous waste management unit after closure of that specific unit. In addition, owners, operators, or subsequent owners or operators wishing to remove waste and residues which remained on-site, along with the liner and all contaminated underlying and surrounding soil, will be required to request from the Department written approval for a modification of the post-closure plan.

The proposed amendments to N.J.A.C. 7:26-9.10 and 9.11 require owners or operators to prepare detailed written cost estimates of closure and post-closure costs. The closure and post-closure cost estimates shall be based on the costs to the owner or operator of hiring a third party to perform closure or post-closure activities, even where the owner or operator does not plan to hire a third party, in order to ensure that adequate funds are available to cover the costs of closure and post-closure because, in the event that the owner or operator fails to perform, closure and post-closure must be performed by a third party. The closure cost estimate may not incorporate any salvage value of wastes, equipment, structures, or land to offset liabilities, nor may the cost estimate assume that the hazardous waste will be saleable or that a third party will take the hazardous waste at no charge at closure, because the value of waste or equipment cannot be assured. Therefore, an owner or operator may not incorporate any reduction in cost into the closure cost estimate for handling hazardous wastes with potential value. The Department also proposes to require owners or operators to revise their cost estimate for closure and post-closure within 60 days prior to the anniversary date of

preparation of the first cost estimate. This will ensure a more accurate cost estimate adjusted annually for inflation. Furthermore, the owner or operator must revise the closure and post-closure estimates if a change in the closure or post-closure plan increases the cost of closure. The revised closure and post-closure cost estimate must be submitted to the Department within 30 days after the amended closure and post-closure plan is submitted. The proposed amendment to N.J.A.C. 7:26-9.10 and 9.11 will also allow an owner or operator to request reimbursement from a trustee or insurer for partial or final closure only if the remaining balance of the trust fund or face amount of the insurance policy is sufficient to cover the estimated total cost of closing the facility over its remaining operating life. The Department will instruct the trustee or insurer to make reimbursements for partial or final closure in those amounts as specified in writing if the closure is performed in accordance with an approved closure plan. The Department will withhold reimbursements if the maximum cost of closure over the remaining life of the facility will be equal to or greater than the value of the trust fund or face amount of the insurance policy. In addition, if the reimbursement request is denied, the Department will provide the owner or operator with a detailed written statement of reasons for the denial.

The Department also proposes to amend the financial assurance requirements for closure and post-closure. The letter of credit and surety bond guarantees become liable in the event the owner or operator fails to begin closure within 15 days after issuance of a judicial or final Departmental order to begin final closure. The amendment will make it clear that judicial review of a final administrative action is not required before the surety becomes liable or before the Department can draw on the letter of credit.

Within 60 days after receiving certification from the owner or operator and from an independent registered professional engineer that closure or post-closure has been completed in accordance with the approved closure or post-closure plan, the Department will notify the owner or operator that it is no longer required to maintain financial assurance for closure, if completed, or post-closure, if completed, for that unit. However, the owner or operator must maintain financial assurance if the Department has reason to believe that post-closure has not been performed in accordance with the approved plan. The Department shall provide the owner or operator with a detailed written statement of any reasons the Department has to believe that closure or post-closure has not been performed in accordance with the approved plan.

The proposed amendment to N.J.A.C. 7:26-9.13 requires the owner or operator to provide liability coverage until the certification of final closure is received by the Department and the owner or operator is notified by the Department in writing that it is released from this obligation. The amendment will also revise the requirements for owners or operators using the financial test to demonstrate adequate liability coverage. The State currently allows owners or operators to use the financial test for liability; however, current rules do not take into account the possibility that owners or operators may be using the same assets to guarantee liability coverage in New Jersey and to guarantee liability and closure and post-closure costs in other states. This practice may result in an owner's or operator's using the financial test despite having inadequate resources to provide adequate liability coverage in this State because of underreporting of his or her total financial obligations. This amendment requires owners or operators to inform the Department of all closure, post-closure, and liability costs they may be obligated for throughout the country in order to ensure that an owner's or operator's resources are adequate to cover all of its liabilities to the State.

The proposed amendment to N.J.A.C. 7:26-9 Appendix A(b), "Wording of Instruments", requires that a surety bond contain a paragraph stating that the surety is responsible for funding the standby trust fund if the owner or operator fails to begin closure within 15 days after issuance of a judicial or final Departmental order to begin closure and/or post-closure. The proposed amendment to N.J.A.C. 7:26-9 Appendix A(c) requires that the surety bond guaranteeing performance of closure or post-closure state that the surety shall perform final closure and/or post-closure or fund the standby trust fund if the owner or operator fails to begin closure within 15 days after issuance of a judicial or final administrative order to begin closure. Also, the proposed amendment to N.J.A.C. 7:26-9 Appendix A(f) requires a certification of whether or not the firm demonstrating liability by the financial test is the owner or operator of an underground injection control (UIC) facility for which plugging and abandonment are required. A current closure cost estimate for each UIC facility is also required. In addition, the amendment provides wording for owners or operators using the financial test for liability coverage which reflects the changes to N.J.A.C. 7:26-9.13(f).

The proposed amendment to N.J.A.C. 7:26-12.5 requires new owners or operators of hazardous waste facilities to demonstrate compliance with N.J.A.C. 7:26-9.10 through 9.14 within six months of the date of change of ownership or operational control. The former owner or operator is required to comply with N.J.A.C. 7:26-9.10 through 9.14 until notified by the Department that the new owner or operator has demonstrated compliance. The proposed amendment to N.J.A.C. 7:26-12.3 imposes equivalent requirements on owners or operators of hazardous waste facilities with existing facility status under N.J.A.C. 7:26-12.3

This proposal supersedes the proposal published in the December 21, 1987 New Jersey Register at 19 N.J.R. 2349(a). Because of extensive revisions to the original proposal that were required in order to achieve equivalency with Federal regulations, the Department is publishing this new proposal.

Social Impact

The proposed amendments will have a positive social impact by assuring that hazardous wastes are not released into the environment after closure of hazardous waste facilities. The proposed amendment to N.J.A.C. 7:26-1.4 will improve communication between the Department and the regulated community by identifying and defining additional, necessary terms. The proposed amendment to N.J.A.C. 7:26-9.9 requires the submission of information needed by the Department to identify the activities being carried on after closure of each hazardous waste management unit. Modifications to the post-closure plan will be in writing and subject to the approval of the Department, which will ensure that any change in the facility design or routine operation will be consistent with the post-closure plan. The amendments also require the owner or operator to certify that closure and post-closure were performed in accordance with the closure and post-closure plan. In the event that a hazardous waste facility is held liable for damages, the amendments will provide further assurance that the facility has adequate assets to cover such liability.

The proposed amendments to N.J.A.C. 7:14A-5.12 and 7:26-9.8, 9.9, 9.10, 9.11, 9 Appendix A, 12.3 and 12.5 will make the State rules consistent with, and in some cases more stringent than, the Federal regulations. The amendments will require cost estimates to support the list of activities in the closure and post-closure plans, and will provide further assurance that adequate funds are available to cover the costs of closure and post-closure in the event the owner or operator fails to perform.

Economic Impact

The proposed amendments will not have a significant adverse economic impact, with the possible exception of the change in the financial test requirements. There will be a slight increase in administrative costs to the regulated community for more detailed and more frequent estimates of closure and post-closure costs. These requirements may be of some economic benefit because owners or operators can use the detailed cost estimates in preparing a budget during closure.

There may be a significant economic impact on some owners or operators who are currently using the financial test to guarantee liability coverage. Those who have used the same assets to guarantee liability coverage for closure or post-closure costs in other states and whose assets are not adequate to cover their liabilities nationwide will no longer be able to qualify for the financial test and will be required to obtain other liability coverage to satisfy the requirements of N.J.A.C. 7:26-9.13 or face possible enforcement action.

Environmental Impact

The proposed amendments will have a positive environmental impact by ensuring that closure and post-closure will be performed in a manner that will protect human health and the environment. The added requirements will ensure that hazardous waste is properly handled during closure and post-closure and that sufficient funds will be available to cover the costs of such handling.

As a result of the amendments, all hazardous waste facilities in New Jersey that use the financial test for liability coverage will be required to have adequate assets to cover possible liabilities to the State. The use of identical assets to cover obligations both inside and outside New Jersey will be prevented unless those assets are adequate to cover both costs.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will have a minimal impact on small businesses. The amendments apply to all hazardous waste treatment, storage, and disposal facilities. Of the approximately 180 hazardous waste facilities in the State, approximately 90 percent are small businesses as defined by the Act. The

amendments impose primarily recordkeeping and reporting requirements, and are not expected to require significant additional expenditures. The amendments will not require significant capital expenditures. The State must adopt these rules in order to retain authorization of its hazardous waste program. The Department has not set less stringent standards for small businesses here, because the effect of hazardous wastes on the environment is determined by the nature and amount of the wastes and not by the size of the generator or waste management facility.

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

7:14A-5.12 Requirements for wells injecting hazardous waste

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

(d) When used in this section, "plugging and abandonment plan" shall mean the plan for plugging and abandonment prepared in accordance with the requirements of N.J.A.C. 7:14A-5.10(a)6.

(e) A cost estimate for plugging and abandonment shall be prepared as follows:

1. The owner or operator shall prepare a written cost estimate, in current dollars, of the cost of plugging the injection well in accordance with the plugging and abandonment plan as specified in N.J.A.C. 7:14A-5.10(a)6. The plugging and abandonment cost estimate shall equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive as indicated by the facility's plugging and abandonment plan.

2. The owner or operator shall adjust the plugging and abandonment cost estimate for inflation within 30 days after each anniversary of the date on which the first plugging and abandonment cost estimate was prepared. The adjustment shall be made as specified in (e)2i and ii below, using an inflation factor derived from the annual Oil and Gas Field Equipment Cost Index, which appears in the Survey of Current Business, issued monthly by the United States Department of Commerce, Bureau of Economic Analysis. The inflation factor is the result of dividing the latest published annual Index by the Index for the previous year.

i. The first adjustment is made by multiplying the plugging and abandonment cost estimate by the current inflation factor. The result is the adjusted plugging and abandonment cost estimate.

ii. Subsequent adjustments are made by multiplying the latest adjusted plugging and abandonment cost estimate by the latest inflation factor.

3. The owner or operator shall revise the plugging and abandonment plan when the cost of plugging and abandonment increases as a result of inflation or because of other factors. If the increase is because of other factors, the revised plugging and abandonment cost estimate shall be adjusted for inflation as specified in (e)2 above.

4. During the operating life of the facility, the owner or operator shall keep at the facility the latest plugging and abandonment cost estimate prepared in accordance with (e)1 and 3 above, and, when this estimate has been adjusted in accordance with (e)2 above, the latest adjusted plugging and abandonment cost estimate.

7:26-1.4 Definitions

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

. . .

"Active life" of a hazardous waste facility means the period from the initial receipt of hazardous waste at the facility until the Department approves certification of final closure of the facility.

. . .

"Final closure" means the closure of all hazardous waste management units at a hazardous waste facility in accordance with all applicable closure requirements so that hazardous waste management activities subject to regulation under N.J.A.C. 7:26-10 and 7:26-11 are no longer conducted at the facility.

. . .

"Hazardous waste management unit" means an area of land on or in which hazardous waste is placed or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes the containers and the land or pad upon which they are placed.

. . .

"Partial closure" means the closure of a hazardous waste management unit or units in accordance with the applicable closure requirements of N.J.A.C. 7:26-9.1 through 9.13, 7:26-10, and 7:26-11 at a hazardous waste facility that contains other active hazardous waste management units. For example, partial closure of a hazardous waste facility may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, or other hazardous waste management unit, while other units of the same hazardous waste facility continue to operate.

. . .

7:26-9.8 General closure requirements

(a) (No change.)

(b) The owner or operator shall close the **hazardous waste** facility **or management unit** in a manner that minimizes the need for further maintenance and controls, minimizes or eliminates, to the extent necessary to protect human health and environment, post-closure escape of hazardous waste, hazardous [waste] constituents, leachate, contaminated [rainfall] **run-off**, or waste decomposition products to the groundwater, or surface waters, or to the atmosphere. **In addition, the owner or operator shall comply with all other applicable closure requirements in this section and at N.J.A.C. 7:26-9.10, 7:26-9.12, 7:26-10, and 7:26-11.**

(c) The owner or operator shall have a written closure plan. **In addition, for surface impoundments at which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure, the owner or operator shall submit a contingent closure plan at the same time as submission of the closure plan. The contingent closure plan shall establish procedures for closing the surface impoundment as a landfill in the event that not all hazardous wastes can be removed or decontaminated at closure.** The owner or operator shall keep a copy of the closure plan and all revisions to the plan at the facility until closure is completed in accordance with [subsection 9.8] **(1) below.**

(d) The **closure** shall be submitted with the permit application in accordance with N.J.A.C. 7:26-12[.1 et seq.] and approved by the Department as part of the permit issuance proceeding. The approved closure plan will become a condition of any permit issued under N.J.A.C. 7:26-12.[1 et seq.] **For facilities with existing facility status under N.J.A.C. 7:26-12.3, the plan shall be submitted in accordance with (h)1 below.** The Department's decision shall ensure that the approved closure plan is consistent with the provisions of this section as well as **all** applicable provisions of N.J.A.C. 7:26-10[.1 et seq.] **or 7:26-11. Until final closure is completed to the Department's satisfaction and certified in accordance with (1) below, a copy of the approved plan and all approved revisions shall be furnished to the Department upon request, including request by mail.**

(e) The closure plan shall identify the steps necessary to completely or partially close the facility at any point during [and at the end of its intended operating life] **the facility's active life.** The closure plan shall include at least:

1. A description of:

i. How [and when the facility will be partially closed, if applicable, and ultimately closed] **each hazardous waste management unit will be closed in accordance with (b) above;**

ii. The maximum extent of the operation which will be unclosed during the active life of the facility; and

iii. How the requirements of [paragraph 9.8] (b) above **for final closure** and [the] **all other** applicable closure requirements of this section [,] and N.J.A.C. 7:26-10[.1 et seq.], or N.J.A.C. 7:26-11[.1 et seq. (]for exisiting facilities prior to final desposition of a permit application[)], will be met;

2. An estimate of the maximum inventory of **solid waste, including hazardous** waste[s], [in storage or in treatment] **ever on-site** at any given time [for] during the **active** life of the facility, **a detailed description of the methods to be used during partial and final closure, including,**

but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable;

A **detailed** description of the steps needed to **remove or** decontaminate [facility equipment] **all hazardous waste and hazardous waste residues and contaminated containment system components, equipment, structures, and soils** during **partial and final** closure, **including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;** [and]

4. A schedule **for closure of each hazardous waste management unit and** for final closure **of the facility** which shall include, [as] **at** a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, **the total time required to close each hazardous waste management unit,** and intervening milestone dates which will allow tracking of the progress of partial and final closure,[. For]**for** example, the expected date for completing treatment or disposal of waste inventory, **the time to place final cover on a landfill,** [shall be included, as well as] the planned dates for storage facilities and treatment processes, **and an estimate of the expected year of final closure of the facility** [.)]; **and**

5. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closures satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control.

(f) The owner or operator may **submit a written request for a permit modification in accordance with N.J.A.C. 7:26-12, or, for a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, a written request for a closure plan modification, to** amend the **approved** closure plan at any time [during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.)] **before the owner or operator notifies the Department of his or her intent to partially or finally close the facility. For existing facilities, a closure plan modification that is not minor according to the criteria at N.J.A.C. 7:26-12.8 shall be submitted and reviewed in accordance with procedures established at (h)3 below. The written request shall include a copy of the amended closure plan for approval by the Department.**

1. The owner or operator shall **submit a written request for a permit modification in accordance with N.J.A.C. 7:26.12, or for a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, a written request for a closure plan modification in accordance with paragraph (f) above, to** amend the **approved closure** plan any time changes in operating plans or facility design affect the closure plan [or], whenever there is a change in the expected year of closure of the facility, **or if unexpected events require a modification of the closure plan.** The **written request to modify the permit or to amend the closure** plan [must] **shall** be [amended within] **submitted at least 60 days prior to the proposed change in facility design or operation or no later than** 60 days [of the changes.] **after the occurrence of an unexpected event which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification or plan amendment no later than 30 days after the unexpected event.**

2. For facilities operating under a permit issued pursuant to N.J.A.C. 7:26-12[.1 et seq.], when the owner or operator requests a permit modification to authorize a change in operating plans or facility design, the owner or operator shall request a modification of the closure plan at the same time. If a permit modification is not needed to authorize the change in operating plans or facility design **because the change is a minor modification as defined at N.J.A.C. 7:26-12.8,** the request for modification of the closure plan shall be made [within 60 days after] **60 days prior to** the change in plans or design occurs.

3. The Department may request modifications to the plan if the owner or operator fails to comply with (f)1 or 2 above. The owner or operator shall submit the modified plan within 60 days of the Department's request, or within 30 days of the Department's request if the unexpected event or the change in facility conditions occurs during partial or final closure. Approval of modifications requested by the Department will be in accordance with the permit modification procedures at N.J.A.C. 7:26-12, or, for facilities with existing facility status under N.J.A.C. 7:26-12.3, if the modifications are not minor according to the criteria at N.J.A.C. 7:26-12.8, approval will be in accordance with h(3) below.

(g) The owner or operator shall notify the Department **in writing** at least 180 days prior to the date the owner or operator expects to begin **partial or final** closure, except in cases where the facility's permit **or existing facility status** is terminated or if the facility is otherwise ordered by judicial decree or [compliance] **administrative** order to cease receiving wastes or to close. The date when the owner or operator "expects to begin closure" [should] **for the purposes of this notification shall** be [within] **no later than** 30 days after the date on which the [owner or operator expects to receive] **hazardous waste facility or management unit receives** the final volume of **hazardous** wastes, **except as provided at g(2) below.**

1. If the facility's permit or existing facility status is terminated, or if the facility is otherwise ordered by judicial decree or administrative order to cease receiving wastes or to close, then the facility shall be closed in accordance with the deadlines established at (i) and (j) below.

2. If the owner or operator demonstrates to the satisfaction of the Department that there is a reasonable probability that the hazardous waste management unit will receive additional hazardous waste, the date when the owner or operator "expects to begin closure" may be any date on or before one year after the date on which the unit last received hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the satisfaction of the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit or existing facility requirements, the Department may approve an extension of this one year limit.

(h) The owner or operator shall submit the closure plan according to the requirements of this [paragraph] **subsection and the requirements of (d) above.**

1. [If the owner or operator is operating the facility prior to final disposition of a permit application pursuant to N.J.A.C. 7:26-12.1 et seq. **For a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3,** the owner or operator shall submit the closure plan to the Department at least 180 days before the date the owner or operator expects to begin **partial or final** closure. The Department may waive this requirement if the owner or operator had [previvosly] **previously** submitted the closure plan as part of a permit application and the Department finds that final disposition of the permit application is imminent and will result in an approved closure plan. **Until final closure is completed and certified in accordance with this section, a copy of the most current plan shall be furnished to the Department upon request, including request by mail, and during site inspections, on the day of inspection, to any officer, employee, or representative of the Department upon the presentation of credentials.**

2. **For all hazardous waste facilities subject to this section,** [The] **the** owner or operator shall submit the closure plan to the Department no later than 15 days after:

i. (No change.)

ii. Issuance of a judicial decree or [compliance] **administrative** order to cease receiving wastes or to close.

3. **Upon submission of the closure plan by a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3,** [The]**the** Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and to request modifications of the plan [within 30 days of] **for 30 days after** the date of the notice. The Department [will] **may** also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. [(]Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two

notices may be combined [)]. The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department [does not approve] **disapproves** the plan, **it shall provide the owner or operator with a detailed written statement of reasons for the disapproval and** the owner or operator shall modify the plan or submit a new plan for approval within 30 days **of receiving the Department's statement of reasons for disapproval.** The Department will approve [or], modify **or disapprove** this plan in writing within 60 days. If the Department modifies the **original or resubmitted** plan, this modified plan becomes the approved closure plan. The Department's decision shall assure that the approved closure plan is consistent with this section and [the] **all** applicable requirements of N.J.A.C. 7:26-11.[1 et seq.] A copy of this modified plan **and a statement of reasons for the modification** shall be mailed to the owner or operator. [If the owner or operator plans to begin closure in less than 180 days from the effective date of this subchapter, the owner or operator shall submit the closure plan immediately.]

(i) Within 90 days after receiving the final volume of hazardous waste, or**, for a facility with existing facility status under N.J.A.C. 7:26-12.3,** within 90 days after the approval of the closure plan, if that is later, the owner or operator **of a hazardous waste management unit or facility** shall treat, remove from the [site] **unit or facility**, or dispose of on-site all hazardous wastes in accordance with the approved closure plan. The Department may approve a longer period [using the procedures under (h) above] if the owner or operator **complies with all the applicable requirements for modifying the closure plan and** demonstrates**, at least 30 days prior to the expiration of the time allowed to treat, remove, or dispose of all hazardous wastes on-site under this subsection,** that:

1. (No change.)

2. The following requirements are met:

i. The **hazardous waste management unit or** facility has the capacity to receive additional **hazardous** wastes;

ii. There is a reasonable likelihood that [a] **the owner or operator or another** person [other than the owner or operator] will recommence operation of the [site] **hazardous waste management unit or facility within one year;**

iii. Closure of the **hazardous waste management unit or** facility would be incompatible with continued operation of the site; and

3. The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment**, including, but not limited to, compliance with all applicable permit conditions and existing facility requirements.**

(j) The owner or operator shall complete **partial or final** closure activities in accordance with the approved closure plan within 180 days after receiving the final volume of wastes **at the hazardous waste management unit or facility** or**, in the case of facilities operating prior to final disposition of a permit,** 180 days after approval of the closure plan, whichever is later. The Department may approve a longer closure period [using the procedures under subsection 9.8(b),] if the owner or operator **complies with all applicable requirements for requesting a modification to the permit or closure plan and** demonstrates**, at least 30 days prior to the expiration of the time allowed to complete closure under this subsection,** that:

1. The **partial or final** closure activities will, of necessity, take longer than 180 days to complete; or

2. The following requirements are met:

i. The **hazardous waste management unit or** facility has the capacity to receive additional **hazardous** waste;

ii. There is reasonable likelihood that [a] **the owner or operator or another** person [other than the owner or operator] will recommence operation of the [site] **hazardous waste management unit or facility within year;**

iii. Closure of the **hazardous waste management unit or** facility would be incompatible with continued operation of the site; and

3. The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but [inactive] **not operating hazardous waste management unit or** facility**, including, but not limited to, compliance with all applicable permit or existing facility requirements.**

(k) [When closure is completed, all facility equipment and structures shall have been properly disposed of or decontaminated by removing all hazardous waste and residues.] **During the partial and final closure periods, all contaminated equipment, structures, and soils shall be properly disposed of or decontaminated. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste. A generator of hazardous waste shall handle that waste in accordance with N.J.A.C. 7:26-7.4, 7:26-8, and 7:26-9.3.**

(l) [When closure is completed] **Within 60 days after the completion of partial or final closure**, the owner or operator shall submit to the Department **by registered mail a two-part** certification **by** both [by] the owner or operator and **a certification by** an independent registered professional engineer that the **hazardous waste management unit or** facility**, whichever is applicable,** has been closed in accordance with the specifications in the approved closure plan. **Documentation supporting the independent registered professional engineer's certification shall be furnished to the Department upon request. If the owner and operator are not the same person, both parties shall separately submit two-part certifications. The owner's and/or operator's two-part certifications shall state and be signed as follows:**

1. "I certify under penalty of law that the hazardous waste management unit/facility has been closed in accordance with the specifications in the closure plan approved by the Department on (date) and as subsequently amended (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (l)1 above shall be signed by the highest ranking corporate, partnership, proprietorship, or governmental official at the facility responsible for closure.

2. "I certify under penalty of law that I have personally examined and am familiar with the closure plan, and that based upon my inquiry of those individuals immediately responsible for drafting and implementing the plan, I believe that the hazardous waste management unit/facility has been closed in accordance with the specifications in the closure plan, approved by the Department on (date) and as subsequently amended, (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (l)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

(m) No later than the submission by the owner or operator to the Department of the certification of closure for each hazardous waste management unit, the owner or operator shall submit to the local zoning authority or other authority with jurisdiction over local land use and to the Department a survey plat indicating the location and dimensions of hazardous waste management units with respect to permanently surveyed bench-marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or other authority with jurisdiction over local land use shall contain a note, prominently displayed, stating the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with all applicable closure and post-closure requirements at N.J.A.C. 7:26-9.

(n) Nothing in this section shall preclude the owner or operator from removing hazardous waste and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

7:26-9.9 General post-closure care requirements

(a) Except as N.J.A.C. 7:26-9.1 **or 9.9(g)2** provides otherwise, this section applies to all hazardous waste facilities where hazardous wastes will remain at the facility site after closure is completed.

(b) Post-closure care **for each hazardous waste management unit or facility subject to this section shall begin immediately upon completion of closure of the unit or facility and** [shall] continue for 30 years after the date of completing closure, and shall consist of at least the following:

1. Groundwater monitoring and reporting in compliance with N.J.A.C. 7:14A-6 [.1 et. seq., and];

2. Maintenance of monitoring and waste containment systems as applicable[.]; **and**

3. Compliance with all applicable hazardous waste facility requirements at N.J.A.C. 7:26-9, 10, and 11.

[(c) In the case of a facility operating pursuant to a permit issued pursuant to N.J.A.C. 7:26-12.1 et seq., during the 180-day period preceding partial closure or at any time thereafter, the following provisions apply:]

(c) The Department may amend the post-closure plan for a hazardous waste management unit or hazardous waste facility in accordance with N.J.A.C. 7:26-12 for a facility operating under a permit issued pursuant to that subchapter, or in accordance with N.J.A.C. 7:26-9.8 for a facility with existing facility status under N.J.A.C. 7:26-12.3, in order to:

1. [The Department may reduce] **Reduce** the post-closure care period to less than 30 years **for a hazardous waste management unit, at any time before that unit is closed, or a facility, at any time before all disposal units at the facility have been closed,** if [it] **the Department** finds that the reduced period is sufficient to protect human health and the environment (for example, if leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the **hazardous waste management unit or** facility is secure)[.]; **or**

2. [Prior to the time that the post-closure care period is due to expire, the Department may extend that] **Extend the** post-closure care period **for a hazardous waste management unit or facility at any time during the active life or post-closure period of that unit or facility** if [it] **the Department** finds that the extended period is necessary to protect human health and the environment (for example, leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment).

(d) The Department may require, **at partial or final closure,** continuation of any or all of the security requirements [of paragraph] **at N.J.A.C. 7:26-**9.4(h) [after the date of closure has been completed] **during all or part of the post-closure period** when:

1. [Wastes] **Solid waste, including hazardous waste,** may remain exposed after completion of **partial or final** closure; or

2. (No change.)

(e) Post-closure use of property on or in which hazardous waste remains after **partial or final** closure shall [never be allowed to] **not** disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the owner or operator can demonstrate to the Department, either in the post-closure plan or by petition, that the disturbance:

1.-2. (No change.)

(f) (No change.)

[(g) The owner or operator of a facility to this section must have a written post-closure plan. The owner or operator shall keep a copy of the post-closure and all revisions to the plan at the facility until the post-closure care period begins.]

(g) The following plans are required:

1. Any hazardous waste facility or management unit subject to this section shall have a written post-closure plan.

2. Surface impoundments not otherwise subject to this section, as provided at (a) above, because the owner or operator intends to remove or decontaminate all hazardous wastes at partial or final closure, shall have a contingent post-closure plan submitted at the same time as submission of the closure plan. The contingent post-closure plan shall provide for compliance with this section in case not all hazardous waste or hazardous waste residues, including contaminated soil and groundwater, are removed at closure, and shall be approved and amended as necessary in accordance with procedures for approving and amending post-closure plans under this section.

(h) The **post-closure** plan shall be submitted with the permit application in accordance with N.J.A.C. 7:26-12[.1 et seq.] and approved by the Department as part of the permit issuance proceeding. The approved post-closure plan will become a condition of any permit issued under N.J.A.C. 7:26-12.[1 et seq.] **For a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, the post-closure plan shall be submitted in accordance with (k) below.** The Department's [decision] **approval** shall assure that the approved **post-**closure plan is consistent with the provisions of this section as well as all applicable provisions of N.J.A.C. 7:26-10.[1 et seq.]

(i) **For each of the hazardous waste management units subject to the requirements of this section,** [The]**the** post-closure plan shall identify the activities which will be carried on after closure **of each unit** and the frequency of these activities and **shall** include at least:

1.-2. (No change.)

3. The name, address, and phone number of the person or office to contact about the [disposal] **hazardous waste** facility **or management unit** during the post-closure period. This person or office shall keep an updated **approved** post-closure plan during the post-closure period. **Until the end of the post-closure period, a copy of the current approved post-closure plan shall be furnished to the Department upon request, including request by mail. In addition, for facilities without approved plans, a copy of the plan most recently submitted to the Department for approval shall be provided during site inspections, on the day of inspection, to any officer, employee, or representative of the Department upon the presentation of credentials.**

4. Requirements for compliance with all applicable hazardous waste facility requirements at N.J.A.C. 7:26-9, 10, and 11.

(j) The owner or operator may **submit a written request to the Department for a permit modification to** amend the **approved** post-closure plan **in accordance with N.J.A.C. 7:26-12, for a facility operating under a permit pursuant to that subchapter, or, for a facility operating with existing facility status under N.J.A.C. 7:26-12.3, a written request for a plan modification,** at any time during the active life **or post-closure period** of the [disposal] **hazardous waste** facility **or management unit included in the plan** [and, in the case of a facility operating under a permit issued pursuant to N.J.A.C. 7:26-12.1 et seq., during the post-closure care period as well]. **The written request shall include a copy of the amended post-closure plan for approval by the Department.**

1. The owner or operator shall [amend the] **submit a written request in accordance with paragraph (j) above to obtain Departmental authorization for a change in the approved post-closure** plan whenever changes in operating plans or facility design[,] or events which occur during the active life **or post-closure period** of the **hazardous waste** facility **or management unit** [or during the post-closure period,] affect the post-closure plan[.] or [The owner or operator shall also amend the plan] whenever there is a change in the expected year of **final** closure.

2. In the case of a facility **owner's or operator's** [operating under a permit issued pursuant to N.J.A.C. 7:26-12.1 et seq., when] **requesting** a permit modification [is requested] during the active life of the facility **in order to** [authorize] **obtain Departmental authorization for** a change in operating plans or facility design, **a written request for** modification of the post-closure plan shall be [requested] **submitted to the Department** at the same time **as submission of the request for the permit modification.** [In all other cases,] **For all facilities subject to this section,** the request for modification of the post-closure plan **under (j)1 above** shall be made [within] **at least** 60 days [after] **prior to** the change in operating plans or facility design or [the events] **no later than 60 days after an unforeseen event** which affects the post-closure plan [occur].

3. The Department may request modifications to a post-closure plan in accordance with the subsection. The owner or operator shall submit the modified plan to the Department no later than 60 days after the Department's request.

4. Modifications of post-closure plans which are not minor according to the criteria at N.J.A.C. 7:26-12.8 shall be reviewed by the Department as follows:

i. For hazardous waste facilities operating under a permit pursuant to N.J.A.C. 7:26-12, according to the permit modification procedures in that subchapter; and

ii. For hazardous waste facilities with existing facility status under N.J.A.C. 7:26-12.3, according to plan approval procedures at (k)2 below.

(k) [If an owner or operator is operating a facility prior to final disposition of a permit application pursuant to N.J.A.C. 7:26-12.1 et seq.] **For a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3**, the owner or operator shall submit the post-closure plan to the Department at least 180 days before the owner or operator expects to begin **partial or final** closure **of the first unit subject to the requirements of this section. The date that the owner or operator expects to begin closure shall be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous waste, or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste, no later than one year after the date on which the unit receives or received the last volume of hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable requirements under N.J.A.C. 7:26-11, and that there is in fact no possibility of a present or future release of hazardous waste or other threat to human health or the environment, then the Department may approve an extension to this one year limit.**

1. [The Department may waive this requirement if the owner or operator had previously submitted the post-closure plan as part of the permit application and the Department finds that final disposition of the permit application is imminent and will result in an approved post-closure plan.] The owner or operator shall submit the post-closure plan to the Department no later than 15 days after:

i. (No change.)

ii. Issuance of a judicial decree or [compliance] **administrative** order to cease receiving wastes or to close.

2. The Department will provide the owner or operator and the public through a newspaper notice the opportunity to submit written comments on the **post-closure** plan and to request modifications of the plan, including modification of the 30 year post-closure period required in (b) above, [within 30 days of] **for 30 days after** the date of the notice. The Department may also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the public notice of the hearing at least 30 days before it occurs. [(]Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.[)] The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department [does not approve] **disapproves** the plan, **the Department will provide the owner or operator with a detailed written statement of reasons for the modification or disapproval and** the owner or operator shall modify the plan or submit a new plan for approval within 30 days **of receiving the Department's statement of reasons for disapproval**. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the **original or resubmitted** plan, this modified plan becomes the approved post-closure plan. The Department bases its decision upon the criteria required of petitions under (l) below. **The Department's decision will ensure that the approved post-closure plan is consistent with this section.** A copy of [this] **the** modified plan **and a statement of reasons for the modification** [shall] **will** be mailed to the owner or operator. [If an owner or operator plans to begin closure before the effective date of this subchapter the owner and operator shall submit the post-closure plan immediately.]

(l) If an owner or operator has closed a facility prior to final disposition of a permit application pursuant to N.J.A.C. 7:26-12[.1 et seq.], the post-closure plan (or period) may be modified during the post-closure care period or at the end of the post-closure care period in either of the following ways:

1. The owner or operator or any member of the public may petition the Department to extend or reduce the post-closure care period **for the hazardous waste facility or management unit** based on cause, or to alter the requirements of the post-closure plan based on cause.

i. The petition shall include evidence demonstrating that:

(1) The secure nature of the **hazardous waste management unit or** facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (for example, leachage or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate the facility is secure); or

(2) (No change.)

ii.-iii. (No change.)

2. The Department may tentatively decide to modify the post-closure plan if [it] **the Department** deems [it] **the modification** necessary to prevent threats to human health and the environment. The Department may propose to extend [or reduce] the post-closure care period [based on cause] **applicable to a hazardous waste management unit or facility** or alter the requirements of the post-closure plan based on cause.

i.-ii. (No change.)

(m) [Within 90] **No later than 60** days after **certification of** closure [is completed] **of each hazardous waste management unit**, the owner or operator [of a disposal facility] shall submit to the local [land] **zoning** authority **or other authority with jurisdiction over local land use** and to the Department a survey plat indicating the location and dimensions of **each certified** landfill cell[s] or other [disposal areas] **hazardous waste management unit** with respect to permanently surveyed benchmarks. This plat shall be prepared and certified by a professional land surveyor.

1. (No change.)

2. In addition, **within the timeframes and for the units specified in paragraph (m) above,** the owner or operator shall submit to the Department and to the local [land] **zoning** authority **or other authority with jurisdiction over local land use** a record of the type, location, and quantity of hazardous wastes disposed of within each cell or [area] **other hazardous waste management unit** of the facility.

i. (No change.)

3. Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or [area] **other hazardous waste management units** of the facility that occur after the survey plat and record of wastes have been filed [must] **shall** be reported to the local zoning authority or [the] **other** authority with jurisdiction over local land use, and to the Department.

(n) Requirements for notice in deed to property [including the following] **are as follows:**

1. [The] **Within 60 days after certification of closure of the first hazardous waste management unit and within 60 days after certification of closure of the last hazardous waste management unit, the** owner of the property on which a [disposal] **hazardous waste** facility is located shall record, in accordance with State law, a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

i.-ii. (No change.)

iii. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or [area] **other hazardous waste management unit** of the facility required in (m) above have been filed with the local zoning authority or the authority with jurisdiction over local land use and **with** the Department[; and].

2. If at any time **prior to certification of completed post-closure care under (p) below,** the owner or operator or any subsequent owner of land upon which a hazardous waste facility is located [removes] **wishes to remove** the **hazardous** waste and **hazardous** waste residues, the liner, if any, and all contaminated [underlying or surrounding] **structures, equipment, and** soil, the owner or operator [may] **shall request a modification to the post-closure plan in accordance with this section. The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the requirements at (e) above. By removing hazardous wastes, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with N.J.A.C. 7:26-7.4, 8 and 9.3. If the owner or operator or subsequent owner of the land is granted a permit modification or is otherwise granted approval to conduct such removal activities, and does in fact remove the hazardous waste, hazardous waste residues, liner, and all contaminated structures, equipment, and soil, the owner or operator or subsequent owner may, upon approval by the Department,** add a notation to the deed or instrument indicating the removal of the **hazardous** waste.

3. Within 60 days after certification of closure of the first and of the last hazardous waste management unit, the owner or operator shall in both cases submit to the Department a certification, signed by the owner or operator, that he or she has recorded the notation specified in (n)1 above. This certification shall include a copy of the document in which the notation has been placed.

(o) No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Department by certified mail a certification that the post-closure care obligations for the hazardous waste disposal unit were performed in accordance with the specifications in the approved post-closure plan. The certification shall be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification shall be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for post-closure care. The certification shall be signed as follows:

1. "I certify under penalty of law that post-closure care of the hazardous waste management unit/facility has been performed in accordance with the specifications in the post-closure plan approved by the Department on (date) and as subsequently amended (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (o)1 above shall be signed by the highest ranking corporate, partnership, proprietorship, or governmental official at the facility responsible for closure.

2. "I certify under penalty of law that I have personally examined and am familiar with the post-closure plan, and that based upon my inquiry of those individuals immediately responsible for drafting and implementing the plan, I believe that post-closure care of the hazardous waste management unit/facility has been performed in accordance with the specifications in the closure plan, approved by the Department on (date) and as subsequently amended, (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (o)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

7:26-9.10 Financial requirements for facility closure

(a) (No change.)

(b) When used in this section, the following terms have the meanings given below:

1.-6. (No change.)

7. "Current plugging and abandonment cost estimate" means the most recent estimate prepared in accordance with N.J.A.C. 7:14A-5.12(e).

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

(e) The owner or operator shall comply with the following provisions concerning the cost estimate for facility closure:

1. The owner or operator [must] **shall** have a **detailed** written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in N.J.A.C. 7:26-9.8 [and applicable closure requirements in N.J.A.C. 7:26-9.8] and applicable closure requirements in N.J.A.C. 7:26.10 and 11. The estimate must equal the cost of **final** closure at the point in the facility's [operating] **active** life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan[, see] **under** N.J.A.C. 7:26-9.8. **The cost estimate shall take the following into consideration:**

i. The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" and "subsidiary" at (b)5 above.) The owner or operator may use costs for on-site disposal if he or she can show that adequate on-site disposal capacity will exist at all times over the life of the facility.

(1) The closure cost estimate based on hiring a third party to close the facility shall reflect, but not be limited to:

(A) Labor costs that are calculated as specified by the New Jersey Department of Labor pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and rules adopted pursuant thereto;

(B) Contingency costs to cover any unanticipated discharges or adverse weather conditions; and

(C) Administrative costs including, but not limited to, the costs of bookkeeping and taxes.

ii. The closure cost estimate shall not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures, or equipment, land, or other assets associated with the facility at the time of partial or final closure.

iii. The owner or operator shall not incorporate a zero or negative cost for hazardous wastes that might have economic value.

2. **During the active life of the facility,** [The]**the** owner or operator [must] **shall** adjust the closure cost estimate for inflation within 30 days [after] **prior to** each anniversary of the date on which the [first closure cost estimated was prepared] **financial instrument(s) used to comply with (f) below were established.** The adjustment [must] **shall** be made, as specified in (e)2i and [2]ii below, using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product, as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

i.-ii. (No change.)

3. **During the active life of the facility,** [The]**the** owner or operator [must] **shall** revise the closure cost estimate [whenever a change in] **no later than 30 days after the Department has approved a request to modify the closure plan, or, for an unapproved plan, no later than 30 days after a revision in the plan, if the change in** the closure plan increases the cost of closure. The revised closure cost estimate [must] **shall** be adjusted for inflation, as specified in (e)2 above.

4. The owner or operator [must] **shall** keep [the following] at the facility during the [operating] **active** life of the facility[:] the latest closure cost estimate prepared in accordance with (e)1 and 3 above[,] and, when this estimate has been adjusted in accordance with (e)2 above, the latest adjusted closure cost estimate.

(f) The owner or operator of each facility [must] **shall** establish financial assurance for closure of the facility. [He must] **The owner or operator shall** choose from the options[, as] specified in (f)1 through 5 below, except **that** the option in (f)3 is not available to owners or operators of existing facilities until they have received a permit[:].

1. Closure trust fund requirements are as follows:

i.-ix. (No change.)

x. After beginning **partial or** final closure, an owner or operator or [any] other person authorized to [perform] **conduct partial or final** closure may request reimbursement **from the trust fund** for **partial or final** closure expenditures by submitting itemized bills to the Department **for approval by the Department. The owner or operator may request reimbursements for partial or final closure costs only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining active life.**

(1) Within 60 days after receiving bills for **partial or final** closure activities, the Department will **instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department** determines [whether] **that** the **partial or final** closure expenditures are in accordance with the **approved** closure plan, or **are** otherwise justified [, and if so, will instruct the trustee to make reimbursements in such amounts as the Department specifies in writing].

(2) If the Department has reason to believe that the **maximum** cost of closure **at any time during the remaining active life of the facility** will be significantly greater than the value of the trust fund, [he] **the Department** may withhold reimbursement of such amounts as [he] **the Department** deems prudent until [he] **the Department** determines, in accordance with (f)8 below, that the owner or operator is no longer

required to maintain financial assurance for **final** closure **of the facility. If the Department does not instruct the trustee to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons.**

xi. (No change.)

2. Requirements for the surety bond guaranteeing payment into a closure trust fund are as follows:

i.-iii. (No change.)

iv. The bond [must] **shall** guarantee that the owner or operator will:

(1) (No change.)

(2) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an **administrative** order to begin **final** closure [is] issued by the Department[,] **becomes final, or within 15 days after an order to begin final closure is issued by** a State or Federal court or other court of competent jurisdiction; or

(3) (No change.)

v-ix. (No change.)

3. Requirements for the surety bond guaranteeing performance of closure requirements are as follows:

i.-iv. (No change.)

v. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a **final administrative** determination that the owner or operator has failed to perform final closure in accordance with the **approved** closure plan and other permit requirements when required to do so[,] under the terms of the bond, **or if, within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction, the owner or operator fails to begin closure in accordance with the order,** the surety will perform final closure as guaranteed by the bond[,] or will deposit the amount of the penal sum into the standby trust fund.

vi.-x. (No change.)

4. [Closure] **The closure** letter of credit requirements are as follows:

i.-vii. (No change.)

viii. Following a determination that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so **or if the owner or operator has failed to begin closure in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction**, the Department may draw on the letter of credit.

ix.-x. (No change.)

5. Closure insurance requirements are as follows:

i.-iv. (No change.)

v. After beginning **partial or** final closure, an owner or operator or [any] other person authorized to [perform] **conduct** closure may request reimbursement **from the insurer** for closure expenditures by submitting itemized bills to the Department **for approval by the Department. The owner or operator will receive reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining active life.**

(1) Within 60 days after receiving bills for closure activities, the Department will **instruct the insurer to make the reimbursements in such amounts as the Department specifies in writing, if the Department** determines [whether] **that** the **partial or final** closure expenditures are in accordance with the **approved** closure plan or are otherwise justified [, and if so, will instruct the insurer to make reimbursement in such amounts as the Department specifies in writing].

(2) If the Department has reason to believe that the **maximum** cost of closure **at any time during the remaining active life of the facility** will be significantly greater than the face amount of the policy, [it] **the Department** may withhold reimbursement of such amounts as the Department deems prudent until the Department determines, in accordance with (f)8 below, that the owner or operator is no longer required to maintain financial assurance for **final** closure of the facility. **If the Department does not instruct the insurer to make such reimbursement, the Department will provide the owner or operator with a detailed written statement of reasons.**

vi.-x. (No change.)

6.-7. (No change.)

8. Release of the owner or operator from the requirements of [(f) of] this **sub**section shall be governed by the following requirements:

i. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that **final** closure has been [accomplished] **completed** in accordance with the **approved** closure plan, the Department will notify the owner or operator in writing that he **or she** is no longer required [by this section] to maintain financial assurance for **final** closure of the [particular] facility, unless the Department has reason to believe that **final** closure has not been in accordance with the **approved** closure plan. **The Department shall provide the owner or operator with a detailed written statement of any such reason it has to believe that closure has not been in accordance with the approved closure plan.**

7:26-9.11 Financial requirements for facility post-closure care

(a) The requirements of this section apply to owners and operators of facilities where hazardous wastes are intended to remain at the facility site after closure is completed, except as **otherwise** provided in this section or in N.J.A.C. 7:26-9.1, **and to those facilities which are required by N.J.A.C. 7:26-9.9(g)2 to prepare contingent post-closure plans.**

(b) (No change.)

(c) The owner or operator shall comply with the following provisions concerning the cost estimate for a **hazardous waste** facility **or management unit** post-closure care:

1. The owner or operator of a facility subject to post-closure monitoring or maintenance requirements [must] **shall** have a **detailed** written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure [regulations] **rules** in N.J.A.C. [7:26-10.1 and 11.1] **7:26-9.9, 7:26-10, and 7:26-11. The post-closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct post-closure activities. A third party is a party that is neither a parent nor a subsidiary of the owner or operator.** The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under N.J.A.C. 7:26-9.9.

2. During the [operating] **active** life of a facility, the owner or operator [must] **shall** adjust the post-closure cost estimate for inflation within [30 days after each] **60 days prior to** each anniversary [of the date on which the first post-closure cost estimate was prepared] **date of the establishment of the financial instrument(s) used to comply with N.J.A.C. 7:26-9.9**. The adjustment [must] **shall** be made as specified in (c)2i and [2]ii below, using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product, as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor, is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

i.-ii. (No change.)

3. The owner or operator [must] **shall** revise the post-closure cost estimate during the [operating] **active** life of the facility whenever a change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate [must] **shall be submitted within 30 days after the Department has approved the request to amend the post-closure plan, and shall** be adjusted for inflation, as specified in (c)2 above. **Facilities that have submitted a post-closure plan that has not yet been approved shall submit a revised post-closure cost estimate no later than 30 days after their post-closure plan has been revised. The plan shall be adjusted for inflation as specified in (c)2 above.**

4. (No change.)

(d). The owner or operator of a **hazardous waste management unit or** facility subject to post-closure monitoring or maintenance requirements **under N.J.A.C. 7:26-9.9** [must] **shall** establish financial assurance for post-closure care in accordance with the [approved] post-closure plan for the facility **60 days prior to the initial receipt of hazardous waste or within 60 days of the effective date of these amendments, whichever is later.** [He must] **The owner or operator shall** choose

from the following options except that the option in (d)3 is not available to owners or operators of existing facilities until they have received a permit[:].

1. Post-closure trust fund requirements are as follows:

i.-x. (No change.)

xi. An owner or operator or [any] other person authorized to [perform] **conduct** post-closure care may request reimbursement **from the trust fund** for post-closure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure activities, the Department will **instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department** determines [whether] **that** the post-closure expenditures are in accordance with the approved post-closure plan or **are** otherwise justified [, and if so, will instruct the trustee to make reimbursement in such amounts as the Department specifies in writing]. **If the Department does not instruct the trustee to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons for its decision.**

xii. (No change.)

2. Requirements for the surety bond guaranteeing payment into a post-closure trust fund are as follows:

i.-iii. (No change.)

iv. The bond [must] **shall** guarantee that the owner or operator will:

(1) (No change.)

(2) Fund the standby trust fund in an amount equal to the penal sum **if the owner or operator has not performed closure in accordance with the order** within [25] **15** days after an **administrative** order to begin **partial or final** closure [is] issued by the Department[,] **becomes final or within 15 days after an order to begin partial or final closure is issued by a** State or Federal court or other court of competent jurisdiction; or

(3) (No change.)

v.-ix. (No change.)

3. Requirements for the surety bond guaranteeing performance of post-closure care are as follows:

i.-iv. (No change.)

v. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform[,] as guaranteed by the bond. Following a **final administrative** determination that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements under the terms of the bond, **or if the owner or operator fails to begin post-closure care in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by State or Federal court or other court of competent jurisdiction,** the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

vi.-xi. (No change.)

4. Post-closure letter of credit requirements are as follows:

i.-viii. (No change.)

ix. Following a **final administrative** determination that the owner or operator has failed to perform post-closure care in accordance with the **approved** post-closure plan and other permit requirements, **or if the owner or operator fails to perform post-closure care in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction,** the Department may draw on the letter of credit.

x.-xi. (No change.)

5. Post-closure insurance requirements are as follows:

i.-iv. (No change.)

v. An owner or operator or [any] other person authorized to [perform] **conduct** post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will **instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department** determines [whether] **that** the post-closure expenditures are in accordance with the approved post-closure or are otherwise justified [, and if so, the Department will instruct the insurer to make reimbursement in such amounts as the Department specifies in writing]. **If the Department does not instruct the insurer to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons for the decision.**

vi.-xi. (No change.)

6.-7. (No change.)

8. Release of the owner or operator from the requirements of [(d) of]this **sub**section is governed by the following requirements:

i. [When an owner or operator has completed,] **Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period for a hazardous waste unit or facility has been completed** to the satisfaction of the Department[, all post-closure care requirements] **and** in accordance with the **approved** post-closure plan, the Department will [, at the request of the owner or operator,] notify [him] **the owner or operator** [in writing] that he **or she** is no longer required [by this section] to maintain financial assurance for post-closure care of [the particular facility] **that unit or facility, unless the Department has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Department shall provide the owner or operator with a detailed written statement of the Department's reasons for believing that post-closure care has not been in accordance with the approved post-closure plan.**

7:26-9.13 Liability requirements

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

(e) An owner or operator [must] **shall** continuously provide liability coverage for a facility, as required by this section, until certifications of closure of the facility, as specified in N.J.A.C. 7:26-9.8[(1)] (**m**), are [received] **approved** by the Department. **Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.**

(f) Requirements for the use of the financial test for liability coverage are as follows:

1. An owner or operator may satisfy the requirements of this section by demonstrating that he **or she** passes a financial test, as specified in [(f) of] this **sub**section. To pass this test the owner or operator must meet the criteria of (f)1i or [(f)1]ii below:

i. The owner or operator [must] **shall** have:

(1) Net working capital and tangible net worth each at least six times the amount of **closure costs, post-closure costs, UIC plugging and abandonment costs, and** liability coverage to be demonstrated by this test; and

(2) (No change.)

(3) Assets in the United States amounting to either:

(A) At least 90 percent of [his] **the owner's or operator's** total assets; or

(B) At least six times the amount of **closure costs, post-closure costs, UIC plugging and abandonment costs, and** liability coverage to be demonstrated by this test; or

ii. The owner or operator [must] **shall** have:

(1)-(2) (No change.)

(3) Tangible net worth at least six times the amount of **closure costs, post-closure costs, UIC plugging and abandonment costs, and** liability coverage to be demonstrated by this test; and

(4) Assets in the United States amounting to either:

(A) At least 90 percent of [his] **the owner's or operator's** total assets; or

(B) At least six times the amount of **closure costs, post-closure costs, UIC plugging and abandonment costs, and** liability coverage to be demonstrated by this test.

2. (No change.)

3. To demonstrate that this test is met, the owner or operator must submit the following three items to the Department:

i. A letter signed by the owner's or operator's chief financial officer worded[,] as specified in N.J.A.C. 7:26-9[.15(g)] **Appendix A, incorporated herein by reference.**

ii.-iii. (No change.)

4.-7. (No change.)

Appendix A

Appendix A: Wording of the Instruments [(See 40 Code of Federal Regulations 264.151)]

(a) (No change.)

(b) A surety bond guaranteeing payment into a trust fund, as specified in this subchapter [must], **shall** be worded as follows, except that instructions in [brackets] **parentheses** are to be replaced with the relevant information and the [brackets] **parentheses** deleted:

Financial Guarantee Bond

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address of owner or operator)

Type of organization (Insert "individual", "joint venture", "partnership", or "corporation") _____

State of incorporation: _____

Surety(ies): (name(s) and business address(es)) _____

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts separately): _____

Total penal sum of bond: _____

Surety's bond number: _____

Know All Persons By These Presents, That We, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection (hereinafter called NJDEP), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Solid Waste Management Act to have a permit or existing facility status in order to own or operate each hazardous waste management facility identified above, and

Whereas said [principal] **Principal** is required to provide financial assurance for closure or closure and post-closure care, as a condition of the permit or existing facility status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility[.],

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an administrative order to begin closure [is] issued by the NJDEP **becomes final or within 15 days after an order to begin final closure is issued by**[,] a state or federal court or other court of competent jurisdiction[.],

Or, if the Principal shall provide alternate financial assurance[, as specified in] **under** N.J.A.C. 7:26-9[1.] et seq. as applicable], and obtain the written approval of the NJDEP of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the NJDEP from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP, provided however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26-9.10(b)2.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree[d] to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in N.J.A.C. 7:26-9 (Appendix A) as such regulations were constituted on the date the bond was executed.

Principal

(Signature(s)[])

(Name(s))

(Title(s))

(Corporate seal)

Corporate Surety(ies)

(Name and address)

State of incorporation: _____

Liability limit: _____

(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: _____

(c) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in this subchapter [must], **shall** be worded as follows, except that the instructions in [brackets] **parentheses** are to be replaced with the relevant information and the [brackets] **parentheses** deleted:

Performance Bond

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address of owner or operator)

Type of organization: (insert "individual", "joint venture", "partnership", or "corporation")_____

State of incorporation: _____

Surety(ies): (name(s) and business address(es)) _____

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts separately): _____

Total penal sum of bond: _____

Surety's bond number: _____

Know All Persons by These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection (hereinafter called NJDEP), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of penal sum.

Whereas said Principal is required, under the New Jersey Solid Waste Management Act, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure and/**or** post-closure care[,] as a condition of the permit or existing facility status[.]**, and**

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that, if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended,

And, if the Principal shall faithfully perform post-closure of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended,

Or, if the Principal shall perform final closure as guaranteed by the bond, or shall deposit the amount of the penal sum into the standby trust fund within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance as specified in N.J.A.C. 7:26-9[.1 et seq.,] and obtain the written approval of the NJDEP of such assurance[,] within 90 days after the date notice of cancellation is received by both the Principal and the NJDEP for the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the NJDEP that the Principal has been found in violation of the closure requirements of N.J.A.C. 7:26-9[.1 et seq.,] for a facility for which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the NJDEP.

Upon notification by the NJDEP that the Principal has been found in violation of the post-closure requirements of N.J.A.C. 7:26-9[.1 et seq.,] for a facility for which this bond guarantees performance of post-closure, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund, as directed by the NJDEP.

Upon notification by the NJDEP that the Principal has failed to provide alternate financial assurance as specified in N.J.A.C. 7:26-9[.1 et seq.] and obtain written approval of such assurance from the NJDEP during the 90 days following receipt by both the Principal and the NJDEP of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the NJDEP.

The [surety(ies)] **Surety(ies)** hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules and regulations and agrees that no such amendment shall in any way alleviate its (their) obligations of this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the NJDEP, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined at N.J.A.C. 7:26-9.10(b)2.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the NJDEP.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in N.J.A.C. 7:26-9 (Appendix A) as such regulation was constituted on the date this bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s))

(Corporate Seal)

Corporate Surety(ies)

(Name and address)

State of incorporation: _____

Liability limit: _____

(Signature(s))

(Name(s) and title(s))

Corporate seal:

(For every co-surety, provide signature(s), corporate seal and other information in the same manner as for Surety above.)

Bond premium: _____

(d)-(e) (No change.)

(f) A letter from the chief financial officer, as specified in N.J.A.C. 7:26-9.13, [must] **shall** be worded as follows, except that instructions in [brackets] **parentheses** are to be replaced with the relevant information and the [brackets] **parentheses** deleted:

Letter from Chief Financial Officer (to demonstrate liability coverage) [or to demonstrate both liability coverage and assurance of closure or post-closure)].

(Address to the New Jersey Department of Environmental Protection.)

I am the chief financial officer of ([owner's or operator's] **firm's** name and address). This letter is in support of ([the firm's] (**firm's name**) use of the financial test to demonstrate financial responsibility for liability coverage, as specified in N.J.A.C. 7:26-[9.1 et seq] **9.13.**

(Fill out the following two paragraphs regarding facilities and liability coverage. **If there is no facility that belongs in the paragraph, write "none" in the space indicated.** For each facility, include its EPA Identification Number, name, and address).

The [owner or operator] **firm** identified above is the owner or operator of the following facilities for which liability coverage **for (insert "sudden" or "non-sudden" or both "sudden and non-sudden") accidental occurrences** is being demonstrated through the financial test specified in N.J.A.C. 7:26-[9.1 et seq] **9.13.**

This firm is the owner or operator of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under N.J.A.C. 7:14A-5.10(a)7. The current closure cost estimates as required by N.J.A.C. 7:14A-5.12(d) are shown for each facility:

In states where New Jersey is not administering the financial requirements for closure or post-closure care, UIC plugging and abandonment costs, and liability coverage, this firm is demonstrating financial assurance responsibility for the following facilities through the use of a test equivalent to or substantially equivalent to the financial test specified in N.J.A.C. 7:26-9.13. The current closure or post-closure estimates, UIC plugging and abandonment costs, and liability coverage covered by such a test are shown for each facility.

The [owner or operator] **firm** (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this [owner or operator] **firm** ends on (month, day). The figures for the following items marked with an asterisk are derived from this [owner's or operator's] **firm's** independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

ALTERNATIVE I

1. Amount of annual aggregate liability coverage to be demonstrated ..... $ _____

2. Amount of closure, post-closure, UIC plugging and abandonment costs ..... $ _____

[*2.]***3.** Current [Assets] **assets** ..... $ _____

[*3.]***4.** Current liabilities ..... $ _____

[4.]**5.** Net working capital (line [2]**3** minus line [3]**4**) $ _____

[*5.]***6.** Tangible net worth ..... $ _____

[*6.]***7.** If less than 90% of assets are located in the U.S. give total U.S. assets ..... $ _____

	Yes	No
[7.]**8.** Is line [5]**6** at least $10 million?	____	____
[8.]**9.** Is line [4]**5** at least 6 times lines 1+**2**?	____	____
[9.]**10.** Is line [5]**6** at least 6 times lines 1+**2**?	____	____
[*10.]***11.** Are at least 90% of assets located in the U.S.?	____	____
If not, complete line [11]**12**	____	____
[11.]**12.** Is line [6]**7** at least 6 times lines 1+**2**?	____	____

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated ..... $ _____

2. Amount of closure, post-closure, UIC plugging and abandonment costs ..... $ _____

[2.]**3.** Current bond rating of most recent issuance and name of rating service ..... $ _____

[3.]**4.** Date of issuance of bond ..... $ _____

[4.]**5.** Date of maturity of bond ..... $ _____

[*5.]***6.** Tangible net worth ..... $ _____

[*6.]***7.** Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) ..... $ _____

	Yes	No
[7.]**8.** Is line [5]**6** at least $10 million?	____	____
[8.]**9.** Is line [5]**6** at least 6 times lines 1+**2**?	____	____
[*9.]***10.** Are at least 90% of assets located in the U.S.?	____	____
If not, complete line [10]**11**	____	____
[10.]**11.** Is line [6]**7** at least 6 times lines 1+**2**?	____	____

I hereby certify that the wording of this letter is identical to the wording specified in N.J.A.C. 7:26-9 (Appendix A) [,] as such regulations were constituted on the date shown immediately below:

(Signature)

(Name)

(Title)

(Date)

[(i)-(j)] (**g**)-(**h**) (No change in text.)

7:26-12.3 Existing facilities

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

(c) Owners or operators making changes during operation prior to final disposition of a permit application shall comply with the requirements of this section.

1.-3. (No change.)

4. Changes in the ownership or operational control of a facility must be approved in advance by the Department.

i.-ii. (No change.)

iii. When a transfer of ownership or operational control of a facility occurs, the former owner or operator shall comply with the hazardous waste facility financial requirements of N.J.A.C. 7:26-9.10 through [9.13] **9.14**[,] until the new owner or operator has demonstrated to the Department that [it] **he or she** is complying with those sections. All other duties are transferred effective immediately upon the date of approval by the Department of the change of ownership or operational control of the facility. **The new owner or operator shall demonstrate compliance with N.J.A.C. 7:26-9.10 through 9.14 within six months of the date of change of ownership or operational control of the facility.** Upon demonstration to the Department by the new owner or operator of compliance with N.J.A.C. 7:26-9.10 through [9.13] **9.14**, the Department shall notify the former owner or operator in writing that [it] **the former owner or operator is** no longer [needs] **required** to comply with those sections [as of the date of demonstration].

5. (No change.)

(d)-(i) (No change.)

7:26-12.5 Transfer of ownership or operational control

(a) (No change.)

(b) The permittee shall notify the Department at least 180 days in advance of any proposed change of ownership or operational control of a facility (90 days in the case of a prospective new permittee exempt from the requirement of a disclosure statement under N.J.A.C. 7:26-16.3(d)). The notice shall include:

1.-2. (No change.)

3. A demonstration that the financial responsibility requirements of N.J.A.C. 7:26-9.10 through [9.13] **9.14** will be met by the proposed new permittee **within six months of the date of change of ownership or operational control of the facility.**

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

(f) Upon demonstration to the Department by the new owner or operator of compliance with N.J.A.C. 7:26-9.10 through 9.14, the Department shall notify the former owner or operator in writing that the former owner or operator is no longer required to comply with those sections.

(a)

DIVISION OF WATER RESOURCES

Standards and Procedures for Establishing Privileges to Divert Water and for Obtaining Water Usage Certifications for Agricultural or Horticultural Purposes

Proposed Readoption with Amendments: N.J.A.C. 7:20A.

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3, 13:1D-9 and 58:1A-1 et seq.
DEP Docket Number: 041-88-10.
Proposal Number: PRN 1988-570.

Submit written comments by December 7, 1988 to:
Mark Benevenia, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 7:20A expires on December 19, 1988. The Department of Environmental Protection (Department) has reviewed the rules and determined that the requirements set forth therein are necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt the chapter with minor modifications.

The original rules made reference to Water Policy and Supply Council permits. These permits no longer exist as all have now been converted to agricultural water usage certifications. As such, the chapter is being amended to delete all references to such permits. In addition, the Office of Water Allocation is now referred to as the Bureau of Water Allocation. This change has been made in every instance throughout the chapter.

The readoption of these rules will continue to provide the mechanism whereby the State will serve as the consultant to the appropriate county agricultural agent by providing recommendations concerning the approval and/or disapproval of a water usage certification.

The Department has determined that there is a need to identify the proper procedures to be followed in those instances where a modification to an existing certification involves an increase in the amount of water being diverted; the addition of a new source of supply; and a change in agricultural/horticultural activity.

The provisions of this chapter have enabled the State to obtain valuable water use information and source of supply information on agricultural water usage. This information is an essential component of the Statewide water resource management strategy.

The following is a summary of the provisions of each section of the chapter proposed for readoption and/or amendment:

N.J.A.C. 7:20A-1.1 sets forth the scope and authority for the chapter. N.J.A.C. 7:20A-1.2 describes how the chapter is to be construed.

N.J.A.C. 7:20-1.3 defines the words and terms which are used in the chapter. The term "coastal plain" has been deleted from the rule. The terms "critical aquifer" and "aquifer" have been added to describe areas which must be verified by the agricultural agent for a water usage certification. The definition of "critical water supply area" was amended to include the regulatory requirements mandated by N.J.A.C. 7:19-6, which was promulgated subsequent to the effective date of this chapter and is therefore being added as part of this readoption. The term "modification" is being included in the rule because modifications are now convered by the rule in N.J.A.C. 7:20A-2.5.

N.J.A.C. 7:20A-1.4, Applicability, has been amended to delete references to "Water Policy and Supply Council permits" as they have been coverted to agricultural water usage certifications. The identical amendment has been made throughout the chapter rule.

N.J.A.C. 7:20A-1.5 provides the schedule for applying for water usage certifications and establishing privileges to divert water. N.J.A.C. 7:20A-1.6 sets forth the means of calculating the gallons of water per day which are used for agricultural or horticultural purposes in addition to the penalty provision which has been amended to include reference to the provisions of N.J.A.C. 7:14-8. N.J.A.C. 7:20A-1.7 indicates the procedure to be followed in transferring an existing water usage certification after transfer of ownership or operation of the property.

N.J.A.C. 7:20A-1.8 provides program information and N.J.A.C. 7:20A-1.9 sets forth the severability of the chapter.

N.J.A.C. 7:20A-2.1 sets forth the scope of the subchapter. N.J.A.C. 7:20A-2.2, Information and reports, has been amended to no longer require review and compilation of Water Policy and Supply Council permits in order to develop a listing for county agricultural agents since these reviews have been completed. The Division of Water Resources will continue to maintain a record of all existing certifications. Additionally, N.J.A.C. 7:20A-2.2(c)1 has been amended to require an accounting of water usage on December 31 of each year, broken down on a monthly basis.

N.J.A.C. 7:20A-2.3, General application procedures, has been amended to no longer require the Department to provide current application forms to the county agricultural agents since this has previously been accomplished.

N.J.A.C. 7:20A-2.4, Standards and procedures for approval of water usage certifications, has been amended at paragraph (a)5 to include the word "downstream". N.J.A.C. 7:20A-2.5 has been amended to set forth the new procedures for processing applications for renewals or modifications of existing water usage certifications. The existing procedures have been deleted since the conversion of Water Policy and Supply Council permits to certifications has been completed.

N.J.A.C. 7:20A-2.6 sets forth the procedures for preliminary application review. N.J.A.C. 7:20A-2.7, Extension of existing certifications; Water Policy and Supply Council permits or privileges allowed pursuant to other lawful legislative or administrative actions by county agricultural agents, has been amended to delete all references to Water Policy and Supply Council permits.

N.J.A.C. 7:20A-2.8, Opportunity to review application by interested parties, has been amended to extend the time period within which notice of applications must be published from 15 to 30 days. Additionally, notice is not required for renewal of permits without modifications.

N.J.A.C. 7:20A-2.9, Verification of agricultural water need and determination of appropriate processing for application, has been amended at paragraph (a)1 to include the term "critical aquifer" as an area which must be verified by an agricultural agent for a water usage certification.

N.J.A.C. 7:20A-2.10 describes the Division of Water Resources' application procedures and N.J.A.C. 7:20A-2.11 explains the function and duties of the advisory panel.

N.J.A.C. 7:20A-2.12, Notice of public hearing requirements, has been amended at paragraph (a)3 to require written notification of all water allocation permit holders within a one mile radius of the proposed diversion. N.J.A.C. 7:20A-2.13 establishes that the applicant shall bear the expense of the hearing. N.J.A.C. 7:20A-2.14 describes the duties of the hearing officer and N.J.A.C. 7:20A-2.15 explains the public hearing report.

N.J.A.C. 7:20A-2.16 establishes that the decision maker's duty to make a final recommendation to the county agricultural agent regarding an application and N.J.A.C. 7:20A-2.17 provides how the notification of such recommendation shall be given. N.J.A.C. 7:20A-2.18 describes the agricultural agent's duty to approve or disapprove of water usage certification applications and notify the applicant of said decision. N.J.A.C. 7:20A-2.19 provides that a record of the decision shall be maintained by the Division of Water Resources and N.J.A.C. 7:20A-2.20 establishes the appeal procedure.

N.J.A.C. 7:20A-2.21, Validity of water usage certifications issued, has been amended as the Water Policy and Supply Council permits are no longer in existence. N.J.A.C. 7:20A-2.22 establishes that a water usage certification program may include the right to construct, repair or reconstruct dams or other related structures.

Finally, amendments have been made throughout the text in order to conform the rules to changes in Departmental titles.

Social Impact

The readopted chapter will have a positive effect on the people and agricultural community of the State by providing for better management of water resources and insuring that there are safe and adequate water supplies for agricultural/horticultural purposes. The benefits derived herein aid not only the agricultural community but also all public and private interest throughout the State. More importantly, it demonstrates the Department's determination to protect the State's water supplies and to provide the citizens of New Jersey with an ample and effectively managed water supply in accordance with the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

Economic Impact

The readopted chapter will continue to have a minor economic impact on those persons currently diverting or who wish to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes. Although there are no initial, annual, or renewal fees associated with the certification process, applicants are required to pay for any public notice as well as any stenographer's fee if there is a hearing. Furthermore, new agricultural/horticultural water users who are seeking to obtain a certification may find it necessary to employ professionals such as accountants, consultants, irrigation specialists etc. to assist in obtaining certifications in addition to the actual design and operation of the facility. Additionally, the general public will benefit economically as the implementation of these rules will improve the quality of New Jersey's agricultural industry and protect property values and business interests.

Environmental Impact

The readoption of this chapter will have a positive effect on the environment in that the requirements set forth herein will insure proper management of the water resources in the State of New Jersey for agricultural and horticultural purposes. This will prevent depletion of aquifers, the spread of groundwater contamination and saltwater intrusion into aquifers, and help preserve aquatic life.

Regulatory Flexibility Statement

This chapter will apply to all persons diverting water at a rate of 100,000 gallons per day or greater for agricultural/horticultural purposes. It is estimated that of the 1,200 persons impacted by this chapter, nearly 100 percent are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with this chapter, the small businesses engaged in any such agricultural/horticultural activities will have to continue to comply with the provisions and requirements set forth therein. In so doing, it is unlikely that the readoption of this chapter will result in the need for any additional professional services from existing users who currently possess a certification. The readoption of this chapter may require a need for professional services, such as accountants, consultants, etc. for new agricultural/horticultural water users who need to obtain a certification.

Although there are no initial or annual fees associated with the certification process, applicants are required to pay for any public notice to be advertised in newspapers for new and/or modified certifications as well as any stenographer's fee if there is a hearing. The cost of public notice is approximately $50.00, and the stenographer's fee is approximately $250.00 (depending upon the length of the transcript). In this readoption, the Department balanced the need to protect the environment against the economic impact of the rules and has determined that to minimize the impact of the rules would endanger the environment, public health and public safety and therefore, no exemption from coverage is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:20A.

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

7:20A-1.3 Definitions

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

. . .

"Aquifer" means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

["Coastal Plain" means the southeasterly portion of the State of New Jersey described in the "Geologic Map of New Jersey" revised by Meredith E. Johnson in 1950 (scale 1:25000) with its boundaries indicated as the northern most border (basal contact) of the Raritan Formation of the Cretaceous age, beginning in the west at Trenton Junction trending northeasterly to Woodbridge.]

. . .

"Critical aquifer" means an aquifer within a critical water supply area where there may be either insufficient water supply, shortage of ground water by overdraft, threat of salt water intrusion or contamination, or where circumstances existed which required the Department to impose special water supply management provisions by rule pursuant to N.J.A.C. 7:19-6.10.

"Critical water supply [usage] area" means any areas to be designated in which special water supply usage conditions shall be mandated pursuant to [regulations] **rules** promulgated by the Department pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

. . .

"Modification" means a change to a certification including, but not limited to, requests for an increase in certification amount, the addition of a new source, or a change in agricultural/horticultural activity.

. . .

7:20A-1.4 Applicability

(a) This chapter applies to all persons who have been issued a water usage certification, [a Water Policy and Supply Council permit,] or to other persons diverting or claiming the right to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes, and to all persons who in the future wish to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes except as specified below:

1. (No change.)

2. Water usage certifications shall not be required for a person diverting water from a purveyor or for transfers from a water purveyor within the scope of an existing water usage certification [or Water Policy and Supply Council permit]. Modification of a certification shall be required for diversions or transfers of water from certified or permitted usage to another use not within the scope of an existing water usage certification [or Water Supply Council permit] regardless of the same or different ownership of the property.

3.-4. (No change.)

7:20A-1.5 Schedule for applying for water usage certifications and establishing privileges to divert water

[(a) Any person issued a valid Water Policy and Supply Council permit for agricultural or horticultural purposes which will terminate within five years after the effective date of this chapter shall apply for a water usage certification 90 days prior to the termination date of the person's present Water Policy and Supply Council permit, by following the procedures set forth in N.J.A.C. 7:20A-2.

(b) Any person issued a valid Water Policy and Supply Council permit for agricultural or horticultural purposes with no termination date or a termination date five or more years after the effective date of this chapter shall apply for a water usage certification within 180 days after the effective date of this chapter, by following the procedures set forth in N.J.A.C. 7:20A-2.]

[(c)] (**a**) Any person [other than those referred to in (a) and (b) above] who intends to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes shall apply for a water usage certification by following the application procedures set forth in N.J.A.C. 7:20A-2.

7:20A-1.6 Calculation of gallons of water per day for agricultural or horticultural purposes; penalty provision

(a) (No change.)

(b) Any person who fails to comply with this chapter or the Act shall be subject to the penalty provisions set forth in [Section 16 of the Act] **N.J.S.A. 58:1A-16 and N.J.A.C. 7:14-8.**

7:20A-1.8 Program information

Unless otherwise specified, any questions concerning the requirements of N.J.A.C. 7:20A-1 and 2 shall be directed to the appropriate county agricultural agent, or to the [Office] **Bureau** of Water Allocation, Water Supply [and Watershed Management Administration] **Element,** Division of Water Resources, New Jersey Department of Environmental Protection, CN 029, Trenton, New Jersey 08625.

SUBCHAPTER 2. WATER USAGE CERTIFICATION PROCEDURE

[7:20-2.1] **7:20A-2.1** (No change in text.)

7:20A-2.2 Information and reports

(a) The Division shall [prepare and] maintain a [complete and current listing] **record** of all existing certifications [and Water Policy

and Supply Council permits] for agricultural or horticultural purposes.

[(b) The list required pursuant to (a) above shall be provided by the Division to the Chairman, Department of Agricultural and Resource Management Agents, Cooperative Extension Service, Cook College, Rutgers University, New Brunswick, New Jersey 08903, for distribution to all county agricultural agents and shall be updated by the Division as appropriate.]

[(c)](b) The [list] **record** required pursuant to (a) above shall include the following information:

1. Name and address of existing certification [and Water Policy and Supply Council permit] holders;

2. (No change.)

3. Dates for the term of the certification [or Water Policy and Supply Council permit];

4. Whether location of the existing certification [or Water Policy and Supply Council permit] is within a critical water supply usage area; and

5. (No change.)

[(d)](c) Copies of the existing certification [or Water Policy and Supply Council permit] documents will be provided to the appropriate county agricultural agent upon a written request to the Division.

[(e)](d) The appropriate county agricultural agent shall concurrently upon issuance of any water usage certification issued pursuant to this chapter provide the **Bureau of** Water Allocation[s Office] of the Division with a copy of the relevant water usage certification.

[(f)](e) The appropriate county agricultural agent shall include as standard conditions in all water usage certifications issued pursuant to this chapter the following information to be annually prepared and submitted to the appropriate county agricultural agent:

1. [Annual water] **An accounting of monthly water** usage on December 31 of each year; and

2. (No change.)

7:20A-2.3 General application procedures

[(a) The Department shall provide the current application forms required for water usage certifications to the Chairman, Department of Agricultural and Resource Management Agents, Cooperative Extension Service, Cook College, Rutgers University, Box 231, New Brunswick, New Jersey 08903, for distribution to all county agricultural agents.]

Renumber existing (b)-(d) as (**a**) **through** (**c**) (No change in text.)

7:20A-2.4 Standards and procedures for approval of water usage certifications

(a) In general, an applicant for a water usage certification shall provide all information reasonably available to the applicant which establishes that the application complies with the standards and procedures as follows:

1.-4. (No change.)

5. In the case of surface water only, whether the reduction of the dry season flow of any stream will be caused to an amount likely to produce unsanitary conditions **downstream** or otherwise unduly injure public or private interests; or

6. (No change.)

(b) Applicatioins for renewal of existing certifications [or permits] shall supply information not previously established in the existing certification [or permit], any information relevant to proposed changes in certification [or permit] conditions, and other information as requested by the appropriate county agricultural agent or the [d] Division for the proper implementation of the Act and this chapter.

(c) The appropriate county agricultural agent shall review the application and [made] **make** a determination concerning the accuracy of information submitted pursuant to (a) **and** (**b**) above, and based on the appropriate county agricultural agent's actual knowledge of the water systems in the area of the application.

(d) If based upon the appropriate county agricultural agent's actual knowledge, the information submitted is insufficient to indicate compliance with (a) **and** (**b**) above, the appropriate county agricultural agent shall request additional information or consideration of the applicant of some more suitable alternative source of water.

7:20A-2.5 [Conversion of existing Water Policy and Supply Council permits to water usage certifications and applications] **Applications** for renewal **or modification** of existing water usage certifications

[(a) A water usage certification may be granted with the same or different conditions as the existing water usage certification or Water Policy and Supply Council permit, or the request for an extension of the conditions set forth in the existing certification or permit may be denied.

1. If the extension is granted to a water usage certification or Water Policy and Supply Council permit which will terminate within five years after the effective date of this chapter, then the scheduled termination date of the existing water usage certification or Water Policy and Supply Council permit shall be the starting date of the water usage certification pursuant to this section.

2. If the extension is granted to a water usage certification or Water Policy and Supply Council permit which has no termination date or a termination date five or more years after the effective date of this chapter, then the starting date of the water usage certification pursuant to this section shall be the effective date of this chapter.

3. Any change in existing water usage conditions shall require compliance with the procedures set forth in N.J.A.C. 7:20A-2.

(b) Applications for renewal of existing certifications or permits shall supply information not previously established in the existing certification or permit, any information relevant to proposed changes in certification or permit conditions, and other information as requested by the appropriate county agricultural agent or the Division for the proper implementation of the Act and this chapter.]

(a) An application for renewal of an existing water usage certification shall be filed at least three months prior to the expiration date in accordance with the procedures set forth in N.J.A.C. 7:20A-2.3.

(b) All applications for modification to an existing water usage certification shall be processed in accordance with the procedures set forth in this subchapter.

7:20A-2.7 Extension of existing certifications: [Water Policy and Supply Council permits or] privileges allowed pursuant to other lawful legislative or administrative actions by county agricultural agent

(a) The appropriate county agricultural agent shall consult the [list] **record** established pursuant to N.J.A.C. 7:20A-2.2(a) above to determine if an application requests an extension of an existing certification[, Water Policy and Supply Council permit] or privileges previously allowed pursuant to other lawful legislative or administrative actions under the same conditions as previously allowed.

(b) If an application requests an extension of the existing certification[, Water Policy and Supply Council permit] or privileges previously allowed pursuant to other lawful legislative or administrative actions under the same conditions as previously allowed and the applicant does not request an increase in the amount of water diverted or any modification of the existing certification [or Water Policy and Supply Council permit], the appropriate county agricultural agent may directly issue a new five year certification under the previous conditions plus any additional conditions deemed necessary by the appropriate county agricultural agent or the Division without public notice as set forth in N.J.A.C. 7:20A-2.8(b) below.

(c) N.J.A.C. 7:20A-2.7(a) and (b) shall not apply to diversions located within any designated critical water supply [usage] area.

7:20A-2.8 Opportunity to review application by interested parties

(a) (No change.)

(b) [Unless a certification has been issued pursuant to N.J.A.C. 7:20A-2.7, the applicant] **The county agricultural agent** shall have a notice of the application published in a newspaper circulating in the territory affected by the application within [one week of the filing of the application.] **30 days of the application being deemed complete. A notice is not required for a renewal without modification.**

1.-2. (No change.)

[3. Unless acceptable proof of notice required by this section shall be furnished by the applicant to the appropriate county agricultural agent within a reasonable time period, no further action on the application shall be undertaken.]

7:20A-2.9 Verification of agricultural water need and determination of appropriate processing for application

(a) The county agricultural agent shall verify the need for the water usage requested for all applications submitted and make a determination whether the applications for a water usage certification describes and includes proposed diversions as follows:

1. Within **a critical aquifer in** critical water supply [usage] areas;

2.-3. (No change.)

4. [Within the coastal plain outside] **Outside** the pinelands area for diversions of not more than 500,000 gallons as calculated pursuant to N.J.A.C. 7:20A-1.6(a).

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

(d) Unless specified in (a)1 or 2 above, if the application for a water usage certification concerns either (a)3 or 4 above **or is for renewal of an existing certification**, the application may be directly approved or disapproved by the appropriate county agricultural agent without any further processing and pursuant to the standards and procedures for approval of certifications set forth at N.J.A.C. 7:20A-2.4, including conditions deemed necessary by the appropriate county agricultural agent or the Division, and subject to the public notice provisions of N.J.A.C. 7:20A-2.8.

(e) All other applications for a water usage certification not specified in N.J.A.C. 7:20A-[2.7 and] 2.9 shall be processed pursuant to N.J.A.C. 7:20A-2.8 and 2.10.

7:20A-2.10 Applications referred to the Division

(a) The appropriate county agricultural agent shall forward verification of the applicant's need for water usage requested and the following information to the **Bureau of** Water Allocation[s Office] of the Division for all applications pursuant to N.J.A.C. 7:20A-2.9 (b), (c), and (e) above:

1. (No change.)

2. The appropriate county agricultural agent shall forward the application and all other relevant data to the Division's **Bureau of** Water Allocation[s Office] for evaluation and review of the application's compliance with the standards and procedures set forth in N.J.A.C. 7:20A-2.4.

(b) The Division's **Bureau of** Water Allocation [Office] shall review and evaluate the application and verification of the need for the water usage and complete the following activities:

1.-5. (No change.)

(c) If no written objection from any interested parties concerning the application for a water usage certification has been made or received by the county agricultural agent and no written objections are made during the Division's **Bureau of** Water Allocation [Office] review process, and the application complies with the standards and procedures set forth in this chapter, then the Division's **Bureau of** Water Allocation [Office] shall:

1. (No change.)

2. Recommend that the appropriate county agricultural agent issue the water usage certification drafted by the Division's **Bureau of** Water Allocation [Office] and based upon the standards and procedures set forth in this chapter.

(d) (No change.)

7:20A-2.12 Notice of public hearing requirements

(a) When a public hearing on a water usage certification is required pursuant to N.J.A.C. 7:20A-2.11(b), or the appropriate county agricultural agent or the Division determines that a public hearing is required in the public interest, the Division shall:

1.-2. (No change).

3. Notify, in writing, the applicant, the governing bodies of municipalities and counties in the territory affected by the application, and officials of existing public water systems within a five mile radius of the proposed diversion **and all Water Allocation permit holders within a one mile radius.**

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

(d) Between the time the notice is published and the scheduled date for the public hearing, the Division shall review the application and develop staff recommendations concerning the disposition of the application and any conditions that should be included in the water usage certification if issued.

1. The staff recommendations shall include and consider the application, the water usage verification of the appropriate county agricultural agent, [the Division's Office of Water Allocations recommendation,] the Advisory Panel's report, written comments of interested parties, and all other relevant information pertaining to the application. These staff recommendations shall be:

i.-iii. (No change.)

7:20A-2.15 Public hearing report

(a) The hearing officer shall review the application, the water usage verification of the appropriate county agricultural agent, the Division's **Bureau** [Office] of Water Allocation[s] recommendation, the Advisory Panel's report, [staff recommendations,] written comments of interested parties, transcripts from the public hearing, and all other relevant information pertaining to the application and prepare and submit written findings and recommendations to the decision maker for a final recommendation for approval or disapproval of the application for a water usage certification by the appropriate county agricultural agent.

1. (No change.)

7:20A-2.17 Notification of recommendation

The appropriate county agricultural agent shall be notified of the Department's recommendation by either the drafting of a water usage certification with any conditions deemed appropriate, or by a draft letter of denial of the application [from] **for signature of** the appropriate county agricultural agent stating reasons for the denial.

7:20A-2.19 Record of decision

(a) (No change.)

(b) This record may be reviewed by interested parties at the Division and copies of it may be obtained from the Division upon payment of the fee for duplication. [The applicable water usage certification information shall be added by the Division to the list required pursuant to N.J.A.C. 7:20A-2.2(a).]

7:20A-2.21 Validity of water usage certifications issued

(a) (No change.)

(b) The conditions and provisions of previously issued water usage certifications[, Water Policy and Supply Council permits] and privileges previously allowed pursuant to other lawful legislative or administrative actions shall remain in effect pending approval or disapproval of an application submitted pursuant to this chapter.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Shellfisheries

Fee Schedule; Clam Licenses

Proposed Amendment: N.J.A.C. 7:25-1.5

Proposed New Rules: N.J.A.C. 7:25-8

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection (with the approval of the Marine Fisheries Council).

Authority: N.J.S.A. 13:1D-9, 50:1-5, P.L. 1988, c.35, and 50:2-1 et seq.

DEP Docket Number: 042-88-10.

Proposal Number: PRN 1988-571.

Submit comments by December 9, 1988 to:
Martin J. McHugh, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 29 of the Marine Fisheries Management and Commercial Fisheries Act, P.L. 1979 c. 199, N.J.S.A. 50:2-3, authorized the Commissioner of the Department of Environmental Protection to establish clam license fees with the approval of the Marine Fisheries Council. The current license fees have been in effect at or near the minimum statutorily authorized levels since enactment of P.L. 1979 c. 199, in 1979. The Marine

Fisheries Management and Commercial Fisheries Act was amended and supplemented in 1988 by P.L. 1988 c.35, which established new clam license fees at not less than $5.00 nor more than $10.00 for a resident's recreational clam license, at not less than $10.00 nor more than $20.00 for a nonresident's recreational clam license, and at not less than $25.00 nor more than $50.00 for a commercial clam license. P.L. 1988 c.35 also provided for a $2.00 license for all persons under 14 years of age.

In addition to providing for new license fees, P.L. 1988 c.35, established the Shellfisheries Law Enforcement Fund. Pursuant to section 3 of P.L. 1988 c.35, all clam license fees shall be deposited into the Shelfish Enforcement Fund and shall be allocated by the Commissioner to the Division of Fish, Game and Wildlife to enforce the laws necessary for the protection of the shellfish resources of the State, to enforce the prohibition of taking shellfish from any shellfish bed condemned by the Department, to increase the effectiveness of the relay and depuration programs, and to enhance the productivity of the natural clam beds in the State.

The proposed amendment deletes the provisions containing the existing license fees at N.J.A.C. 7:25-1.5(a)5 and 6. The proposed new rules implement P.L. 1988 c.35 by proposing the increase of all clam license fees to the maximum allowed. It is anticipated that the new fees will generate sufficient funds to meet the annual costs of law enforcement dedicated to the shellfisheries programs. The new fees are within the limits recommended by the Coastal Bay Clam Resources Task Force Report, issued in 1985 and available for inspection at the Division of Fish, Game and Wildlife, 501 East State Street, Trenton, New Jersey, during normal business hours. Revenues will be utilized as mandated by P.L. 1988 c.35, and as recommended by the Coastal Bay Claim Resource Task Force Report.

The new rules also include a provision which restricts recreational clammers from harvesting or participating in harvesting activities with commercial clammers. The intent of this provision is to prevent recreational clammers from circumventing the recreational limit of 150 clams per day by commingling a recreational catch with a commercial catch while harvesting clams in the presence of a commercial clammer.

Social Impact

As mandated by P.L. 1988 c.35, a share of the cost of enforcement of the shellfish laws and enhancement of the resource shall be borne by the users of the State's hard clam resource. License fees represent a small percentage of the potential value of harvested clams. Adoption of these rules should have a positive social impact by providing existing Department enforcement units with an enhanced and stable funding source, which in turn will benefit the clamming industry by promoting conservation of the resource and aiding in the protection of the public health by reducing the opportunity for the marketing of clams unsuitable for human consumption.

Economic Impact

Adoption of these new rules should produce positive economic impacts overall. The proposal to increase the fee for the commercial clamming license was discussed at length in the meetings conducted by the Coastal Bay Clam Resource Task Force. Commercial clammers were generally in agreement that increased fees would be a fair method for ensuring adequate revenue for enforcement. Effective enforcement would benefit the resource as well as the industry, outweighing the initial impact of the increased fees by generating increased revenue to the regulated community from increased harvests of clams suitable for human consumption. It is anticipated that the license fee increase for recreational clammers will result in little to no adverse economic impact to recreational clammers.

Environmental Impact

The proposed new rules will have a positive environmental impact both in the short and long run. Increased availability of funding for enforcement of the shellfish rules from increased license fees and the establishment of the Shellfisheries Law Enforcement Fund will enhance effective enforcement, management and conservation, resulting in a positive impact on the State's clam resource.

Regulatory Flexibility Statement

The proposed new rules apply to commercial and recreational clammers. It is estimated that of the total number of approximately 2,500 commercial license holders impacted by this proposal, approximately 500 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., and will be impacted. In order to comply with these rules, the small businesses will have to comply with the requirements as set forth in the Summary above. It is unlikely that small businesses will need additional services or incur additional capital costs to comply with these rules. No additional recordkeeping will be imposed on commercial or recreational clammers as a result of the adoption of these rules.

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

7:25-1.5 Fee schedule

(a) The following schedule of fees shall become effective immediately:

1.-4. (No change.)

[5. Resident clamming license $6.00;

6. Juvenile clamming license ..... $2.00;]

Renumber existing 7.-11. as **5.-9.** (No change in text.)

SUBCHAPTER 8. [CLAM DREDGING] CLAM LICENSES

7:25-8.1 [(Reserved)] **Scope and authority**

This subchapter constitutes the rules governing the issuance and use of recreational resident and non-resident, juvenile and commercial clam licenses pursuant to the authority of N.J.S.A. 13:1D-9, 50:1-5, P.L. 1988 c.35, and N.J.S.A. 50:2-1 et seq.

7:25-8.2 Purpose

The purpose of this subchapter is to establish the fees for recreational resident and non-resident, juvenile and commercial clam licenses, to provide necessary restrictions on the use of these licenses, and to establish the Shellfisheries Enforcement Fund, into which these fees shall be deposited.

7:25-8.3 Construction

This subchapter shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 13:1D-9, 50:1-5, P.L. 1988 c.35, and N.J.S.A. 50:2-1 et seq.

7:25-8.4 Applicability

This subchapter applies to the harvest of clams from any of the natural clam grounds in the waters of the State.

7:25-8.5 Licenses

(a) Any person engaged in the harvest of clams from any of the natural clam grounds in the waters of the State shall first obtain the appropriate license, as set forth in (b)1 to 3 below, issued by the Division of Fish, Game and Wildlife, Bureau of Shellfisheries, or its designated agents. Licenses to harvest clams shall only be available to natural persons and only licensees may harvest clams from the natural clam grounds of the State.

(b) The following licenses are available for the harvest of clams:

1. Any person harvesting clams not in excess of 150 clams per day shall first obtain either a resident recreational clam license or a nonresident recreational clam license;

2. Any person under 14 years of age harvesting clams not in excess of 150 clams per day shall obtain a juvenile recreational clam license; and

3. Any person of any age harvesting more than 150 clams per day shall first obtain a commercial clam license.

(c) Whenever a person in possession of a commercial clam license in any vessel or vehicle is engaged in any clamming activity, all other persons on or in that vessel or vehicle harvesting clams shall also possess a commercial clam license.

(d) Clams harvested by a person in possession of a recreational clam license shall not be commingled with clams harvested by a person in possession of a commercial clam license.

7:25-8.6 License fees

(a) The license fees for the license described in N.J.A.C. 7:25-8.5 shall be as follows:

1. Resident recreational clam license: $10.00;

2. Nonresident recreational clam license $20.00;

3. Juvenile clam license: ..... $2.00; and

4. Commercial clam license: ..... $50.00.

(b) All clam license fees collected pursuant to this subchapter shall be deposited into the Shellfisheries Law Enforcement Fund.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Fees and Registration Requirements

Proposed Repeals: N.J.A.C. 7:26-4.1, 4.2, 4.4, 4.7, 4.8, and 4.9

Proposed New Rules: N.J.A.C. 7:26-4.1, 4.2, 4.3, 4.4, and 4.5

Proposed Amendments: N.J.A.C. 7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 4.10, 16.2, 16.3, and 16.13

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1E et seq., particularly 13:1E-6, 13:1E-18.

DEP Docket Number: 039-88-10.

Proposal Number: PRN 1988-568.

A **public hearing** concerning this proposal will be held on:
December 9, 1988 at 1:00 P.M.
Thomas A. Edison College Auditorium
101 West State Street
Trenton, New Jersey 08625

Submit comments by December 22, 1988 to:
Mary L. Gillespie, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to repeal its current solid waste fee schedule and is proposing a new fee schedule for specific services, which establishes new fees for solid waste facilities in the following areas: monthly facility monitoring, facility initial registration, review of solid waste facility application for administrative completeness, review of facility application for compliance with district solid waste management plan, technical review of environmental and health impact statement, technical review of closure and post-closure plan, technical review of sanitary landfill topographic survey, preparation and issuance of a solid waste facility permit, and engineering review of solid waste collection or disposal facilities or operations which claim exemption from registration and compliance monitoring. These proposed new rules and amendments also establish new fees for transporter registration.

The proposed new rules and amendments increase the existing fees for annual registration update of a solid waste facility and for the cost of reviewing disclosure statements and securing confidential documents pursuant to N.J.S.A. 13:1E-126 et seq. The fee for technical review of engineering design for a solid waste facility and the county enforcement activity fees for solid waste control program would remain the same.

Hazardous waste fees are excluded from the fee schedule. A separate hazardous waste fee schedule was proposed in the August 15, 1988 New Jersey Register at 20 N.J.R. 1995(a). The amendments to N.J.A.C. 7:26-1.1(a), 1.4 "Collection", and 7:26-4 in the earlier proposal differ from those proposed herein. As the Department contemplates the adoption of the prior proposed amendments and new rules before those in this proposal, the earlier proposed language differing from that proposed herein cannot be superseded by this proposal. To supersede portions of the earlier proposed amendments would mean retaining current rule text until the adoption of these amendments and new rules, which would produce conflicts upon adoption with the earlier proposed amendments and new rules. The Department, therefore, intends to proceed with both proposals unchanged. Changes wrought by the adoption of the prior proposal will be accounted for as appropriate in the adoption of this proposal.

The Department is responsible for administering the solid waste regulatory program in New Jersey in a manner which ensures that solid waste is collected, transported and disposed of in an environmentally safe manner. The Department's authority is derived from the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (SWMA).

In 1974, the Department's first solid waste fee schedule was adopted (see 6 N.J.R. 343(c)). The authority for this fee schedule, which became effective on July 1, 1974, was N.J.S.A. 13:1E-18. The statute stipulates that "the fees shall not be less than $10.00 nor more than $500.00", and may be assessed on any services the Department performs in connection with this act.

Presently, fees are assessed on solid waste facilities for the following services: annual registration, transfer of registration, inspection and regulation and engineering design review. These fees date back to 1975. An annual registration and inspection fee per vehicle is the only fee presently assessed on solid waste transporters. These fees have been the same since 1980. Fees are also assessed for the cost of reviewing disclosure statements and securing confidential documents pursuant to N.J.S.A. 13:1E-126 et seq., and for the county enforcement activity for solid waste control program.

While the Solid Waste Fees have not increased over the years, the services the Department provides in terms of the number of applications received and the amount of time and expertise required for each review have increased tremendously. Even though the Department spends considerable time and resources in providing services required by the SWMA, in many areas the fee proposal does not reflect the total cost to the Department for providing the required services due to the $500.00 cap of N.J.S.A. 13:1E-18. This is especially apparent in the areas that require in-depth technical review such as review of environmental and health impact statements, facility engineering designs, closure and post-closure plans, and topographic surveys.

The total revenue generated by the existing fee schedule in fiscal year 1987 was $447,600. However, this revenue did not go directly to the Department, but instead went into the general State fund. In fiscal year 1987, general State funds in the amount of $4.2 million provided funding to help support the activities of the Division of Solid Waste Management. These funds are fully committed to existing staff and administrative costs.

The following is a section by section description of the Department changes made by this proposal:

The amendment to N.J.A.C. 7:26-1.1 adds hazardous to the description of waste facilities and replaces the reference to collection and haulage with transporting. In addition, the specific listing of the fee schedule is deleted and replaced with a generalized statement.

The amendment to N.J.A.C. 7:26-1.4 adds definitions for solid waste cab, solid waste container, solid waste single-unit vehicle, solid waste trailer, solid waste vehicle, transportation, and transporter. References in the definitions to collector/hauler have been replaced with transporter, land disposal with sanitary landfill, and collection and/or haulage vehicle with solid waste vehicle. The references to Code Federal Regulation (CFR) cites in the definition of asbestos-containing waste have been updated.

N.J.A.C. 7:26-2.7 has been amended so that all fees required by N.J.A.C. 7:26-4 shall be submitted with a renewal application. New fees are assessed in N.J.A.C. 7:26-4 for an updated registration statement, updated engineering design and updated environmental and health impact statement. Reference to an updated environmental and health impact statement are added to this subchapter.

The amendment at N.J.A.C. 7:26-2.11 requires that a vehicle that is loading at any solid waste facility shall be registered with the Department as a solid waste vehicle unless exempt from registration. An amendment to paragraph (b)10 makes it mandatory that a solid waste facility operator shall designate an area for unloading solid waste vehicles that are exempt from registration.

References to collection and/or haulage vehicle or delivery vehicle or vehicle are replaced with solid waste vehicle in N.J.A.C. 7:26-2.11, 2.13, 2B.4, 3.4, and 3.7. References to collector/hauler or hauling are replaced with transporter, transporting or transportation in N.J.A.C. 7:26-2.12, 2.13, 2B.4, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, and 16.2.

N.J.A.C. 7:26-2.12 is also amended by changing the address where notifications are sent. The CFR cites in N.J.A.C. 7:26-2.12, 2A.8, and 3.5 have been updated.

The amendment to N.J.A.C. 7:26-2.13 adds tonnage as an available description for the capacity of a solid waste vehicle.

The amendment at N.J.A.C. 7:26-2.13 deletes the 15th day and replaces it with the 20th day of each month as time for submitting daily records and also changes the address for submitting the reports.

N.J.A.C. 7:26-2B.8 is amended by deleting the 500 tons-per-day capacity requirement as the minimum that allows an inspector to be stationed at a thermal destruction facility and replaces it with a 250 tons-per-day capacity.

N.J.A.C. 7:26-3.2 is amended by adding subsection (h) which requires all applicants to own or lease the vehicle being registered and if leased a copy of the lease must be supplied by the applicant.

The proposed amendment to N.J.A.C. 7:26-3.3 would exempt from the provisions of subchapter 3 (which includes transporter registration) persons who transport only their own household solid waste in vehicles bearing passenger license plates, and persons who transport only their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds. The major effect of this change will be to bring under the requirement to register and file disclosure statements persons transporting solid waste on a commercial basis in a vehicle of any size or description, no matter how small.

N.J.A.C. 7:26-3.4 is also amended to require that each registered unit of a solid waste vehicle shall permanently and conspicuously display the New Jersey Department of Environmental Protection registration number.

N.J.A.C. 7:26-3.5(d), regarding hazardous waste, is being deleted and the remaining subsection relettered accordingly.

N.J.A.C. 7:26-4 contains the proposed new fees for solid waste, excluding hazardous waste, N.J.A.C. 7:26-4.1 contains the general provisions. N.J.A.C. 7:26-4.2 gives the address for payment of fees. N.J.A.C. 7:26-4.3 contains the fee schedule for solid waste facilities. N.J.A.C. 7:26-4.4 contains the fee schedule for transporters.

N.J.A.C. 7:26-4.10 has been recodified without change as N.J.A.C. 7:26-4.5 and contains the fees that will be assessed for the county enforcement activity for solid waste control program.

The amendment to N.J.A.C. 7:26-16.3 changes the address for submittal of disclosure statements. N.J.A.C. 7:26-16.13 is amended to provide that a fee of $500.00 shall be paid to the Department for reviewing disclosure statements and securing confidential documents for each individual required to be listed in the disclosure statement. A $500.00 fee shall also be paid to the Department for filing a change of information statement which lists an individual not listed in the disclosure statement which is currently on file in the Department. Where the applicant is a small family owned and operated business the fee shall only be $500.00 per principal residence.

Social Impact

A positive social impact will result from the proposed solid waste fee schedule. The amendments and new rules would provide funds which are essential for the support of the services the Department provides pursuant to the SWMA. In addition, a beneficial social impact will be derived from the shift of responsibility for support of these services from primarily the general tax base to those who produce, transport, handle, dispose, and otherwise derive monetary benefit from solid waste activities.

Economic Impact

The proposed solid waste fees are expected to increase the regulated solid waste industry costs to $4.3 million. The fees will only provide a portion of the funding necessary for the Department to provide the services required under the Solid Waste Management Act. The total cost to the Department for providing the services described below is $8,240,300.00. However, the new fees proposed by the Department are limited by a statutory maximum of $500.00 pursuant to N.J.S.A. 13:1E-18.

The cost of specific Departmental activities upon which these proposed fee amounts are based is calculated by determining the number of full-time staff positions required for the activity and multiplying this figure by the average cost per full-time employee. The average cost of each is made up of salary and normal operating expenses. The costs have been calculated using the annual dollar amounts listed in 1 and 2 below. In addition, the cost of special equipment (examples given at 3 below) is added as necessary.

1. Salaries—staff salaries, indirect costs, and fringe benefits average $50,265 per each staff person required.

2. Normal operating expenses—postage, telephone, travel, supplies and data system maintenance average $7,661 per each staff person required.

3. Special equipment—vehicles and maintenance, scientific equipment and supplies, safety equipment and training, and data processing equipment as needed.

The Department is proposing to assess a $500.00 annual fee for monthly facility monitoring. Approximately 150 solid waste facilities submit monthly volume monitoring reports to the Department. Each month, approximately 160 staff hours are required to administer the program, and on an annual basis, approximately 1,920 staff hours are required. In addition, an estimated 2,000 hours are needed on an annual basis to monitor the accuracy of the waste origin/waste disposal forms (O and D) and review their compilation into the daily log which is the basis of the facility monthly volume report. A total of approximately 3,920 hours are required annually for the monthly facility volume monitoring.

The Department is proposing to assess a $500.00 fee for the initial registration of a solid waste facility. The registration requires approximately 16 hours of staff time for the creation of permanent files, financial accounts and for mailings and review of files. Annually, an estimated 960 hours of staff time will be needed to complete the estimated 60 initial facility registrations.

The Department devotes on the average 760 hours of staff time on the technical review of each closure and post-closure application. On an annual basis, it is expected that 103 plans will be submitted and will require 78,280 hours of staff time. N.J.S.A. 13:1E-8 limits the Department to assessing a $500.00 fee for this service.

The Department is proposing to increase the fee to $175.00 for the facility annual registration update. Currently, 364 solid waste facilities are required to submit yearly updates. The proposed fee reflects the average five hours of staff time required for the administrative review of the information submitted by each facility and the time required to update the permanent records of each facility. On an annual basis, this activity requires approximately 1,820 hours of staff time.

It is estimated that the above fees will generate $183,080 in revenue and fund three staff positions in accordance with the following budgetary breakdown:

Salaries/indirect/fringe	$150,795
Normal operating expenses	22,983
Special equipment-data processing	9,302
Total	$183,080

The Department is proposing a fee for review of a solid waste facility application for administrative completeness. The review is to assure that all required materials have been submitted. On an annual basis, approximately 1,500 hours of staff time will be needed to complete the estimated 60 administrative reviews which the Department expects to perform. Due to the $500.00 cap of N.J.S.A. 13:1E-18, the Department is limited to assessing a $500.00 fee for this service.

The Department receives an average of 60 facility applications annually which require review to ascertain compliance with district solid waste management plans. Each review requires approximately eight hours of staff time for a total of 480 hours annually. The Department is proposing a fee of $270.00 for this service.

The Department averages 1,060 hours of staff time for the technical review of a facility engineering design. On an annual basis, it is estimated that 7,420 hours of staff time will be necessary to complete the seven expected activities in this area. Due to the $500.00 cap of N.J.S.A. 13:1E-18, the Department is limited to assessing a $500.00 fee for this service.

Each technical review of an environmental and health impact statement requires an average of 620 hours of staff time. On an annual basis, it is estimated that 4,340 hours will be expended to complete the seven environmental and health impact statements received each year. The Department is limited to assessing a $500.00 fee for this service due to the $500.00 cap imposed by N.J.S.A. 13:1E-18.

Approximately 70 solid waste facilities are required to submit topographic surveys on an annual basis. Each technical review of the study requires an average of 60 hours of staff time or 4,200 hours on an annual basis. The $500.00 cap of N.J.S.A. 13:1E-18 limits the Department to assessing a $500.00 fee for this service.

Approximately 16 hours of staff time are required to perform the administration, drafting, preparation and issuance of a solid waste facility permit. On an annual basis, approximately 960 hours of staff time are required for the issuance of the estimated 60 permits. N.J.S.A. 13:1E-18 limits the Department to assessing a $500.00 fee for this service.

Each engineering review of solid waste collection or disposal facilities or operations which claim exemption from registration requires an average of 90 hours of technical review. The Department estimates that 15 on-site disposal applications will be received each year which will require 1,350 staff hours. N.J.S.A. 13:1E-18 limits the Department to assessing a $500.00 fee for this service.

The above described fees will generate $161,000 annually and will fund three staff positions in accordance with the following budgetary breakdown:

Salaries/indirect/fringe	$150,795
vehicle/data processing	10,205
Total	$161,000

The Department is proposing to assess fees for compliance monitoring at solid waste facilities. The Department provides monitoring of solid waste processing, transfer, treatment, destruction, and disposal facilities to determine compliance with all laws, rules, and permit conditions. The fees are assessed for each site-visit and are commensurate with the amount of personnel resources needed to accomplish proper monitoring and guidance for every class of facility operation. The number of site-visits is an estimate based on the approved work plan of the Division of Solid Waste Management.

A $405.00 compliance monitoring fee is proposed for each site-visit to a sanitary landfill operating at 31,200 tons per year or more. The work plan approves 52 site-visits per year for each of the 15 facilities. This is approximately a 12 hour activity which is expected to require 9,360 staff hours annually.

A $405.00 fee is also being proposed for each site-visit to a sanitary landfill under construction. Fifty-two site-visits per year are planned for each of the seven facilities under construction. This is approximately a 12 hour activity which requires 4,368 staff hours annually.

A $500.00 fee is being proposed for each day that an inspector is on the premises of a resource recovery facility which operates at 9.6 tons per day or more. An inspector will be on the premises during all hours of operation. Currently, one such resource recovery facility exists which will require 8,400 staff hours annually.

A $340.00 compliance monitoring fee is being proposed for each site-visit to an incinerator operating at 9.6 tons per day or more. Fifty-two site-visits per year are planned for each of the six facilities. This is approximately a 10 hour activity which will require 3,120 staff hours annually.

A $270.00 fee is being proposed for each site-visit to a sanitary landfill operating at less than 31,200 tons per year. Twelve site-visits per year are planned for each of the 75 facilities. Each inspection is approximately an eight hour activity which will require 7,200 staff hours annually.

A $270.00 fee is being proposed for each site-visit to a transfer station operating at 31,200 tons per year or more. Twenty-four site-visits per year are planned for each of the 20 stations. Each inspection is approximately an eight hour activity which will require 3,840 staff hours annually.

A $270.00 fee is also being proposed for each site-visit to a resource recovery facility operating at less than 9.6 tons per day. Fifty-two site-visits per year are planned for each of the two facilities. This is approximately an eight hour activity which will require 832 staff hours annually.

A $270.00 fee is being proposed for each day that an inspector is on the premises of a resource recovery facility that is under construction. Two hundred sixty-one site-visits per year will take place at each of the seven facilities under construction. This is approximately an eight hour activity which will require 14,616 staff hours annually.

A $205.00 fee is being proposed for each site-visit to an incinerator operating at less than 9.6 tons per day. Four site-visits per year are planned at each of the 70 facilities. This is approximately a six hour activity which requires 1,680 staff-hours annually. A $205.00 fee is also being proposed for each site-visit to a transfer station operating at less than 31,200 tons per year. Twelve site-visits per year are planned for each of the 70 facilities. This is approximately a six hour activity which will require 5,040 staff hours annually.

The Department expects to perform an estimated total of 6,252 site-visits per year to be distributed among the 273 facilities according to the above plan. The fees are expected to generate $1,867,970 in funds. It is estimated that 32 full-time employees will be needed to perform the monitoring compliance site-visits and administrative work in accordance with the following budgetary breakdown:

Salaries/indirect/fringe	$1,608,480
Normal operating expenses	245,152
Special Expenses	14,338
Total	$1,867,970

The Department is proposing to establish new fees for transporters. A transporter will be required to register the following: solid waste single-unit vehicles or solid waste cabs, solid waste trailers and solid waste containers with the fees assessed at $120.00, $120.00, $120.00 and $25.00 respectively.

Solid waste transporter fees will be used to support activities required in administering all aspects of transporter registration and waste flow compliance monitoring. Currently, there are approximately 6,000 registered transporters, employing approximately 15,000 registered vehicles. Additionally, it is estimated that there are approximately 10,000 solid waste containers in use.

The fees assessed solid waste transporters will be used by the Department to register the vehicles used in solid waste transportation and to perform monitoring and compliance activities. The fees are derived from the specific costs associated with transporter related activities contained in the approved work plan of the Division of Solid Waste Management.

Registration of vehicles involves processing of applications, creation of permanent files, preparation of registration documents, tracking and logging of documents and decals issued, mailing, and annual updating. Staff time required is approximately 1.8 hours for an initial registrant and 2.3 hours for a renewal applicant. The entire process is estimated to require 12,280 hours of staff time for the existing workload with an additional 7,500 hours needed to perform registration tasks associated with registration of cabs and solid waste containers.

Monitoring of the transporter industry involves such activities as waste flow monitoring and tracking, roadside registration checks, origin and destination checks at solid waste facilities, and records and vehicle checks at transporter facilities. These activities are performed in a coordinated fashion as an integral operation and require approximately 160 hours to complete as an operational activity. It is anticipated, in accordance with the approved work plan, that 252 transporter operations will be conducted annually requiring approximately 40,320 hours.

The above described fees will generate an estimated $2,050,000 and fund 35 staff positions in accordance with the following cost analysis:

Salaries/indirect/fringe	$1,759,275
Normal operating expenses	268,135
Special Expenses	22,590
Total	$2,050,000

The Department is proposing an increased fee of $500.00 for review of disclosure statements and for securing confidential documents, required by N.J.S.A. 13:1E-126 et seq., for each individual required to be listed in the disclosure statement and for each new individual listed in the change of information statement. On the average each review requires 17 hours of staff time. The Department projects that 200 licenses and new or key employees will file or be listed in disclosure statements. The proposed fee will generate $100,000 in revenue which will fund 1.73 staff positions in accordance with the following budgetary breakdown:

Salaries/indirect/fringe	$ 86,958
Normal operating expenses	13,254
Total	$100,000

The cost to the Department in providing the above services is $8,240,316 which would fund 142 staff positions. However, the solid waste fees imposed by the Department for services are limited by a statutory maximum fee of $500.00 pursuant to N.J.S.A. 13:1E-18 and as a result, even the new fees, which are expected to generate $4.3 million and fund 74 staff positions, will only partially cover the cost to the Department. A substantial amount will continue to be paid by all New Jersey taxpayers through the use of general State funds.

Environmental Impact

Proper management of New Jersey's solid waste is essential to the health, safety and welfare of New Jersey's residential and business community. The proposed fees, combined with additional State appropriations, will provide adequate funds to ensure solid waste is disposed of in an environmentally sound manner and in accordance with the SWMA. The illegal disposal of solid waste is a major threat to not only environmentally sensitive natural resources, but also to the neighborhoods of many of the older urban areas. Increased revenues dedicated to supporting the services outlined in the proposal will provide the Department with increased capabilities for protecting the public health, safety, welfare, and the environment pursuant to the Solid Waste Management Act.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these proposed amendments and new rules will impose new or increased compliance requirements on small businesses as defined by the Act.

The proposed amendments and new rules apply to solid waste facilities and transporters and will have a significant economic impact on facilities that are small businesses. There are approximately 6,000 registered solid

waste transporters and 364 solid waste facilities. The majority are small businesses. Cost of compliance also depends on the type of the solid waste facility, whether the facility is applying for initial registration or whether it has previously registered. Excluding compliance monitoring fees, costs of compliance range from $175.00 for a facility which has been previously registered to $4,200 or more for a new facility registration. Compliance monitoring fees could range from $820.00 annually for incinerators operating at less than 9.6 tons per day to $182,500 annually for resource recovery facilities operating at 9.6 tons per day or more.

Solid waste transporter registration fees will range from $120.00 for a single-unit vehicle to $265.00 for a detachable solid waste vehicle consisting of a solid waste cab, solid waste trailer and solid waste container. Small businesses may wish to engage the services of consultants or accountants.

In developing these amendments and rules, the Department has balanced the need to protect the environment against the economic impact of the proposed amendments and rules and has provided for the fees to be based primarily on the size of the facility and on the number of vehicles and solid waste vehicle components registered by transporters. Smaller firms, therefore, will pay only proportionate fees.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 7:26-4.1, 4.2, 4.4, 4.7, 4.8, and 4.9.

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

7:26-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection which govern the registration, operation, and closure maintenance of sanitary landfills [in the State of New Jersey,] and other solid [and liquid] **and hazardous** waste facilities **in the State of New Jersey** as may be approved by the Department; registration, operation, and maintenance of [collection and haulage] **solid waste transporting** operations and facilities in the State of New Jersey; a fee schedule for [engineering review, registration and inspection of solid waste facilities, and registration of collection, haulage disposal operations and facilities in the State of New Jersey] **services provided by the Department to solid and hazardous waste facilities, generators and transporters**. These rules shall not apply to the following:

1.-6. (No change.)

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

7:26-1.4 Definitions

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

. . .

"Approved registration" means the registration of a solid waste disposal site, [collection/hauler] **transporter**, or other solid **or hazardous** waste facility[ies] issued by the Department [of Environmental Protection] after review and approval of the registration statement.

. . .

"Asbestos-containing waste" means any solid waste which contains friable asbestos material or any variety of asbestos which is produced by extracting asbestos from asbestos ore and is generated by a source subject to 40 CFR [61.22(a), 61.22(c), 61.22(d), 61.22(e), and 61.22(h)] **61.144, 61.145, 61.148, 61.149, 61.150, and 61.153**, as they may be subsequently amended or recodified.

. . .

"Collection **or collecting**" means the act of picking up solid waste at its point of generation or storage [and placing it in a vehicle].

["Collection-hauler" means a person engaged in the act of collection of solid waste and/or transporting such waste between solid waste facilities.]

["Collection vehicle" means a vehicle (usually a specially designed truck) used in collection.]

. . .

["Haulage vehicle" means a vehicle used to transport solid waste between one solid waste facility and another, a transfer vehicle.]

. . .

"Solid waste cab" means any powered device to which a solid waste trailer can be attached for transporting solid waste, excluding hazardous waste, off-site by roadway. Solid waste cab includes, but is not limited to, the tractor portion of an articulated vehicle.

"Solid waste container" means any non-powered, portable detachable device that is used to contain and transport solid waste off-site or to a solid waste facility by road, rail, water, or air and that is not normally disposed of with its cargo. A container is normally used in conjunction with a solid waste cab and trailer or a solid waste single-unit vehicle and includes, but is not limited to, roll-off boxes, dumpsters, hoppers, lugger boxes, portable tanks, or any similar appurtenance, except that it shall not include metal, fiber, or plastic containers with a capacity of less than 100 gallons.

. . .

"Solid waste single-unit vehicle" means any self-propelled, non-articulated device, with either a detachable or non-detachable cargo compartment, which is used to move solid waste off-site or to a solid waste facility by road. A solid waste single-unit vehicle includes, but is not limited to, front and rear loading compactor vehicles, straight roll-off vehicles, straight vans, dump trucks, pick-up, straight flat beds, and straight tank and vacuum trucks.

"Solid waste trailer" means any non-powered device that normally has a permanently attached receptacle or area for carrying a solid waste payload. A solid waste trailer is usually employed in conjunction with a solid waste cab and includes, but is not limited to, flat bed trailers, box trailers, vans, open top trailers, compactor trailers, dump trailers, tank trailers, vacuum trailers, roll-off trailers, rail cars, and barges.

"Solid waste vehicle" means any self-propelled device used to move solid waste off-site or to a solid waste facility by road. A solid waste vehicle includes, but is not limited to, a solid waste single-unit vehicle, solid waste cab and trailer, single-unit vehicle and container, or a cab, trailer, and container combination.

. . .

"Transfer station" means a facility at which solid waste is transferred from [collection] **one solid waste** vehicle[s] to [haulage] **another solid waste** vehicle[s] for transportation to a solid waste facility.

"Transportation" or "transporting" means the act of collecting and/or moving solid waste off-site or to a solid or hazardous waste facility by road, rail, water, or air.

"Transporter" means a person engaged in the act of collecting and/or moving of solid waste off-site by road, rail, water, or air.

. . .

"Working face" means that portion of a [land disposal] **sanitary landfill** site where solid waste is discharged by a [collection and/or haulage] **solid waste** vehicle and is spread and compacted prior to placement of coverage material.

. . .

7:26-2.7 Duration of the permit; permit renewal requirements; continuation of an expiring permit and transfer of an existing permit

(a) (No change.)

(b) SWF permit renewal submission requirements and procedures shall be as follows:

1. (No change.)

2. The permittee, owner or operator shall submit **all fees required by N.J.A.C. 7:26-4 and** the following materials to the Department, if needed to update the facility's operations, as an application to renew the SWF permit for that facility:

i.-iv. (No change.)

v. **An updated environmental and health impact statement, including** [A] **a** complete and detailed description of changes in environmental impacts resulting from the operation of the facility and additional mitigation measures being proposed to address such impacts.

3. The Department shall publish notice in the DEP Bulletin and shall notify all parties as specified in N.J.A.C. 7:26-[2.4(a)6 and 7] **2.4(g)6 and 7** of the SWF permit renewal application.

4.-8. (No change.)

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

7:26-2.11 General operational requirements

(a) (No change.)

(b) The general operational requirements for all solid waste disposal facilities[,] are as follows:

1.-8. (No change.)

9. Only **solid waste** vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid Waste Management, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number shall be admitted for **loading or** unloading of any solid waste at the facility. **Solid waste** [V]vehicles exempt from registration shall not be admitted to the tipping area when registered, commercial type [collection or haulage] **solid waste** vehicles including, but not limited to, compactor trucks, trailers or any **solid waste** vehicle that tilts or uses other mechanical means to discharge its solid waste are being unloaded, or when other heavy equipment is being operated in the tipping area. The facility shall be sufficiently staffed to ensure that this requirement is not violated;

10. The operator [may] **shall** designate a secure area under the facility's control, located a safe distance from the tipping area, where solid waste may be unloaded from those **solid waste** vehicles which are exempt from the registration requirement of N.J.A.C. 7:26-3.3. Bulky items and recyclable materials may be provided for in this manner. The facility operator shall be responsible for the sanitary condition and orderly operation of the designated area. It shall be the operator's responsibility to remove the bulky items, recyclable materials or other waste from the designated area at a frequency so as not to exceed the storage capacity of the area. Scavenging is prohibited;

11.-18. (No change.)

7:26-2.12 Generator requirements for disposal of asbestos and asbestos-containing waste

(a) (No change.)

(b) The written notification required by (a) above shall include:

1.-2. (No change.)

3. Name, address, New Jersey Department of Environmental Protection registration number of the [collector-hauler] **transporter**;

4. Name and address of the **sanitary** landfill at which disposal will occur;

5. (No change.)

6. A copy of any written notification required by 40 CFR 61.[22] **145** to 61.[25]**155**.

(c) The written notification required by (a) above shall be submitted to:

New Jersey Department of Environmental Protection
Division of **Solid** Waste Management
[Bureau of Field Operations]**Enforcement Element**
[120 Route 156]**428 E. State Street, CN 414**
[Yardville]**Trenton**, New Jersey 0862[0]**5**

(d) (No change.)

7:26-2.13 Solid waste facilities; records

(a) Each solid waste facility permittee shall maintain a daily record of wastes received. The record shall include:

1.-2. (No change.)

3. The cubic yard, **tonnage** or gallon capacity of the [delivery] **solid waste** vehicle or **solid waste** container for each of three categories of wastes as follows:

i. Solids: Wastes ID 10 through 27 received (in cubic yards **or tons**);

ii.-iii. (No change.)

4. (No change.)

5. The license plate number and State initials of the [delivery] **solid waste** vehicle; and

6. (No change.)

7. In addition to the information required in (a)1 through [(a)]6 above, sanitary landfills which accept asbestos and asbestos-containing waste shall:

i. Maintain a separate daily record of the asbestos and asbestos-containing waste received, which shall include:

(1) (No change.)

(2) Identification of the [collection-hauler] **transporter** by name and by the New Jersey Department of Environmental Protection registration number assigned to the [collector-hauler] **transporter**;

(3) Quantity in cubic yards **and/or tons** of the waste;

(4)-(5) (No change.)

ii. [On]**By** the [15th]**20th** day of every month, submit a copy of the daily record required by (a)7i above, covering the asbestos disposal activity of the previous calendar month. The information shall be submitted to:

New Jersey Department of Environmental Protection
Division of **Solid** Waste Management
Bureau of Registration and Permits Administration
[32 East Hanover Street]**401 East State Street, CN 414**
Trenton, New Jersey 08625

(b) (No change.)

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator on a waste origin/waste disposal (O and D) form (or duplication of same).

1.-4. (No change.)

5. If an O and D form is not completed and signed by a registered transporter for each **solid waste** vehicle, or if the waste disposal would not be in compliance with the waste flow rules or the facility's registration, as required in (c)3 above, the facility operator shall deny the transporter the right to dispose of the solid waste at the facility.

(d)-(i) (No change.)

7:26-2A.8 Sanitary landfill operational and maintenance requirements

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

(l) Rules concerning the disposal of asbestos and asbestos-containing waste in sanitary landfills follow:

1. The owner or operator of a sanitary landfill may only accept and dispose of asbestos and asbestos-containing waste which has been managed in the following manner:

i. Asbestos and asbestos-containing waste, including waste originating from sources subject to 40 CFR [61.22(c), (d), (e) and (h)] **61.144, 61.145, 61.148, 61.149 and 61.150**, except, as provided otherwise below shall have been sufficiently mixed or coated with water or an aqueous solution and sealed into leak-tight containers (such as 6 mil. plastic bags) while wet. The container shall have been permanently sealed and labeled with a warning label that states:

CAUTION
Contains Asbestos
Avoid Opening or
Breaking Container
Breathing Asbestos is Hazardous
to Your Health

Alternatively, warning labels specified by Occupational Safety and Health Standards of the United States Department of Labor, Occupational Safety and Health Administration under 29 CFR 1910 may be used;

ii. Air pollution control device asbestos waste originating from sources subject to 40 CFR [61.22(c), (d), (e) and (h)]**61.144, 61.145, 61.148, 61.149 and 61.150** shall have been thoroughly mixed with water into a slurry and sealed into leak-tight containers (such as 6 mil. plastic bags) while wet. The containers shall have been permanently sealed and labeled in accordance with (l)1i[,] above;

iii. (No change.)

iv. All asbestos and asbestos-containing waste from asbestos mills subject to 40 CFR [61.22(a)] **61.151**, shall have been adequately mixed with a wetting agent recommended by the manufacturer of the wetting agent to effectively wet asbestos mill dust and asbestos mill tailings and sealed into leak tight containers (such as 6 mil. plastic bags) while wet. The containers shall be permanently sealed and labeled in accordance with (l)1i[,] above;

2.-5. (No change.)

7:26-2B.4 Additional engineering design submission requirements for thermal destruction facilities

(a) The following engineering design submittal requirements are in addition to the submittal requirements of N.J.A.C. 7:26-2.10.

1.-10. (No change.)

11. A descriptive statement and detailed specification of the proposed [onsite] **on-site** and [offsite] **off-site** transportation system

intended to service employee vehicles, **solid waste** vehicles [hauling] **transporting** waste to the facility for processing, and **other** vehicles removing reclaimed materials and/or process residues from the facility. The number, type, capacity, and frequency of these vehicles shall be specified. [Onsite] **On-site** parking, access and exit points, and the mechanisms or features which will be employed to provide for an even flow of traffic into, out of, and within the site, shall be identified;

12.-21. (No change.)

(b) Thermal destruction facility engineering design requirements are as follows:

1.-19. (No change.)

20. All facilities shall be designed in a manner that affords fluid vehicular movement [onsite] **on-site** and prevents traffic backups and related traffic hazards on access roads servicing the facility site. The [onsite] **on-site** roadway design configuration and layout shall provide sufficient roadway for unobstructed vehicular passage, with parking areas, maneuvering space in the loading and unloading areas, and traffic control measures ([i.e.] **that is,** lane delineations, signals, signs and barriers), in order to achieve this goal. All [onsite] **on-site** roadways used by [refuse] **solid waste** vehicles shall be constructed and surfaced in accordance with standards for heavy truck usage;

21. [Offsite truck]**Off-site solid waste vehicle** routes for the conveyance of solid waste to, and residues from, the facility shall be defined and delineated in a manner which will minimize impacts on surrounding residential development or similar sensitive receptors. The [truck] **solid waste vehicle** traffic to and from the proposed facility shall not result in a decrease in the existing level of service, as defined by the New Jersey Department of Transportation, of a major intersection;

22.-32. (No change.)

7:26-2B.8 Additional operational requirements for thermal destruction facilities

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

(e) A Department[al] inspector may, at the option of the Department, be stationed at facilities operating at a capacity of [500] **250** tons per day or greater, on a daily basis and during all facility operating hours. The owner or operator of such a facility shall allow entry to the inspector at any time during operating hours. The owner **or operator** shall make available office space for [d]Department[al] personnel to prepare inspection reports.

(f)-(v) (No change.)

SUBCHAPTER 3. [COLLECTION AND HAULAGE] TRANSPORTATION

7:26-3.1 Improper [collection or haulage]**transportation** prohibited

(a) The [collection and haulage] **transportation** of organic and/or combustible matter or other forms of solid waste on the roadways and highways in this State shall be made only through the use of:

1. [Collection and/or haulage]**Transportation** systems established, operated and maintained in accordance with the [regulations] **rules** set forth in this subchapter;

2. Other methods of [collection and haulage] **transportation** as may be approved by the [State] Department [of Environmental Protection].

7:26-3.2 Registration

(a) No person shall engage or continue to engage in the [collection or haulage] **transportation** of solid waste in this State without first [filing a completed] **obtaining an approved** registration statement [with] **from** the [d]Department. The registration statement shall be signed by the person engaged in or desiring to engage in the [collection of haulage] **transportation** of solid waste, shall be executed on forms prescribed by and furnished by the [d]Department and shall state such information necessary and proper to enforcement of this subchapter, as the [d]Department may require.

(b) (No change.)

[(c) No person shall engage in the collection or haulage of solid waste in this State without first obtaining an approved registration from the department.]

[(d)](c) No person shall engage in the [collection or haulage] **transportation** of solid waste in this State if such an operation does not meet the [collector/hauler] **transporter** requirements listed in this subchapter. In addition, the [registrant and its operators] **transporter** shall comply with any other conditions or limitations which may be specified on the approved registration.

[(e)](**d**) Prior to May 1 of each calendar year [(for the registration year of initial registration, a pro rata adjustment of fees will be made by the Department)], each registrant, other than a hazardous waste [hauler] **transporter,** shall submit to the Department a statement updating the information contained in the original registration statement. This update shall be on forms furnished by the Department. In no case shall the submission of an updated registration statement alter the conditions under which the approved registration was granted. Hazardous waste [haulers] **transporters** shall submit updated registration statements on or before October 1 **of each calendar year**, as more fully set forth at N.J.A.C. 7:26-7.5(c)5.

[(f)](**e**) (No change in text.)

[(g)](**f**) The failure to submit an updated registration statement and to submit all applicable fees (see [Subchapter 4 of this Chapter] **N.J.A.C. 7:26-4**) on or before June 1 in each calendar year, shall be sufficient cause to revoke the approved registration of a solid waste [collector-hauler] **transporter** or to declare it expired.

[(h)](**g**) (No change in text.)

(h) All vehicles registered with the Department for the transportation of solid waste must be owned or leased by the applicant, and, if leased, a copy of the lease shall be supplied when filing the registration statement.

7:26-3.3 Exceptions and conditions

(a) The provisions of this subchapter shall not be applicable to the following:

1. Persons [hauling] **transporting** only their own household [refuse] **solid waste** in vehicles bearing passenger license plates;

2. Persons [hauling refuse] **transporting only their own solid waste** in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of [5,000] **8,000** pounds.

(b) No provision of these rules shall be interpreted as permitting the [haulage] **transportation** of domestic sewage in any manner other than that prescribed by law.

(c) Vehicles not registered with the [Bureau of Solid Waste Management] **Department as solid waste vehicles** are not permitted to discharge solid waste at or near areas where commercial type [collection or haulage] **solid waste** vehicles are unloading or where heavy equipment is operating.

7:26-3.4 [Collector-hauler] **Transporter** requirements (General)

(a) Length of service routes shall be kept consistent with the proper operation of [trucks] **solid waste vehicles** and/or equipment in order that the area or route services can be completed during a normal operating day.

(b) (No change.)

(c) Unless an emergency, such as[,] inclement weather, equipment breakdown or accident warrant, no solid waste shall be allowed to remain or be stored in any [collection or haulage] **solid waste** vehicles in excess of 24 hours.

(d) No **solid waste** vehicle shall be used for [collection and/or haulage] **transportation** if the design of the **solid waste** vehicle is such that any solid waste material will spill onto the roadways and highways of this State.

(e) No **solid waste** vehicle used for [collection and/or haulage] **transportation** shall be used beyond its design capabilities or in such a manner that littering and spillage of solid waste onto the roadways and highways of this State will occur.

(f) All **solid waste** vehicles used for the [collection and/or haulage] **transportation** of solid waste shall be maintained in good working condition to protect the health and safety of the [workmen] **workers** and citizens of this State and to provide prompt and efficient service. The registered operator of any [collection and/or haulage] **transportation** system shall provide a means of continuous service in the event an emergency arises.

(g) All [workmen] **workers** or collection crews operating solid waste [collection] **transportation** systems shall take reasonable care to protect the property of customers being served. Any damage or spillage of solid waste as a result of the [collector's] **transporter's** actions shall be his **or her** responsibility.

(h) [All] **Each registered unit of a solid waste** vehicle[s], except those exempted from fee payment under N.J.A.C. 7:26-[4.8(e)]**3.3**, used in the [collection or haulage] **transportation** of solid waste shall properly, **permanently,** and conspicuously display the [New Jersey Solid Waste Administration (N.J.S.W.A.)] **New Jersey Department of Environmental Protection (N.J.D.E.P.)** registration number in letters and numbers at least three inches in height, and shall carry the current [Solid Waste Administration] **N.J.D.E.P.** registration certificate in the **solid waste** vehicle. In addition, in letters and numbers at least three inches in height, the capacity of the [vehicle] **solid waste container** in cubic yards, **in tons** or in gallons, with the appropriate unit designated, shall be [marked] **permanently affixed** on both sides of the **solid waste** vehicle so as to be visible to the operator of the solid waste facility. [Markings are to be displayed no later than November 1, 1976.]

(i) (No change.)

(j) All **solid waste** vehicles used for [collection or haulage] **transportation** of solid waste shall, except for operations of their collection service routes, access and exit solid waste facilities in accordance with designated [truck] **solid waste** vehicle routes as specified in either the appropriate district solid waste management plan or the permit for the particular solid waste facility.

7:26-3.5 [Collection-hauler] **Transporter** requirements (Specific)

(a) Rules concerning sewage sludge and other fecal material include:

1. All **solid waste** vehicles used for the [collection and/or haulage] **transportation** of such wastes shall be of such a design as to preclude any spillage or leakage onto the roadways and highways of the State.

2. Sewage sludge and other fecal material shall not be intermixed with other wastes of a chemical or industrial nature for [haulage] **transportation** to a disposal operation.

(b) All **solid wastes** vehicles used for [collection and/or haulage] **transportation** of bulky wastes shall be of such a design so as to preclude any spillage onto the roadways and highways of the State.

(c) (No change.)

[(d) Rules concerning hazardous wastes, excluding all radioactive wastes, include:

1. Such wastes shall not be mixed with other categories of wastes in shipment.

2. All collectors and haulers of such waste are responsible for operating within existing laws governing the transportation of such materials including N.J.A.C. 7:26-7, 8, 9, 10, 11 and 12.

3. All vehicles used for the collection and haulage of such wastes shall be of a design to preclude any spillage or leakage onto the roadways and highways of the State.

4. Collectors and haulers of such wastes shall not transport drummed hazardous wastes whereby said drums or containers are damaged, rusted, leaking or without proper tight fitting covers or lids.

5. All drums and containers of hazardous waste in transport to a disposal facility shall be properly labeled in accordance with N.J.A.C. 7:26-7, 8, 9, 10, 11 and 12.]

[(e)] **(d)** Rules concerning [collection/haulage] **transportation** of asbestos and asbestos-containing waste follow:

1. All **solid waste** vehicles used for the [collection and/or haulage] **transportation** of asbestos and asbestos-containing waste shall be of such a design so as to prevent any spillage or leakage or emissions therefrom.

2. No [collector/hauler] **transporter** shall transport asbestos and/or asbestos-containing waste unless such waste is properly packaged in accordance with 40 CFR 61.[22]**152** and N.J.A.C. 7:26-2A.8(1). In no case shall loose asbestos or asbestos-containing waste be transported.

3.-6. (No change.)

7:26-3.7 Smoking, smoldering or burning solid waste in [collection or haulage] **solid waste** vehicles.

(a) No [collector or hauler] **transporter** shall provide service where waste materials to be [picked up] **collected** and [hauled] **transported** show evidence of smoking, smoldering or burning.

(b) All wastes in transit that must be dumped in an emergency due to smoking, smoldering or burning shall be the responsibility of the [collector-hauler] **transporter**. The operator of the **solid waste** vehicle shall immediately notify the police and fire departments having jurisdiction. The [collector or hauler] **transporter** shall be responsible for cleanup of all materials dumped in an emergency.

SUBCHAPTER 4. FEES FOR SOLID WASTE, EXCLUDING HAZARDOUS WASTE FEES

7:26-4.1 General provisions

(a) The fee schedule set forth in this subchapter shall apply to all sanitary landfill operations, incinerators, transfer stations, processing facilities, resource recovery facilities, or any other methods of transportation or disposal, excluding hazardous waste, requiring registration with the Department.

(b) Persons transporting only their own household refuse in vehicles bearing passenger license plates or persons transporting their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds, need not pay any solid waste fee to the Department.

7:26-4.2 Payment of fees

(a) Fees for activities related to solid waste transporters and facilities shall be paid by certified check or money order and made payable to "Treasurer, State of New Jersey" at the following address:

New Jersey Department of Environmental Protection
Licenses and Collections—Solid Waste
401 E. State Street CN 414
Trenton, N.J. 08625

(b) Engineering design fees and transporter registrations may be paid in person at the Bureau of Registration and Permits Administration, at the address set forth in (a) above.

7:26-4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste facilities is as follows:

1. A facility monitoring fee from all facilities that are required to submit to the Department monthly summaries of waste received shall be paid when submitting the annual registration update. The fee is $500.00 per year.

2. A facility initial registration fee shall be paid before a solid waste facility permit is issued. The fee is $500.00.

3. A facility annual registration update fee shall be paid when submitting the update. The fee is $175.00.

4. A fee for review of a solid waste facility application for administrative completeness shall be paid when submitting the application which is due prior to May 1 of each calendar year. The fee is $500.00.

5. A fee for determination of facility application compliance with a district solid waste management plan shall be paid when submitting the application. The fee is $270.00.

6. A fee for technical review of engineering design shall be paid when submitting the design or updated design if applying for a renewal permit, and when additional information is required as a result of the Department issuing a notice of deficiency. The fee is $500.00 for each submittal.

7. A fee for technical review of the environmental and health impact statement shall be paid when submitting the statement or updated statement if applying for renewal permit, and when additional information is required as a result of the Department issuing a notice of deficiency. The fee is $500.00 for each submittal.

8. A fee for technical review of facility closure and post-closure plan shall be paid when submitting the plan. The fee is $500.00.

9. A fee for technical review of a sanitary landfill topographic survey shall be paid when submitting the survey. The fee is $500.00.

10. A fee for preparation and issuance of a solid waste facility permit or renewal shall be paid before the permit is issued. The fee is $500.00.

11. A fee for engineering review of solid waste collection or disposal facilities or operations submitted pursuant to N.J.A.C. 7:26-1.7(e) shall be paid when submitting the application. The fee is $500.00.

(b) Fees for compliance monitoring of solid waste facilities shall be pre-billed on a quarterly basis and shall be paid within 30 days of the date on the bill issued by the Department. Fees shall be in accordance with the following table:

Type of Facility	Compliance Monitoring Fees
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	**$405.00 per site-visit**
Sanitary Landfill—operating at less than 31,200 tpy	**$270.00 per site-visit**
Sanitary Landfills under construction or expansion	**$405.00 per site-visit**
Incinerators—operating at 9.6 tons per day or more	**$340.00 per site-visit**
Incinerators—operating at less than 9.6 tons per day	**$205.00 per site-visit**
Transfer Stations—operating at 31,200 tpy or more	**$270.00 per site-visit**
Transfer Stations—operating at less than 31,200 tpy	**$205.00 per site-visit**
Resource Recovery—operating at 9.6 tons per day or more	**$500.00 per day that an inspector is on the premises**
Resource Recovery—operating at less than 9.6 tons per day	**$270.00 per site-visit**
Resource Recovery under construction or expansion	**$270.00 per day that an inspector is on the premises**

7:26-4.4 Fee schedule for transporters

(a) For solid waste transporters, excluding those solely transporting hazardous waste, an annual registration and inspection fee shall be paid. Any device used for the transportation of solid waste shall be registered with the Department as either a solid waste cab, solid waste trailer, solid waste container, or solid waste single-unit vehicle.

(b) The registration year shall extend from May 1 through April 30. Fees shall be payable prior to May 1 of each calendar year. No pro rata adjustment of fees shall be made by the Department.

(c) All transporters shall pay a fee of $120.00 for each solid waste cab or for each solid waste single unit-vehicle.

(d) All transporters shall pay a fee of $120.00 for each solid waste trailer.

(e) All transporters shall pay a fee of $25.00 for each solid waste container.

(f) The registration of a single-unit solid waste vehicle, solid waste trailer, solid waste cab, and solid waste container is non-transferable.

(g) A transporter registering a vehicle for both solid waste and hazardous waste transportation shall not pay more than $500.00 in combined registration fees.

[7:26-4.5 (Reserved)]

[7:26-4.6 (Reserved)]

[7:26-4.10]**7:26-4.5** (No change in text.)

7:26-16.2 Definitions

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

. . .

"License" means the initial approval and first renewal of any registration statement or engineering design pursuant to N.J.S.A. 13:1E-1 et seq. and/or N.J.S.A. 13:1E-49 et seq. for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste in this state, except that "license" shall not include any registration statement or engineering design approved for any of the persons listed in N.J.A.C. 7:26-16.3(d). "License" includes any authorization equivalent to an approved registration, including any temporary operating authorization, hazardous waste [hauler] **transporter** license, or hazardous waste facility permit.

. . .

7:26-16.3 Filing of disclosure statement

(a) (No change.)

(b) Disclosure statements shall be filed by submitting an original and one conformed copy of all papers, including Personal History Disclosure Forms, to the Department at the following address:

Department of Environmental Protection
Division of **Solid** Waste Management
Bureau of [Field Operations (D.I.U.)]
Registration and Permits Administration
CN [407] **414**
Trenton, New Jersey 08625

1.-3. (No change.)

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

7:26-16.13 Fees charged by the Attorney General and the Department

Note: The fee for the Attorney General is adopted pursuant to Section 3.d of P.L. 1983, c.392, N.J.S.A. 13:1E-128d. The fee for the Department is adopted pursuant to N.J.S.A. 13:1E-18.

(a) Every applicant or licensee who files a disclosure statement shall submit a fee to the Attorney General to cover the cost of enforcing P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) and a fee to the Department to cover the cost of reviewing disclosure statements and securing confidential documents. Except as provided in (e) below, [each fee shall be $100.00] **the fee for the Attorney General shall be $100.00 per each individual and the fee for the Department shall be $500.00** per each individual required to be listed in the disclosure statement (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9 or shown to have a beneficial interest in the business of the applicant or licensee other than an equity interest or debt liability interest.

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

(d) If an applicant or licensee files a change of information pursuant to N.J.A.C. 7:26-16.6, and discloses thereon an individual not listed in the disclosure statement information (including any amendments) currently on file with the Department, the applicant or licensee shall pay additional separate fees of $100.00 **to the Attorney General and $500.00 to the Department** per each individual so disclosed (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9.).

(e) In the case of an applicant or licensee that is small, family owned and operated business, the Department will reduce its fee as follows:

1. Where ther are three or fewer names listed on the disclosure statement as owners, officers, directors, partners and/or key employees, and two or all three of these individuals are related as spouses or as parent and child, then the Department fee shall be [$100.00] **$500.00** per principal residence of the individuals listed.

2. (No change.)

(f) (No change.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Salvage Certificates of Titles

Proposed New Rules: N.J.A.C. 13:21-22

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:10-37, 30:3-5, 39:3-43 and 39:5-47.

Proposal Number: PRN 1988-536.

Submit comments by December 7, 1988 to:
Glenn R. Paulsen, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 Montgomery South St.
7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The proposed new rules implement the Salvage Certificate of Title Act, N.J.S.A. 39:10-31 et seq. (P.L. 1983, c. 323). The proposed rules require all owners of motor vehicles which have either been reported as being stolen or have sustained damage to such an extent as to have been rendered economically impractical to repair to obtain a salvage certificate of title for their motor vehicles. Such salvage certificate of title must be obtained within 10 working days after a motor vehicle has been reported stolen or has been determined to be economically impractical to repair. Upon subsequent transfer of a salvage motor vehicle, the taker will receive a new salvage certificate of title until the owner obtains a certificate of ownership in accordance with these proposed rules. Except for a temporary registration issued to the owner of a salvage motor vehicle in accordance with these rules salvage motor vehicles will not be registered in this State until the owner obtains a certificate of ownership.

The proposed new rules set forth the procedures for an owner to obtain a certificate of ownership and the grounds for failing inpsection. The proposed new rules also provide remedies for those impacted by violations of the Salvage Certificate of Title Act and/or these rules.

Social Impact

These proposed new rules will protect the public from fraud by establishing standards and procedures to prevent certificates of ownership for salvage motor vehicles from being used to register stolen motor vehicles and by providing for the seizure of salvage motor vehicles which are stolen or reconstructed, rebuilt or repaired using parts from stolen motor vehicles. These proposed new rules will also notify the public, by the salvage designation on the certificate of ownership, which salvage motor vehicles have been subsequently reconstructed, rebuilt or repaired.

These proposed new rules also place reasonable responsibilities on the auto salvage industry and auto rebuilders, with regard to salvage certificates of title and inspections relative thereto.

Economic Impact

Owners of certain salvage motor vehicles will be required to pay an inspection fee to the Division before they will be issued a certificate of ownership. The various inspection fees established by these rules, as well as no inspection fee being charged by the Division in certain instances set forth in these rules, are based upon the scope of the inspection. The costs to those owners paying an inspection fee to the Division are expected to be outweighed by the benefits provided to the public through the reduction or elimination of fraudulent practices in registering stolen motor vehicles with titles from salvage motor vehicles and by providing for the seizure of salvage motor vehicles which are stolen or reconstructed, rebuilt or repaired using parts from stolen motor vehicles.

The Division of motor vehicles will incur substantial costs in connection with the administration of the Salvage Certificate of Title Act and/or these rules. It is expected that the inspection fees collected by the Division pursuant to these rules will provide sufficient revenues for the proper administration of these functions.

Regulatory Flexibility Statement

The Division estimates that some persons subject to these rules will be small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., such as auto rebuilders and members of the salvage industry. However, no special recordkeeping system or professional service is required by a small business in order to implement the requirements imposed by these rules. This subchapter governs the issuance of salvage certificates of title, the inspection of salvage motor vehicles and the issue of certificates of ownership after the motor vehicle has successfully passed a salvage inspection.

Full text of the proposed new rules follows.

SUBCHAPTER 22. SALVAGE CERTIFICATE OF TITLE

13:21-22.1 Purposes

(a) The Salvage Certificate of Title Act, N.J.S.A. 39:10-31 et seq., provides for the issuance of salvage certificates of title and regulates the transfer of ownership of salvage motor vehicles. The purposes of this subchapter are to:

1. Establish standards and procedures necessary to protect the public from fraud by preventing negotiable certificates of ownership for salvage motor vehicles from being used to title or register stolen or other motor vehicles;

2. Establish standards and procedures necessary to protect the public from fraud by providing for the seizure of salvage motor vehicles which are determined, after inspection pursuant to this subchapter, to be stolen or reconstructed, rebuilt or repaired using parts from stolen motor vehicles.

3. Establish standards and procedures necessary to notify the public that a salvage motor vehicle has been subsequently reconstructed, rebuilt or repaired;

4. Establish standards and procedures for the issuance of salvage certificates of title;

5. Establish a system which regulates the transfer of ownership of salvage motor vehicles only as salvage motor vehicles until a negotiable certificate of ownership is obtained;

6. Establish standards and procedures for the inspection of salvage motor vehicles;

7. Establish standards and procedures for the issuance of negotiable certificates of ownership after the salvage motor vehicle has been inspected in accordance with the requirements of this subchapter; and

8. Establish standards for the issuance of salvage and/or negotiable certificate of title which do not cause unreasonable burden to persons or entities licensed by the Director as auto body repair facilities, auto salvage yards, junk yards and/or motor vehicle dealers.

13:21-22.2 Prohibition on transfer

(a) This subchapter shall apply to every motor vehicle which is reported stolen or is damaged to such an extent that it is economically impractical to repair.

(b) No person shall, on or after the effective date of this subchapter, transfer the ownership of a salvage motor vehicle except as a salvage motor vehicle until the owner obtains a certificate of ownership in accordance with this subchapter.

13:21-22.3 Definitions

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

"Bona fide repair estimate" means any written determination of the approximate cost of parts and labor required to repair the damaged motor vehicle that is prepared by an auto body repair facility licensed pursuant to N.J.S.A. 39:13-1 et seq. or by an adjuster of an insurance company licensed to do business in New Jersey. Licensed auto body repair facilities shall prepare the estimate in accordance with N.J.A.C. 13:21-21.10. In the event that more than one such repair estimate is prepared for the damaged motor vehicle, then the highest repair estimate shall be used to determine if the damaged motor vehicle is economically impractical to repair. This term does not include any repair estimate prepared by the motor vehicle owner.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Economically impractical to repair" means that the motor vehicle is damaged to such an extent that:

1. For those motor vehicles manufactured eight or less model years from the current model year, the cost to repair such damaged motor vehicle, as determined by a bona fide repair estimate, equals or exceeds the fair market value of the motor vehicle immediately before it was damaged; or

2. For those other motor vehicles where the fair market value of such damaged motor vehicle immediately before it was damaged equals or exceeds the fair market value of a motor vehicle of the same make and model manufactured five years from the current model year, or similar make and model if the same make and model is no

longer manufactured, if the motor vehicle has sustained damage to the extent that either:

i. The cost to repair such damaged motor vehicle, as determined by a bona fide repair estimate, equals or exceeds the fair market value of the motor vehicle immediately before it was damaged; or

ii. The insurer settles a total loss claim with the motor vehicle owner as a result of the damage to the motor vehicle.

"Fair market value" means the retail value of the motor vehicle as determined by the average of the official valuation manuals approved by the Commissioner of the Department of Insurance in accordance with auto physical damage claims, N.J.A.C. 11:3-10. In the event that the retail value of the motor vehicle is not listed in the official valuation manuals, then the retail value of the motor vehicle may be determined by any other valuation method approved by the Commissioner of the Department of Insurance, in accordance with auto physical damage claims.

"Owner" means the owner of record with the Division on the date that the motor vehicle was stolen or sustained sufficient damage to render it economically impractical to repair.

"Person" means any natural person, business, firm, partnership, association, corporation, or any other entity.

"Salvage certificate of title" means the document issued by the Director pursuant to N.J.S.A. 39:10-31 et seq., or a similar document issued by another state, which serves as proof of ownership of a salvage motor vehicle.

"Salvage motor vehicle" means any motor vehicle which has been reported stolen or is damaged to such an extent that it is economically impractical to repair.

"State inspection" means an inspection conducted by persons approved and designated by the Director to inspect salvage motor vehicles.

13:21-22.4 Issuance of salvage certificates of title; fee

(a) Whenever a motor vehicle is reported as being stolen or is damaged to such an extent that it is economically impractical to repair such motor vehicle, the owner, insurer or person in possession of the certificate of ownership shall, within 10 working days after the motor vehicle was reported as stolen or damaged, or within 10 working days after settling a total loss insurance claim, surrender the certificate of ownership for such motor vehicle to the Division.

(b) Upon surrender of the certificate of ownership, as required by (a) above, the Director shall issue a salvage certificate of title to the owner of the salvage motor vehicle, after determining that the person applying for a salvage certificate of title is the owner of record.

(c) A lienholder of record shall be noted on the salvage certificate of title until the lien is properly satisfied and discharged in accordance with N.J.S.A. 39:10-10.

(d) A fee, set forth in N.J.S.A. 39:10-11, shall be charged for the issuance of a salvage certificate of title.

13:21-22.5 Subsequent transfer of salvage motor vehicles

(a) Until such time as the owner obtains a certificate of ownership in accordance with this subchapter, no person shall transfer ownership of a salvage motor vehicle except by proper assignment and delivery of a salvage certificate of title.

(b) No salvage motor vehicle shall be sold at auction, or otherwise disposed of, in this State except by proper assignment and delivery of a salvage certificate of title.

(c) The buyer of a salvage motor vehicle shall, within 10 working days after its purchase, apply for a new salvage certificate of title. The Director shall issue a new salvage certificate of title to the buyer upon surrender of the previous salvage certificate of title properly executed and assigned by the seller, together with the required title fee and New Jersey sales tax.

(d) Whenever ownership of a salvage motor vehicle is transferred by a motor vehicle dealer in accordance with N.J.S.A. 39:10-19, the dealer may assign and attach a dealer reassignment certificate to the salvage certificate of title.

13:21-22.6 Salvage motor vehicles precluded from obtaining a registration

(a) A salvage motor vehicle shall not be registered for the purpose of being driven or operated on the public highways of this State, except in accordance with N.J.A.C. 13:21-22.11.

(b) The Director shall deny registration, except a temporary registration issued in accordance with N.J.A.C. 13:21-22.11, to the owner of a salvage motor vehicle until the owner obtains a certificate of ownership in accordance with this subchapter.

13:21-22.7 Inspection of salvage motor vehicles which are subsequently reconstructed, rebuilt or repaired

(a) A salvage motor vehicle that has sustained damage to such an extent that it has been rendered economically impractical to repair, including a stolen motor vehicle that is recovered in such condition, and that is subsequently reconstructed, rebuilt or repaired must be inspected in accordance with N.J.A.C. 13:21-22.10(a) to determine the accuracy of its vehicle identification number and/or any identification numbers of any major component parts used to reconstruct, rebuild or repair the motor vehicle before a certificate of ownership will be issued for the motor vehicle.

(b) The following documents must be presented to the Division before the salvage motor vehicle will be inspected:

1. Salvage certificate of title;

2. Notice of appointment obtained in accordance with N.J.A.C. 13:21-22.10;

3. Bill of sale as proof of ownership for each major component part used in the reconstruction, rebuilding or repair of the motor vehicle, including the following parts:

i. Engine;
ii. Transmission or transaxle;
iii. Front bumper;
iv. Rear bumper;
v. Each fender;
vi. Hood or engine cover;
vii. Each door;
viii. Each quarter panel;
ix. Decklid, tailgate or hatchback (whichever is present);
x. Roof (including T-tops/removable roof if present);
xi. Cowl;
xii. Frame;
xiii. Shock tower or apron; and
xiv. Assembled items:
(1) Nose (fenders, hood, bumper, radiator support);
(2) Front clip (cowl, frame section, shock and apron structure);
(3) Rear clip (rear sheet metal, frame section, roof);
(4) Short clip (rear clip without roof); and

4. A set of "before" and "after" color photographs of the motor vehicle. Each set of "before" and "after" color photographs shall consist of:

i. One photograph showing the entire front and entire left side of the motor vehicle; and

ii. One photograph showing the entire rear and entire right side of the motor vehicle.

(c) The bill of sale for each major component part shall include the following information:

1. Name and address of the buyer;
2. Name and address of the seller;
3. Date and the purchase price; and
4. For parts, as follows:

i. For a new part: description of the part and part number; or

ii. For a used part: description of the part, the vehicle identification number (if available), make, model, and year of the motor vehicle from which the part was removed, the date the part was dismantled or removed (if available), and the name and address of the person or business which dismantled or removed the part. If the vehicle identification number is not indicated on the bill of sale, then the owner must obtain a letter from the seller or person who dismantled or removed the part stating why the vehicle identification number was not indicated on the bill of sale.

(d) If the motor vehicle had been reported stolen, then the owner must also present a copy of the report from the law enforcement agency which recovered the stolen motor vehicle.

(e) It is the responsibility of the owner to arrange satisfactory transportation of his or her salvage motor vehicle to have it inspected

(for example, flatbed truck, towing by means of an approved towing device, temporary registration).

13:21-22.8 Inspection of stolen motor vehicles recovered with damaged or missing vehicle identification numbers

(a) A stolen motor vehicle that is subsequently recovered with a missing, altered or damaged vehicle identification number or plate must, whether or not the vehicle has been damaged, be inspected in accordance with N.J.A.C. 13:21-22.10(b) to determine the accuracy of its vehicle identification number before a certificate of ownership will be issued for the motor vehicle.

(b) The following documents must be presented to the Division before the motor vehicle will be inspected:

1. Salvage certificate of title;

2. Copy of the report from the law enforcement agency which recovered the stolen motor vehicle; and

3. Notice of appointment obtained in accordance with N.J.A.C. 13:21-22.10.

13:21-22.9 Inspection of stolen motor vehicles recovered without damaged or missing vehicle identification numbers and without damage sufficient to be rendered economically impractical to repair

The inspection performed upon a recovered stolen motor vehicle by the recovering law enforcement agency to ascertain ownership of the vehicle shall be deemed sufficient inspection for purposes of the issuance of a certificate of ownerhsip to the owner of such vehicle pursuant to N.J.A.C. 13:21-22.14, provided that the recovered stolen vehicle does not have a missing, altered or damaged vehicle identification number or plate and has not sustained damage to such an extent that it has been rendered economically impractical to repair.

13:21-22.10 Inspection; appointment; inspection fee; rescheduling

(a) As a prerequisite to the inssuance of a certificate of ownership, a salvage motor vehicle which has been damaged to such an extent that it has been rendered economically impractical to repair, including a stolen motor vehicle that is recovered in such condition, and that is subsequently reconstructed, rebuilt or repaired must undergo an inspection at a State inspection facility.

(b) As a prerequisite to the issuance of a certificate of ownership, a salvage motor vehicle which is a recovered stolen vehicle with a missing, altered or damaged vehicle identification number or plate must undergo an inspection at a State inspection facility.

(c) As a prerequisite to the issuance of a certificate of ownership, the owner of a salvage motor vehicle which is a recovered stolen vehicle that does not have a missing, altered or damaged vehicle identification number or plate and which has not been damaged to such an extent that it has been rendered economically impractical to repair shall supply the Division with a copy of the report from the law enforcement agency which recoverd the stolen motor vehicle to confirm that the vehicle has been inspected to ascertain ownership, together with the other documents required by N.J.A.C. 13:21-22.14.

(d) Upon receipt of the completed application, together with the required inspection fee, if any, the Division shall mail a notice of appointment to the owner indicating the date, time and place of the inspection.

(e) The following fees, payable to the Division, shall be charged to inspect the following salvage motor vehicles:

1. For a stolen motor vehicle (including a stolen motorcycle) that is subsequently recovered with a missing, altered or damaged vehicle identification number or plate, there is no fee.

2. For a motor vehicle (other than a motorcycle that was previously determined to be economically impractical to repair, including a stolen motor vehicle that is recovered in such condition, and that is subsequently reconstructed, rebuilt or repaired, the fee is $200.00.

3. For a motorcycle that was previously determined to be economically impractical to repair, including a stolen motorcycle that is recovered in such condition, and that is subsequently reconstructed, rebuilt or repaired, the fee is $100.00.

(f) An inspection appointment shall be rescheduled at no additional cost provided that the owner notifies the Division at least five days prior to his or her scheduled inspection date that he or she is unable to have his or her salvage motor vehicle inspected on such date. In the event that the owner fails to provide the Division with at least five days notice of his or her inability to have his or her salvage motor vehicle inspected on the scheduled inspection date, then the owner must submit an additional inspection fee equal to the amount of the original inspection fee to the Division before a new inspection appointment will be issued to the owner to have his or her salvage motor vehicle inspected.

13:21-22.11 Temporary registration for salvage motor vehicles

(a) Owners of salvage motor vehicles may apply for a temporary registration in accordance with this section.

(b) After receiving a notice of appointment in accordance with N.J.A.C. 13:21-22.10, the owner may apply for a temporary registration.

(c) A temporary registration for a salvage motor vehicle may be obtained from any motor vehicle agency no sooner than five days before the scheduled appointment date.

(d) The following documents must be presented at a motor vehicle agency before a temporary registration will be issued to the owner:

1. Notice of appointment in accordance with N.J.A.C. 13:21-22.10;

2. Salvage certificate of title; and

3. Proof of current liability insurance coverage.

(e) If the motor vehicle was reported stolen and was subsequently recovered, then the owner must also present a copy of the report from the law enforcement agency which recovered the stolen motor vehicle.

(f) No temporary registration shall be issued unless the owner presents proof of current liability insurance coverage as required by N.J.S.A. 39:6B-1 and/or N.J.S.A. 39:6A-3. An insurance identification card or a photocopy of the declaration page of the insurance policy for that vehicle shall constitute proof of current liability insurance coverage.

(g) A temporary registration issued to owners of salvage motor vehicles shall only be valid for a period of five days.

(h) A fee of $2.00 shall be charged for the issuance of a temporary registration issued to owners in accordance with this section.

13:21-22.12 Grounds for failing State inspection

(a) No vehicle identification number verification form or inspection report shall be issued if it is determined upon inspection that:

1. The salvage motor vehicle is a stolen motor vehicle;

2. The salvage motor vehicle contains a stolen major component part; or

3. The salvage motor vehicle, or a major component part thereof, displays the identification number or plate of a stolen motor vehicle.

(b) The vehicle identification number verification forms and inspection reports referred to in (a) above are not public records and are not accessible for public examination pursuant to the "Right to Know Law", N.J.S.A. 47:1A-1 et seq.

13:21-22.13 Seizure of a salvage motor vehicle

(a) Members of the State and/or local law enforcement agencies shall seize and confiscate a salvage motor vehicle in the following circumstances:

1. Where the motor vehicle, or a major component part thereof, is determined to be stolen; and/or

2. Where the motor vehicle, or a major component part thereof, displays the identification number or plate of a stolen motor vehicle.

(b) The Director may also designate employees of the Division to seize and confiscate salvage motor vehicles as set forth in (a) above.

(c) The State or local law enforcement agency seizing a salvage motor vehicle shall retain custody of the vehicle, pending prosecution of any person arrested in connection with the seizure. The police shall retain custody of the vehicle until the ownership has been ascertained.

(d) Whenever a salvage vehicle is seized pursuant to this section, the law enforcement agency seizing the vehicle or part shall notify the owner of record for the vehicle, any person holding a security interest of record for the vehicle, any other person claiming an interest in the vehicle, and the person from whom the vehicle or part was seized. This notice shall be in writing and shall be served in person or by certified or registered mail, return receipt requested, to the last known address of the person to whom the notice is given within five days after the seizure. If the notice is unclaimed by the

addressee or if the address of the person to whom the notice is to be given is unknown to the agency giving notice and cannot be ascertained from the records on file with the Division, then notice shall be given by publication twice in a newspaper circulating in the county where the vehicle or part was seized, once in each of two consecutive weeks, and by posting in five public places in this State designated by the Director. The notice shall describe the vehicle or part, state that it has been recovered, where it is located, and that it will be turned over to the named owner of record, unless an objection in writing is received by the Division within 10 days of the receipt or (where applicable) publication of the notice. The notice shall also advise that if no objection is timely filed and the vehicle or part remains unclaimed for a period of 90 days, the agency which seized the vehicle or part may sell the vehicle or part forthwith at auction in a public place as an abandoned vehicle. No vehicle or part shall be surrendered to an owner or other party or sold until the appropriate identification number has been affixed by the Division as necessary, nor where the vehicle is required as evidence in connection with a prosecution.

(e) Any objection filed pursuant to (d) above shall identify the person claiming an interest in the salvage vehicle or part, shall set forth in detail the facts upon which the claim is based, and shall provide copies of all documents supporting the claim, including invoices, bills of sale, and title papers.

(f) Upon sale of a salvage vehicle or part pursuant to this section all claims for interest shall be forever barred and the proceeds realized therefrom, after the payment of the expenses of possession and sale, shall become the sole property of the public entity seizing the vehicle and shall be remitted to the treasury of that public entity.

(g) Unless the Director determines to hear a case personally when an objection has been filed with the Division pursuant to this section, hearings on objections shall be conducted, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, by the Office of Administrative Law. At the hearings, the burden shall be on the agency that seized the salvage vehicle or part to prove that the vehicle or part was stolen. Thereafter, the burden shall be on the person objecting to prove that the vehicle or part was not stolen and to prove that he has a rightful interest in the vehicle or part.

(h) Where inspection discloses that only a major component part is stolen, the owner of the salvage vehicle shall be provided the following options:

1. Seizure of the entire vehicle;

2. Seizure of only the major component part(s) that are determined to be stolen, provided the owner of the salvage vehicle has made arrangements, acceptable to the Division, to have that major component part removed from the vehicle. The owner shall bear any cost of removing the part; or

3. Any other equitable method of restoring the salvage vehicle and/or major component parts that are not stolen to the owner agreed upon by the owner and the Division.

(i) A copy of N.J.A.C. 13:21-22 shall be given to every person applying to the Division for an appointment for inspection of a salvage motor vehicle.

(j) When a salvage motor vehicle seized pursuant to (h)1 above is sold pursuant to (d) above, the owner of the salvage motor vehicle shall receive that portion of the purchase price representing the fair market value of the vehicle minus the fair market value of the stolen major component part.

13:21-22.14 Issuance of certificates of ownership without a salvage designation

(a) A certificate of ownership without a salvage designation shall be issued to the owner of the following motor vehicles:

1. A stolen motor vehicle that is subsequently recovered and which has not sustained damage to such an extent that is has been rendered economically impractical to repair, provided that the recovered stolen motor vehicle does not have a missing, altered or damaged vehicle identification number or plate.

2. A stolen motor vehicle that is subsequently recovered with a missing, altered or damaged vehicle identification number or plate after determination at a State inspection that such recovered motor vehicle is not a stolen motor vehicle, provided such vehicle has not sustained damage to such an extent that it has been rendered economically impractical to repair.

(b) No certificate of ownership without a salvage designation shall be issued unless the following documents are presented to the Division:

1. Salvage certificate of title;

2. Copy of the report from the law enforcement agency which recovered the stolen motor vehicle; and

3. For vehicles described in (a)2 above, a vehicle identification number verification form or inspection report.

(c) A fee, as set forth in N.J.S.A. 39:10-11, shall be charged for the issuance of a certificate of ownership without a salvage designation.

13:21-22.15 Issuance of certificates of ownership with a salvage designation

(a) A certificate of ownership with a salvage designation shall be issued to the owner of the following salvage motor vehicles:

1. A motor vehicle that was previously determined to be economically impractical to repair and that is subsequently reconstructed, rebuilt or repaired.

2. A stolen motor vehicle that is recovered in damaged condition (for example, stripped for major component parts) and that is subsequently reconstructed, rebuilt or repaired where the cost to repair the damaged motor vehicle, as determined by a bona fide repair estimate, equals or exceeds the fair market value of the motor vehicle immediately before it was stolen.

(b) No certificate of ownership with a salvage designation shall be issued unless the following documents are presented to the Division:

1. Salvage certificate of title;

2. Inspection report; and

3. For vehicles described in (a)2 above, a copy of the report from the law enforcement agency which recovered the stolen motor vehicle.

(c) A unique vehicle identification number shall be assigned by the Division to a motor vehicle which is reconstructed, rebuilt or repaired from more than one salvage motor vehicle.

(d) A fee, as set forth in N.J.S.A. 39:10-11, shall be charged for the issuance of a certificate of ownership with a salvage designation.

13:21-22.16 Penalties

(a) Any person who transfers or obtains ownership of a salvage motor vehicle except by proper assignment and delivery of a salvage certificate of title shall be subject ot the penalties set forth in N.J.S.A. 39:10-24.

(b) In addition to the penalties set forth in (a) above, the Director may suspend or revoke the license of any person who is licensed by the Director as an auto body repair facility, junk yard and/or motor vehicle dealer for a period not to exceed three years if such person transfers or obtains ownership of a salvage motor vehicle except by proper assignment and delivery of a salvage certificate of title.

13:21-22.17 Written notice

(a) Any person who transfers ownership of a salvage motor vehicle in violation of N.J.S.A. 39:10-31 et seq. and/or this subchapter shall be notified by the Director, in writing by registered mail, of any license suspension or revocation or other action sought to be imposed and the grounds thereof.

(b) Written notice shall be mailed to the person at the address of record with the Division.

13:21-22.18 Request for a hearing

(a) Any person who has been notified in accordance with N.J.A.C. 13:21-22.17 shall be entitled to an administrative hearing, provided that such person has filed with the Director a written request for a hearing within 30 days from the date of such notice. The 30 day period shall commence on the date such notice was mailed to the person by the Division in accordance with N.J.A.C. 13:21-22.17.

(b) Any written request for a hearing shall be sent to the Director. The hearing request shall contain the following information:

1. The name, address and telephone number to the person requesting a hearing;

2. A concise statement of facts constituting each ground of defense;

3. A specific admission, denial or explanation of each fact alleged by the Division in its notice or order to show cause, or if the person is without knowledge thereof, a statement to that effect; any allegation in the Division's notice or order to show cause which is not answered in accordance with this paragraph shall be deemed to have been admitted; and

4. A statement requesting a hearing.

13:21-22.19 Hearing procedures

Any hearing pursuant to this subchapter shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

BOARD OF DENTISTRY

Complaint Review Procedures

Proposed Amendment: N.J.A.C. 13:30-8.5

Authorized By: Board of Dentistry, Arnold Graham, D.D.S., President.

Authority: N.J.S.A. 45:6-3.

Proposal Number: PRN 1988-532.

Submit comments by December 7, 1988 to:
William Gutman, Executive Director
Board of Dentistry, Room 321
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment of N.J.A.C. 13:30-8.5 would eliminate the requirement that the Board of Dentistry (Board) secretary keep a complaint book where every complaint, the name of the complainant, the name of the dentist, the date of the complaint and the Board's action is logged. Compliance with this requirement may cause an unintended result under the "Right to Know" law, N.J.S.A. 47:1A-1 et seq.

The "Right to Know" law, as applied to Board cases, extends the public's right of inspection to all records of State agencies which are "required by law to be made, maintained or kept on file . . ." Courts have construed the phrase "required by law" to include duly promulgated agency rules, such as the rule being proposed for amendment. The consequence of classifying the complaint book as a public record conceivably makes it and all of the information contained therein available for indiscriminate public inspection at any time. Thus, it is possible that prior to, or subsequent to, Board action in evaluating complaint information, all information, including licensee and complainant identities, might be made public, even though a complaint was deemed meritless and no action thereon was undertaken by the Board. Since important reputational interests are present with regard to licensees and their practices and since complaint information flowing to the Board may be diminished or seriously impaired if the identity of licensees and of complainants is indiscriminately available for public scrutiny, the Board, in deleting the requirement, intends to avoid what may be an untoward and unintended results of a literal reading of the "Right to Know" law. See generally, *Grodjesk v. Faghani,* 198 N.J. Super 449 (App. Div. 1985).

Social Impact

While public access to complaint history of Board licensees may be curtailed, the Board has determined that the proposed amendment more appropriately balances the competing interests of unlimited access to licensee complaint history and uninhibited complaint information flow and licensee reputational interest.

Economic Impact

There will be no discernible economic impact as a result of the proposed amendment.

Regulatory Flexibility Statement

The proposal deletes the requirement that the Board maintain a complaint log book with certain prescribed information. Since no requirement operative on a "small business" is imposed, the Regulatory Flexibility Act, N.J.S.A. 32:14B-16 et seq., is inapplicable, and a regulatory flexibility analysis is not required.

Full text of the proposal follows (deletions are indicated by brackets [thus]).

13:30-8.5 Complaint review procedures

(a) Complaints of alleged neglect, malpractice or excessive pricing in the practice of dentistry shall be in writing.

1.-2. (No change.)

[3. All completed complaints shall be logged in a complaint book by the secretary. He shall record the name of the complainant, name of dentist, date of complaint and provide space to record the Board's actions. All duly logged complaints shall be placed on the agenda for consideration by the Board at its meeting next following the date of the receipt of the complaint.]

(b)-(g) (No change.)

(b)

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Approved Colleges

Proposed Amendment: N.J.A.C. 13:44-1.1

Authorized By: New Jersey State Board of Veterinary Medical Examiners, Michael J. Hennessy, D.V.M., President.

Authority: N.J.S.A. 45:16-3.

Proposal Number: PRN 1988-573.

Submit comments by December 7, 1988 to:
Maurice W. McQuade, Executive Director
State Board of Veterinary Medical Examiners
1100 Raymond Boulevard, Room 513
Newark, New Jersey 07102

The agency proposal follows:

Summary

In order to clarify its existing rules and to avoid any confusion concerning its enabling statute, the Board of Veterinary Medical Examiners proposes to adopt an amendment to N.J.A.C. 13:44-1.1, requiring applicants to have a doctoral degree in veterinary medicine. While the intent of the Board's enabling statute is clear, the definition of a qualified veterinary graduate is imprecise. The Board believes that this imprecision, together with the rise in the number of undergraduate programs in veterinary science, animal husbandry, and related areas, has potential for creating confusion among potential applicants.

Social Impact

Because this amendment is merely a clarification of existing rules and the Board's enabling statute, it is not expected to have any social impact whatsoever.

Economic Impact

This amendment will not have an economic impact on any segment of the population of this State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposal does not impose any reporting, recordkeeping or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed amendment follows (additions indicated in boldface **thus**).

13:44-1.1 Approved colleges; **doctoral degree**

(a) A veterinary college or university approved by the board is a veterinary college or university accredited by the American Veterinary Medical Association (A.V.M.A.).

(b) An applicant for examination shall be a graduate of an approved veterinary college or university pursuant to N.J.S.A. 45:16-7 and shall have received a doctoral degree in veterinary medicine from that institution.

(a)

ADVISORY BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Notice of Extension of Comment Period
Notice of Public Hearing

Public Movers and Warehousemen
Definitions; License Generally; Tariff; General Provisions; Forms
Proposed New Rules: N.J.A.C. 13:44D.

Take notice that the comment period for the proposed N.J.A.C. 13:44D has been extended to November 22, 1988. The proposed rules were published on September 19, 1988 at 20 N.J.R. 2364(a).

On November 22, 1988, a **public hearing** will be held at 10:00 A.M. at the Division of Consumer Affairs, Room 504, 1100 Raymond Boulevard, Newark, New Jersey in order to receive additional comments and submissions. Persons desiring to submit comments in the hearing should, not later than November 15, give notice of their intent to participate and the anticipated length of time for the presentation to:

Diane I. Romano, Executive Director
State Advisory Board of Public Movers
and Warehousemen, Room 511
1100 Raymond Boulevard
Newark, New Jersey 07102

(b)

DIVISION OF CONSUMER AFFAIRS

Automotive Dispute Resolution
Proposed New Rule: N.J.A.C. 13:45A-26

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.
Authority: P.L. 1988, c. 123, § 21.
Proposal Number: PRN 1988-578.

Submit comments by December 7, 1988 to:
James J. Barry, Jr., Director
Division of Consumer Affairs, Room 504
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

In accordance with the provisions of the new Lemon Law, P.L. 1988 c. 123, signed by the Governor on September 15, 1988 and to become effective on March 14, 1989, the Division of Consumer Affairs is establishing an automotive dispute resolution system. These proposed new rules set forth procedures for participation in that system, involving hearings at the Office of Administrative Law, which is one of three options available to an aggrieved purchaser or lessee of a "lemon"—a passenger automobile or motorcycle with substantial defects that continue to exist after multiple repair attempts. The other two options available to the consumer are pursuing resolution of the problem through the manufacturer's informal dispute settlement procedure, or filing a lawsuit in the Superior Court.

Pursuant to the new law, the proposed rules require certain Lemon Law notices to be given to a consumer at the point of purchase or lease of the motor vehicle, as well as statements of repair by the manufacturer through its dealer when repair attempts are made. These rules also mandate how the refund claimed by a consumer is to be computed. In addition, they establish reporting requirements for manufacturers' informal dispute resolution procedures. Manufacturers will be required to provide the Division with a full record of the remedies they award under their own arbitration systems, including the number of refunds requested, the number and amount of money awards, the number of instances where resolution of the dispute is by additional repairs or warranty extension, the number of compensation awards for losses and expenses, and the length of time it took to resolve each dispute, from date of initial request by the consumer to date of the final decision. This information is necessary in order for the Division to publish the statutorily-mandated index and statistical record of manufacturer compliance with the Lemon Law, which will be made public every six months.

Proposed N.J.A.C. 13:45A-26.1 describes the subchapter's purpose and scope, and N.J.A.C. 13:45A-26.2 defines terms used in the new rules. N.J.A.C. 13:45A-26.3 repeats the statutory requirements that at the time of purchase or lease of a motor vehicle a notice about Lemon Law rights must be given by a manufacturer through its dealer to the consumer, as well as a special notice if the vehicle has been previously returned as a "lemon"; statements of repair must also be provided, as applicable. The Division's dispute resolution section, to be known as the Lemon Law Unit ("LLU") is established by N.J.A.C. 13:45A-26.4. N.J.A.C. 13:45A-26.5 details preliminary steps by the consumer which must precede participation in any of the three dispute resolution options (the Division's system, a manufacturer's procedure, or legal action). N.J.A.C. 13:45A-26.6, 26.7 and 26.8 cover eligibility for participation in the Division's system, including submission of an application with certain information and photocopies, and the filing fee of $50.00. The manner in which applications for dispute resolution will be processed is set forth in N.J.A.C. 13:45A-26.9. N.J.A.C. 13:45A-26.10 relates to the scheduling of hearings. N.J.A.C. 13:45A-26.11 provides directions for computation of a requested refund, and N.J.A.C. 13:45A-26.12 sets forth the time schedule for review and notification of the decision and for confirmation by the manufacturer of its compliance with the decision. N.J.A.C. 13:45A-26.13 mandates filing a copy of the petition for appeal with the Director of the Division of Consumer Affairs and details the bonding requirement, when appeals are taken by a manufacturer. N.J.A.C. 13:45A-26.14 lists reporting requirements for manufacturers, and N.J.A.C. 13:45A-26.15 relates to publication of the resulting index and record of manufacturer compliance.

These rules and the dispute resolution system itself are designed to provide speedy and equitable resolution of automotive disputes. In preparation for the new Lemon Law, the Division studied similar dispute resolution systems established in other states, comparing procedures, technical requirements, forms, and time schedules for the various steps in the process. The mechanism set forth in these proposed rules combines the most successful features of those systems and should afford the consumer an efficient method of resolution.

Social Impact

The proposed new rules have evolved from basic structures established by the new Lemmon Law and their social impact should be decidedly positive. They should eliminate the frustrations, endless delays and lengthy arbitration processes experienced by consumers under the prior law.

The consumer will now have available the option of participating in a summary hearing procedure under the direct control of the Division of Consumer Affairs and the Office of Administrative Law; the purchaser or lessee of a "lemon" will thus be assured of active and immediate aid by government agencies in resolving the problem. At the same time, manufacturers are assured of an impartial process requiring full documentation of the nonconformity and repair attempts.

Economic Impact

The proposed new rules, like the Lemon Law itself, will have pronounced economic impact upon the automotive industry if large numbers of defective vehicles are sold or leased in this State. Not only will manufacturers be liable for replacement or refund of such vehicles, but also they will incur legal and administrative costs in the resolution of disputes. Though no exact forecast can be made, extensive expenditures could be involved for any manufacturer doing a substantial volume of business in New Jersey. In addition, the reporting requirements for the purposes of documenting manufacturer compliance with the Lemon Law will mean considerable staff expense; the printing of the notice to the consumer about Lemon Law rights, which must be provided by the manufacturer through its dealer at the time of purchase or lease of the motor vehicle, will add further costs.

On the other hand, an aggrieved consumer will be recompensed for the economic injury suffered when what is probably the second-greatest expenditure he or she will ever make results in possession of a "lemon" — a motor vehicle with substantial defects that remain uncorrected after multiple repair attempts. The consumer who participates in the dispute resolution system structured by these rules can get back his or her investment in the faulty vehicle as well as other costs incurred, including a $50.00 application fee. Financially, the consumer—if he or she proves his or her case—will be made whole.

Regulatory Flexibility Statement

Dozens of American and foreign manufacturers produce motor vehicles that are sold or leased and registered in New Jersey. As far as the Division is able to determine, none of these manufacturers employ fewer than 100 employees; they therefore do not qualify as small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 51:14B-16 et seq.

One section of the proposed rules, however, will impact on dealers, many of which do qualify as small businesses; N.J.A.C. 13:45A-26.3(c) requires the dealer to supply documentation of repair attempts. The number of such businesses is impossible to determine, since a repair attempt may take place outside as well as within the state. In any case, the impact upon these small businesses will be slight, inasmuch as documentation of repair attempts is a record that would be maintained in the ordinary course of business. Because the record of repair attempts is essential to the Division's dispute resolution system, it is not feasible to exempt small businesses from the requirement to assist in the process by supplying the record upon request.

Full text of the proposal follows:

SUBCHAPTER 26. AUTOMOTIVE DISPUTE RESOLUTION

13:45A-26.1 Purpose and scope

(a) The purpose of this subchapter is to implement the Lemon Law, P.L. 1988, c. 123, by establishing an automotive dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method of refund computation, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motor vehicles.

(b) This subchapter is applicable to:

1. All manufacturers of passenger cars and motorcycles registered in the State of New Jersey;

2. All purchasers and lessees of passenger cars and motorcycles registered in the State of New Jersey; and

3. Dealers servicing such vehicles whether their service facilities are located within or outside of the State.

13:45A-26.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"Days" means calendar days.

"Director" means the Director of the Division of Consumer Affairs.

"Dispute Resolution System" means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motor vehicle nonconformity(s) through summary administrative hearings.

"Lemon Law" means P.L. 1988, c. 123, an Act concerning new motor vehicle warranties and repealing P.L. 1983, c. 215.

"Lemon Law Unit" ("LLU") means the administrative unit within the Division of Consumer Affairs that processes Lemon Law matters.

"Motor vehicle" means a passenger automobile or motorcycle as defined in N.J.S.A. 39:1-1, that is registered in the State of New Jersey, whether purchased, leased, or repaired in the State or outside the state.

"Nonconformity" means a defect or condition which substantially impairs the use, value or safety of a motor vehicle."

"OAL" means the Office of Administrative Law.

"Out of service" means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities.

"Term of protection" means within the first 18,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

13:45A-26.3 Statements to consumer

(a) At the time of purchase or lease of a motor vehicle in the State of New Jersey, the manufacturer, through its dealer or lessor, shall provide the following written statement directly to the consumer on a separate piece of paper, in 10-point bold-face type:

"IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER NEW JERSEY LAW TO A REFUND OF THE PURCHASE PRICE OR YOUR LEASE PAYMENTS. FOR COMPLETE INFORMATION REGARDING YOUR RIGHTS AND REMEDIES UNDER THE RELEVANT LAW, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS, LEMON LAW UNIT, AT 1100 RAYMOND BOULEVARD, NEWARK, NEW JERSEY 07102, TEL. NO. (201) 648-3135."

(b) If a motor vehicle is returned to the manufacturer under the provisions of the Lemon Law or a similar statute of another state or as the result of a legal action or an informal dispute settlement procedure, the motor vehicle shall not be resold or re-leased in New Jersey unless the manufacturer provides to the dealer or lessor, and the dealer or lessor provides to the consumer prior to the resale or release of the motor vehicle, the following statement on a separate piece of paper, in 10-point bold-face type:

"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S WARRANTY AND THE NONCONFORMITY WAS NOT CORRECTED WITHIN A REASONABLE TIME AS PROVIDED BY LAW."

(c) Each time a consumer's motor vehicle is returned from being examined or repaired during the term of protection, the manufacturer through its dealer shall provide to the consumer an itemized, legible statement of repair which indicates any diagnosis made and all work performed on the vehicle and provides information including, but not limited to:

1. A general description of the problem reported by the consumer or an identification of the problem reported by the consumer or an identification of the defect or condition;

2. The amount charged for parts and the amount charged for labor, if paid by the consumer;

3. The date and the odometer reading when the vehicle was submitted for repair; and

4. The date and the odometer reading when the vehicle was made available to the consumer.

(d) Failure to comply with the provisions of this section shall be a violation to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

13:45A-26.4 Lemon Law Unit

(a) There is established within the Division of Consumer Affairs a section processing Lemon Law matters, to be known as the Lemon Law Unit (LLU).

(b) The Lemon Law Unit shall upon request provide consumers with a brochure setting forth:

1. Information regarding a consumer's rights and remedies under the relevant law; and

2. The procedure to be followed in order to participate in the various dispute resolution systems.

(c) All correspondence by consumers or manufacturers to the Division of Consumer Affairs regarding Lemon Law matters shall be directed to the attention of the Lemon Law unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
1100 Raymond Boulevard
Newark, New Jersey 07102
Tel. No. (201) 648-3135

13:45A-26.5 Preliminary steps

(a) To initiate a claim under the Lemon Law, written notification of the potential claim must be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if either of the following occurs during the first 18,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:

1. Substantially, the same nonconformity has been subject to repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist; or

2. The motor vehicle has been out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, and a nonconformity continues to exist.

(b) The manufacturer by law has one more opportunity to repair or correct the nonconformity within 10 days following receipt of notification from the consumer of a potential claim; if the nonconformity continues to exist after expiration of the 10-day time period and the manufacturer refuses to replace or refund the price of the vehicle, the criteria necessary to pursue a Lemon Law claim have been met. The consumer may then:

1. Refer the matter to the manufacturer for resolution through the manufacturer's informal dispute settlement procedure;

2. Refer the matter to the LLU for dispute resolution; or

3. File an action in the Superior Court. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Lemon Law shall mail a copy of the initial or responsive pleading containing the claim, counterclaim or defense to the Attorney General within 10 days after filing the pleading with the court.

13:45A-26.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer must provide the following items to the LLU by certified mail, return receipt requested:

1. A photocopy of the consumer's notification to the manufacturer of a potential claim; and

2. A completed Application for Dispute Resolution; the form will be supplied upon request by the LLU.

(b) During any periods when forms are not available, any written request for dispute resolution following the term of protection shall be accepted by the LLU provided all information, items and statements listed in N.J.A.C. 13:45A-26.7 are included.

(c) A consumer is eligible for dispute resolution by the Division as to a specific motor vehicle only once; no further applications from that consumer relating to the same motor vehicle will be accepted if a final decision has been rendered pursuant to N.J.A.C. 13:45A-26.12(b).

13:45A-26.7 Application

(a) Application for dispute resolution shall require submission of the following:

1. Information as follows:

i. The name and address of the consumer and lienholder, if any;

ii. The date of original delivery of the motor vehicle to the consumer;

iii. The mileage on the date the nonconformity was first reported to the manufacturer or its dealer; and

iv. The mileage on the date the application is mailed back to LLU.

2. A written account of the events resulting in the dispute, including description of the claimed nonconformity(s) and a chronology of the repair attempts.

3. A photocopy of the notification of a potential claim sent by or on behalf of the consumer to the manufacturer after two or more attempts to repair or 20 calendar days out of service, and a photocopy of the return receipt signed by the manufacturer's agent.

4. Photocopies of the statements of repair required by section 6(b) of the Lemon Law, to be given to the consumer by the manufacturer through its dealer, each time a motor vehicle is returned from being examined or repaired.

5. Photocopies of the agreement of sale or lease, including any stated credit or allowance for the consumer's used motor vehicle, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including but not limited to:

i. Sales tax;

ii. License and registration fees;

iii. Finance charges;

iv. Towing;

v. Rental of a motor vehicle equivalent to the consumer's motor vehicle for the period when the consumer's motor vehicle was out of service due to a nonconformity; and

vi. Any other documents related to the dispute.

(b) The application must contain a statement as to the following:

1. That the consumer believes the motor vehicle's use, market value or safety is substantially impaired by the nonconformity(s) complained of;

2. That the nonconformity(s) complained of is not the result of abuse, neglect, or unauthorized modifications of the motor vehicle by anyone other than the manufacturer or its dealer;

3. That within the term of protection the manufacturer, its agent or authorized dealer failed in at least two attempts to correct the same substantial defect, or the vehicle was out of service by reason of repair for at least 20 days;

4. That the consumer gave the manufacturer written notification by certified mail, return receipt requested, of a potential claim pursuant to the Lemon Law, section 5(b); and

5. That within the term of protection:

i. The consumer gave the manufacturer or its dealer at least three attempts (including the post-notification attempt) to repair substantially the same nonconformity and the nonconformity continues to exist; or

ii. The vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, the manufacturer has been given the post-notification opportunity to repair, and a nonconformity continues to exist.

13:45A-26.8 Filing fee

(a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of $50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs". The filing fee shall be nonrefundable but is recoverable as a cost if the consumer prevails.

(b) The filing fee shall be requested by the LLU when it has determined that the consumer's application is complete and that it complies with this subchapter and the Lemon Law.

13:45A-26.9 Processing of applications

(a) Submitted applications shall be reviewed by the LLU for completeness and compliance with the Lemon Law and this subchapter.

1. Incomplete applications shall be promptly returned for completion to the consumer.

2. Applications not in compliance with this subchapter and the Lemon Law (including but not limited to the required number of repair attempts or the number of days out of service) will be rejected. The reason for the rejection will be sent to the consumer. No judgment will be made by the LLU as to whether the claimed defect(s) are substantiated by the evidence or whether they substantially impair the use, market value or safety of a motor vehicle.

(b) Upon receipt of the filing fee of $50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

13:45A-26.10 Notification and scheduling of hearings

(a) Within 10 days after the effective date of this subchapter, each manufacturer of motor vehicles sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Lemon Law Unit, the name, address, and telephone number of the person designated by the manufacturer to receive notices under this dispute resolution process. It shall be the duty of the manufacturer to update this information, as necessary.

(b) On the day that an application is accepted for resolution by the LLU, a notice shall be sent by certified mail, return receipt requested by the LLU to the consumer and manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted, and shall provide general information about the resolution process.

(c) The LLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13A.

(d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.

(e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

(f) A copy of the application materials shall be sent by the LLU to the manufacturer's designee. Within 10 days of the notice of acceptance of the consumer's application for dispute resolution, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the clerk of the OAL at 185 Washington Street, Newark, New Jersey 07102, a response to each of the statements set forth in the consumer application.

(g) Applications by the consumer or the manufacturer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

13:45A-26.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4(a) of the Lemon Law, whether through the Division of Consumer Affairs automotive dispute resolution system or a manufacturers' informal dispute resolution process, shall include:

1. The total purchase or lease price of the motor vehicle including finance charges, sales tax, license fees, registration fees, and any stated credit or allowance for the consumer's used motor vehicle, provided that:

i. The full refund of purchase price that may be claimed by a consumer under section 4(a) shall not include any portion of a stated credit or allowance for the consumer's used motor vehicle that grossly exceeds the true value of the consumer's used motor vehicle.

ii. During the Office of Administrative Law hearing, a manufacturer may challenge the stated credit or allowance for the consumer's used motor vehicle. The manufacturer shall bear the burden of proof, and shall provide evidence that the purchase price included a trade-in allowance grossly disproportionate in amount to the true value of the consumer's used motor vehicle. Such evidence shall include, but not be limited to, the value of the motor vehicle as listed in the N.A.D.A. Official Used Car Guide.

2. The cost of any options or other modification arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery.

3. Other charges or fees, including but not limited to:

i. Reimbursement for towing, if any;

ii. Reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle for the period during which the consumer's motor vehicle was out of service due to a nonconformity; and

iii. Filing fee for participation in the Division's dispute resolution system.

(b) From the total sum of the items in (a) above, a deduction shall be made, representing an allowance for vehicle use. This deduction shall be calculated as follows:

1. Multiply the mileage at the time the consumer first presented the motor vehicle to the dealer or manufacturer for correction of the nonconformity(s) in question by the total purchase price of the vehicle (or the total lease price, if applicable), then divide by 100,000 miles.

13:45A-26.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 10 days after receipt.

(b) At the conclusion of the review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lienholder, if any, and to the OAL. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. The date of mailing shall be deemed the date of the final decision.

(c) The manufacturer shall advise the Director as to its compliance with the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of $5000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

13:45A-26.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of Superior Court; a notice of appeal must be filed with the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 13:45A-26.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus $2500 for anticipated attorney's fees and other costs;

2. Secured by cash or its equivalent; and

3. Payable to the consumer.

13:45A-26.14 Manufacturers' informal dispute resolution procedures

(a) The LLU shall compile a roster of American and foreign manufacturers of passenger automobiles and motorcycles registered in New Jersey.

(b) Manufacturers who establish or participate in an informal dispute settlement procedure shall within 30 days after the effective date of this subchapter:

1. Advise the LLU of the existence of its informal dispute settlement procedure; and

2. Send the LLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure; the information shall include all necessary addresses and phone numbers.

(c) On the 15th of January 1990 and on every 15th of July and 15th of January thereafter, the LLU shall mail a questionnaire by certified mail, return receipt requested, to every manufacturer on the roster compiled pursuant to (a) above, requesting the following information:

1. The number of purchase price and lease price refunds requested, the number awarded by the dispute settlement body, the amount of each award and the number of awards satisfied in a timely manner;

2. The number of awards in which additional repairs or a warranty extension was the remedy, the amount or value of each award, and the number of awards satisfied in a timely manner;

3. The number and total dollar amount of awards in which some form of reimbursement for expenses or compensation for losses was the remedy, the amount or value of each award and the number of awards satisfied in a timely manner; and

4. The average number of days from the date of a consumer's initial request to use the manufacturer's informal dispute settlement procedure until the date of the decision and the average number of days from the date of the decision to the date on which performance of the award was satisfied.

(d) Failure of the manufacturer to return the completed questionnaire to the LLU within 60 days of receipt shall be a violation of this subchapter and the Consumer Fraud Act.

13:45A-26.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of all motor vehicle disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The initial index and statistical record of compliance shall be made available to the public on July 1, 1990 and every six months thereafter.

(a)

DIVISION OF CONSUMER AFFAIRS
PRIVATE EMPLOYMENT AGENCY SECTION
Temporary Help Service Firms
Booking Agencies
Proposed New Rules: N.J.A.C. 13:45B-4; 13:45B-5

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-1.1; N.J.S.A. 34:8-36.

Proposal Number: PRN 1988-559.

A **public hearing** will be held on November 22, 1988, at 9:00 A.M. at:
New Jersey State Bureau of Securities
Two Gateway Center, 8th Floor
Newark, New Jersey 07102

Submit comments by December 7, 1988 to:
Charles A. Tantum, Chief
Private Employment Agency Section
Room 516
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Division of Consumer Affairs is proposing to add two new subchapters to the rules regulating private employment agencies: subchapter 4, which establishes the requirements for temporary help service firms; and subchapter 5, which does the same for booking agencies.

In 1981, amendments to the statutes governing private employment agencies exempted temporary help service firms from the rules which regulate private employment agencies. The Attorney General, pursuant to N.J.S.A. 56:8-1.1, is required to promulgate rules concerning the operation of temporary help service firms whose services are considered to be "merchandise" under N.J.S.A. 56:8-1 et seq. Subchapter 4 establishes the requirements for temporary help service firms. The proposed new rules require all temporary help service firms to be operated separately from private employment agencies where the ownership of both is the same. Furthermore, the proposed new rules set a prescribed fee for temporary help service firms, and provide details for the statutory requirement that firms post a bond of $1,000, unless the Attorney General waives such bond for corporations or entities having a net worth of $100,000 or more. In addition, the temporary help service firms will be required to disclose details of ownership and operation.

The proposed new rules contained in subchapter 5 will establish the requirements for booking agencies within the State of New Jersey. Many of these requirements are similar to the requirements which formerly governed booking agencies when they were regulated under the Private Employment Agency Act as theatrical agents. The rules will require the posting of licenses as well as the carrying of a registration card by the licensee whenever he or she is working as a booking agent. These new rules mandate that booking agencies must be maintained as separate entities when operated in conjunction with a private employment agency. The rules further require that all advertising by booking agencies contain the name, address, and license number of the booking agency. Booking agencies will be required to provide each client with copies of any contracts signed by the client. The agencies will also have to send representative samples of their contracts currently in use to the Division of Consumer Affairs, through its Private Employment Agency Section. In addition, copies of all contracts, as well as any advertisements, must be maintained by the booking agency in a form suitable for inspection by the Division of Consumer Affairs.

Social Impact

Because of the legislative amendments exempting temporary help service firms from the rules governing private employment agencies, new rules are necessary to regulate the temporary help service industry. These new rules will impact positively on the businesses that use the temporary help service firms to fill employment vacancies, as well as those individuals who rely on these firms as a means of income. All temporary help service firms must provide pertinent details of operation, which will assist the State in reducing the number of unethical operators, and thereby lessen the potential for fraud.

The new rules concerning booking agencies will be equally beneficial. By requiring that consumers be provided with information about the nature of the services being purchased, these rules will better protect consumers who use booking agencies.

Economic Impact

Subchapter 4 will have a limited economic impact on the operators of temporary help service firms through a single annual fee and the posting of a minimal bond which are required for registration. The bond requirement is necessary in order to prevent the establishment of fly-by-night firms.

Likewise, the proposal of Subchapter 5 is unlikely to have any significant economic impact on the operators of booking agencies. The requirements established by these rules are substantially similar to the statutory and regulatory requirements existing prior to the amendments to the Private Employment Act which replaced theatrical agencies with booking agencies.

Regulatory Flexibility Statement

The proposed new rules concerning temporary help service firms will affect approximately 500 registrants, of whom the majority would qualify as "small businesses" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rules establish reporting and compliance requirements for all temporary help service firms. These requirements, however, are minimal. Each temporary help service firm will be required annually to submit a list to the Division of Consumer Affairs, which includes the firm's name, trade name and address, and the names and resident addresses of the firm's officers, principals, and owners. In addition, principals and owners must provide an affidavit stating whether they have ever been convicted of a crime. Lastly, each firm is required to post a $1,000 bond and pay a fee according to the number of locations of the firm. Compliance with these requirements will not require any kind of additional professional services other than that of a bonding company. While these reporting and compliance requirements will impact on "small businesses", they are necessary to protect the safety and welfare of the citizens of New Jersey.

The proposed new rules dealing with booking agencies affect about 200 licensees. Virtually all of these licensees qualify as "small businesses" for the purposes of the Regulatory Flexibility Act. The majority of the compliance, reporting and recording requirements established by N.J.A.C. 13:45B-5.1 through 5.6 are identical to those which booking agencies were required to follow as theatrical agencies. There are, however, new compliance and reporting requirements to which booking agencies must adhere. First, each booking agent must provide every client with a copy of any contracts signed by the client, and each agent is required to file representative copies of all contracts in use with the Division of Consumer Affairs through its Private Employment Agency Section. Second, N.J.A.C. 13:45B-5.2 requires all booking agents to carry their registration cards with them whenever they are performing the functions of a booking agent. While these rules establish new compliance and reporting requirements, it should be noted that these requirements are not overly burdensome and are easily fulfilled. The new rules will require no professional services and will not significantly increase the booking agent's cost of doing business. The new requirements are necessary to better enable the Division to protect consumers by providing them with a fairer and more equal atmosphere in which to deal with booking agents.

Full text of the proposed new rules follows:

SUBCHAPTER 4. TEMPORARY HELP SERVICE FIRMS

13:45B-4.1 Purposes and scope

(a) This subchapter is promulgated by the Attorney General through the Division of Consumer Affairs. The rules contained in this subchapter implement section 56:8-1.1 of the Consumer Fraud Act, and regulate the operation of temporary help service firms within the State of New Jersey.

(b) This subchapter shall apply to all persons, as defined by N.J.S.A. 56:8-1(d), operating a temporary help service firm, including persons whose residence or principal place of business is located outside of this State.

13:45B-4.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety, 1100 Raymond Boulevard, Room 504, Newark, New Jersey 07102.

"Liquidation fee" means any fee charged by a temporary help service firm to a client when an individual employed by the temporary help service firm is hired as a permanent employee by the client. This fee covers the initial payroll, advertising, and recruiting costs, as well as the replacement costs incurred by the temporary help service firm with regard to its employee.

"Primary location" means an address used by a temporary help service firm for 90 or more calendar days to interview and accept applications from applicants or to solicit job orders from clients.

"Temporary help service firm" means the operation of a business by any person, as that term is defined in N.J.S.A. 56:8-1(d), which

consists of employing individuals directly for the purpose of assigning its employees to assist its customers in the handling of its customers' temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to its employees, is required by law to pay Federal social security taxes and State and Federal unemployment insurance, carries workers compensation insurance as required by State law, and sustains responsibility for the actions of its employees while rendering services to its customers.

13:45B-4.3 Temporary help service firm requirements

(a) A temporary help service firm shall:

1. Prior to commencement of operation and on each January 1 thereafter, notify the Division of Consumer Affairs of its true name; any trade name of its operation; its complete business address, including street and street number of the building(s) and place(s) where its business is to be conducted; and the names and all resident addresses of its officers, directors, principals, and owners. Any changes shall be reported to the Division of Consumer Affairs within two weeks of such change;

2. Provide an affidavit to the Division of Consumer Affairs setting forth whether any of its officers, directors, principals or owners has ever been convicted of a crime. If any of its officers, directors, principals or owners is convicted of a crime subsequent to providing such affidavit, a new affidavit setting forth the circumstances of the conviction shall be provided to the Division of Consumer Affairs. The firm shall also provide an affidavit to the Division of Consumer Affairs when any new officer, director, principal or owner is added to the firm;

3. Notify the Division of Consumer Affairs when the firm wishes to use a location other than or in addition to any of its primary locations, including mobile locations, for the recruiting of applicants. If the notification is made by telephone, it shall be subsequently confirmed in a writing directed to the Division's Private Employment Agency Section prior to the use of such facility;

4. At the time of its initial notification to the Division of Consumer Affairs, and on each January 1 thereafter, post a bond of $1,000 with the Division of Consumer Affairs to secure compliance with P.L. 1960, c.39 (N.J.S.A. 56:8-1 et seq.), as amended and supplemented. The Division of Consumer Affairs may waive such bond for any corporation or entity having a net worth of $100,000 or greater. In order to obtain such a waiver, the firm must provide a copy of a certified financial report prepared by a certified public accountant that the firm has a net worth of $100,000 or greater;

5. Not charge any fees to its employees who, as a result of a temporary placement assignment, are hired as permanent employees of the client. The temporary help service firm may, however, charge its client a liquidation fee, provided the terms of such a liquidation fee were fully disclosed to the client when the temporary help assignment was secured;

6. State in all advertising the trade name of the temporary help service firm and the words "A Temporary Help Service Firm" immediately under the name of the firm unless the words "temporary service" are included in the name of the firm; and

7. Maintain copies of all agency advertisements in a form suitable for inspection by the Division, and made available for inspection by representatives of the Division.

(b) Any temporary help service firm operated by any person who also operates a private employment agency shall comply with 1 through 6 above, in order to qualify for exemption from the requirements of the Private Employment Agency Act, N.J.S.A. 34:8-24 et seq. If a temporary help service firm fails to comply with the requirements of either N.J.S.A. 56:8-1.1 or this subchapter, the firm shall be required to be licensed as a private employment agency and will be subject to the rules and requirements of the Private Employment Agency Act. Nothing in this provision shall be interpreted to relieve a private employment agency, working in conjunction with a temporary help service firm, from complying with the requirements of N.J.A.C. 13:45B-1.1 through 3.6.

13:45B-4.4 Separation from private employment agency

(a) Any temporary help service firm which is operated by any person who also operates a private employment agency shall conduct its business operation separately from the operations of the private employment agency, as follows:

1. The business office space used by a temporary help service firm shall be physically separated from the business office space utilized by an employment agency. This requirement shall not be interpreted to prohibit the use of adjoining office space with a common reception area, provided approval is first obtained from the Division of Consumer Affairs, through the Private Employment Agency Section. If adjoining office space is utilized to conduct the business operation of a temporary help service firm and a private employment agency, the respective spaces shall be clearly marked with signs to prevent any confusion over which space is being used by the temporary help service firm;

2. The true name and any trade name used by the temporary help service firm shall not be the same as or so similar to the true name and any trade name used by the private employment agency so as to cause confusion to the consumers who use the temporary help service firm;

3. All business and personnel records of the temporary help service firm shall be maintained separately from the records of the private employment agency;

4. The telephone numbers used by a temporary help service firm shall not be the same as the telephone numbers utilized by the private employment agency; and

5. Any recruiting and business advertising by a temporary help service firm shall not be contained in the same advertising utilized by the private employment agency.

13:45B-4.5 Information required

Information required by this subchapter shall be provided to the Temporary Help Service Firm Section of the Division of Consumer Affairs, 1100 Raymond Boulevard, Room 516, Newark, New Jersey 07102 on January 1 of each year. Where the temporary help service firm begins operations after Janaury 1, the information required by N.J.S.A. 56:8-1.1 and this subchapter shall be provided with the firm's application. Application forms shall be supplied by the Temporary Help Service Section. Upon submission to the Division, completed forms shall be accompanied by the affidavit required by N.J.A.C. 13:45B-4.3(a)2 and the bond or report required by N.J.A.C. 13:45B-4.3(a)4.

13:45B-4.6 Fees

A temporary help service firm shall annually pay a fee of $240.00 for each primary location and a fee of $10.00 for operation of any location other than a primary location.

13:45B-4.7 Violations

A violation of any of the provisions of this subchapter shall be deemed to be a violation of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and shall be subject to the penalties and sanctions provided for thereunder. Nothing in this subchapter, however, shall be interpreted to prohibit prosecution of any practices which may be unlawful under any other State or Federal law.

SUBCHAPTER 5. BOOKING AGENCIES

13:45B-5.1 Purpose and scope

(a) The rules contained in this subchapter implement section N.J.S.A. 34:8-36 of the Private Employment Agency Act, and regulate the operation of booking agents.

(b) This subchapter shall apply to all persons, as defined in N.J.S.A. 56:8-1(d), operating booking agencies as defined in N.J.S.A. 34:8-24.

13:45B-5.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Booking agency" means a business which procures, offers, promises or attempts to procure employment for performing artists and which collects a fee for providing such employment.

"Booking agent" means any person, as defined in N.J.S.A. 56:8-1(d), who performs any solicitation or recruiting function for or on the behalf of any booking agency.

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety, 1100 Raymond Boulevard, Room 504, Newark, New Jersey 07102.

"Performing artists" means musical, theatrical, vaudeville, film, television, or radio performers, as well as models, employed or engaged individually or as a group.

13:45B-5.3 Booking agency licenses

(a) Each booking agency shall post its license and all licenses held by its agents. If the agent's employment is terminated, the license shall be returned to the Division.

(b) A booking agent shall carry a registration card while performing the functions of a booking agent.

13:45B-5.4 Booking agency contracts

(a) Each performing artist shall be supplied with a copy of any contract with the booking agency signed by the artist.

(b) Each booking agency shall file a representative sample of the contracts currently used by the agency with the Division's Private Employment Agency Section, 1100 Raymond Boulevard, Room 516, Newark, New Jersey 07102.

(c) Copies of all contracts between the agency and performing artists shall be maintained by the agency in a form suitable for inspection by the Division. These copies shall be made available for inspection by representatives of the Division.

13:45B-5.5 Booking agency advertising

(a) All advertisements shall contain the name, address, and license number of the booking agency.

(b) Copies of all agency advertisements shall be maintained by the agency in a form suitable for inspection by the Division, and made available for inspection by representatives of the Division.

13:45B-5.6 Information required

(a) Information required by N.J.S.A. 34:8-24 et seq. and this subchapter shall be provided to the Division's Private Employment Agency Section, 1100 Raymond Boulevard, Room 516, Newark, New Jersey 07102, on January 1 of each year. Where the booking agency begins operation after January 1, the information required by N.J.S.A. 34:8-24 et seq. and this subchapter shall be provided with the agency's application. Application forms shall be supplied by the Private Employment Agency Section.

(b) Completed forms shall be accompanied by the fee required by N.J.S.A. 34:8-31 and the bond required by N.J.S.A. 34:8-30.

13:45B-5.7 Separation from private employment agency

(a) Any booking agency which is operated by a person, firm or entity which also operates a private employment agency shall conduct its business operation separately from the operations of the private employment agency as follows:

1. The true name and any trade name used by the booking agency shall not be the same as or similar to the true name and any trade name used by the private employment agency so as to cause confusion to the consumers who use the booking agency;

2. The recruiting and business advertising of the booking agency shall not be contained in the same advertising used by the private employment agency;

3. The business and personnel records of the booking agency shall be maintained separately from those records of the private employment agency; and

4. The telephone numbers used by the booking agency shall not be the same as those used by the private employment agency.

13:45B-5.8 Violations

A violation of any of the provisions of this subchapter shall be deemed to be a violation of the Private Employment Agency Act, N.J.S.A. 34:8-24 et seq. and shall be subject to the penalties and sanctions provided for thereunder. Nothing in this subchapter, however, shall be interpreted to prohibit prosecution of any practices which may be unlawful under any other State or Federal law.

DIVISION OF CRIMINAL JUSTICE

(a)

OFFICE OF THE STATE MEDICAL EXAMINER

State Medical Examiner Rules

Proposed Readoption: N.J.A.C. 13:49

Authorized By: Robert Goode, M.D., State Medical Examiner.
Authority: N.J.S.A. 52:17B-78 et seq., specifically 52:17B-80.
Proposal Number: PRN 1988-574.

Submit comments by December 7, 1988 to:

Robert Goode, M.D.
State Medical Examiner
Institute of Forensic Science
325 Norfolk Street
Newark, New Jersey 07103

The agency proposal follows:

Summary

N.J.A.C. 13:49 provides the standards for procedures and investigations conducted by the county and state medical examiners and the training and experience requirements attendant to the positions of county medical examiner, deputy or assistant county medical examiner, and forensic pathologist.

Pursuant to Executive Order No. 66(1978), this chapter expires on December 19, 1988. The Office of the State Medical Examiner has reviewed these rules and found them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. A synopsis of the contents of this chapter follows.

N.J.A.C. 13:49-1.1 through 1.5 set forth the circumstances under which postmortem examinations are mandated or discretionary; prescribes the procedures by which postmortem examination investigations are transferred from the county where the investigation was initiated to the county with jurisdiction over the death; provides procedures for postmortem examinations where the death involved military personnel killed in aircraft accidents; and provides the purposes for which postmortem examinations may properly be performed and the necessary standards of these examinations.

N.J.A.C. 13:49-2.1 through 2.3 set the requirements for the collection of suitable specimens for the determination of the alcohol or drug content of bodily fluids and tissues and provides for their proper preservation.

N.J.A.C. 13:49-3.1 through 3.3 set forth the circumstances under which autopsy reports may be released; set the fees to be charged for copies of the reports; and require the State Medical Examiner to maintain files of every death examination.

N.J.A.C. 13:49-4.1 sets forth the standards for the establishment and maintenance of refrigerated storage space to be kept by county medical examiners for the preservation of dead bodies, and requires sufficient facilities to perform the examination of dead bodies under investigation.

N.J.A.C. 13:49-5.1 mandates the responsibilities of a legally authorized physician medical examiner and requires that the medical examiner be on duty at all times to investigate deaths occurring within the jurisdiction of each county. The medical examiner on duty is required to cooperate and coordinate with the county prosecutor in the conduct of a criminal investigation.

N.J.A.C. 13:49-6.1 requires the medical examiner to establish proper identification of the decedent, and enumerates procedures for the proper completion of the death certificate.

N.J.A.C. 13:49-7.1 sets forth the standards for the training and experience requirements of the county medical examiner, deputy or assistant county medical examiner and forensic pathologist.

N.J.A.C. 13:49-8.1 requires the State Medical Examiner to evaluate and enforce the eligibility standards applicable to county medical examiner, deputy or assistant county medical examiner and forensic pathologist, and provides for proceedings for the restriction of or removal from their duties. Notice of the proceedings and an opportunity to be heard, in accordance with the Administrative Procedure Act, are required.

Social Impact

The readoption of these rules will perpetuate standards for qualifications of medical examiners, procedures governing all postmortem examinations, and provide for coordination with the county prosecutor in homicide investigations. Since their promulgation, various amendments to these rules have improved the quality of postmortem examinations.

For example, the rules have previously been amended to require mandatory autopsies in certain categories of death which entail a high degree of public interest, such as the death of persons while detained by law enforcement personnel and the death of children who may be hidden victims of child abuse. Readoption of these rules will assure the continued quality of medical examiner personnel, preserve the integrity of postmortem examinations and facilitate the efficiency and reliability of criminal homicide investigations.

Economic Impact

The readoption of these rules will not impose any significant economic impact upon the State or the general public. County medical examiner offices are currently funded in county budgets and, while adding no new expense to those budgets, readoption of these rules will entail continued county funding. The county medical examiner's office is a small and highly specialized office and its funding represents only a small percentage of the overall county budget.

Regulatory Flexibility Statement

This proposed readoption does not require a regulatory flexibility analysis as it does not impose any requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:49.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Lead Toxicity Control Program

Proposed New Rules: N.J.A.C. 10:48-3

Take notice that the proposal published at 20 N.J.R. 2555(a) will be open for public comment until **November 16, 1988.** This date was omitted from the proposal.

Comments may be submitted to:

James M. Evanochko, Administrative Practice Officer
Division of Developmental Disabilities
CN 700
Trenton, N.J. 08625

(b)

DIVISION OF PUBLIC WELFARE

General Assistance Manual
Medically Needy Eligibility

Proposed Amendment: N.J.A.C. 10:85-3.3

Authorized By: Drew Altman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:8-111(d).
Proposal Number: PRN 1988-537.

Submit comments by December 7, 1988 to:

Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

With the passage of Assembly Bill Number 608, now Chapter 371, Laws of 1985, the Department's Division of Medical Assistance and Health Services commenced operation of the Medically Needy Program (see N.J.A.C. 10:70), with eligibility being determined by the county welfare agencies (CWAs). Consequently, parts of the existing medically needy provisions at N.J.A.C. 10:85-3.3(g) are unnecessary or require modification.

The Medically Needy Program includes in its coverage medically needy elderly, blind, or disabled individuals who are also, pursuant to current rules, covered under the medical "spend-down" provisions of the General Assistance (GA) Program. The Medically Needy Program does not, however, include in its service package payment for items such as drugs. The proposed amendment, therefore, makes it possible for the municipal welfare departments (MWDs) to authorize payment for the cost of drugs to otherwise eligible individuals, when assistance is unavailable from any other source.

The proposed amendment also provides for a required referral to the CWA of all persons who are potentially eligible for the Medically Needy Program and includes a clear statement that those who are eligible for the entire scope of services available under the Medically Needy Program are not eligible for the same services under the GA Program.

Social Impact

While the proposed amendment will serve to make some individuals ineligible for certain medical payments under the GA Program, those individuals will be eligible under the broader and more liberal Medically Needy Program available by application to the CWA.

Economic Impact

There will be little or no economic impact as a result of the proposed amendment. It simply deletes rules which are no longer applicable under the GA Program and adds language to ensure that some individuals may still be covered for certain medical expenses under the GA Program, if they are not eligible for benefits under the Medically Needy Program.

Regulatory Flexibility Statement

This proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rulemaking action imposes no compliance, reporting or recordkeeping requirements on small businesses; therefore, a regulatory flexibility analysis is not required.

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

10:85-3.3 Financial eligibility

(a)-(f) (No change.)

(g) Medical care: Persons found eligible for General Assistance maintenance payments in accordance with the procedures and standards established in this subchapter (N.J.A.C. 10:85-3) are likewise eligible for medical care (see N.J.A.C. 10:85-5 regarding provision of medical care). In addition, certain other individuals and families are eligible for medical assistance from the MWD or for referral to the county welfare agency.

1. Medically needy: Individuals and families who are ineligible for [public assistance (General Assistance, AFDC, Cuban/Haitian Entrant Program or Refugee Resettlement Program) or for SSI payments] **the General Assistance, AFDC or Refugee Resettlement Program** because their income exceeds the standards established for the applicable program may apply to the MWD on a monthly basis for assistance in paying excessive medical costs. The provisions of this subsection are not applicable to the payment of bills for inpatient hospitalization or for medical services rendered to an inpatient. **The MWD shall refer to the county welfare agency those persons who appear to be potentially eligible for the Medically Needy Program administered by that agency. Except as stated in (g)1i below, any person found eligible under the provisions of that program is not eligible for benefits under this subsection.**

i. Elderly, blind or disabled individuals who are ineligible for the SSI Program, because their income exceeds the SSI standard, will be referred to the Medically Needy Program as in (g)1 above. That program, however, does not provide payment for prescribed drugs. Therefore, individuals not entitled to receive assistance in meeting the cost of drugs from any other source may apply to the MWD on a monthly basis for assistance in meeting such costs.

[i.]**ii.** (No change in text.)

[ii.]**iii.** Income levels: For the purpose of determining excessive medical costs, the total available monthly income (see [(g)1iii](**g)1iv** below) of individuals, couples, or families with children is measured against the appropriate allowance standard. (See N.J.A.C. 10:85-3.1(b) regarding eligible unit concept.) For elderly, blind, or disabled persons, the [SSI] **Medically Needy Program** standard applies. For families with children, the AFDC (C and F) standard applies. (See N.J.A.C. 10:82-1.2 for current AFDC standard.) For all others, the General Assistance standard (Schedule I or II as appropriate) applies. When the AFDC or [SSI] **Medically Needy**

Program standards are [increased] **changed**, a Public Notice to that effect will be published in the New Jersey Register. Information about the current standard[s] may also be obtained by contacting the Division of Public Welfare.

Renumber iii.-v. as **iv.-vi.** (No change in text.)

2.-4. (No change.)

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program

General Provisions, Application Process, Eligibility Factors other Than Need, Resources, Financial Eligibility, Certification Procedures, Special Income Circumstances, Fair Hearings, Employment and Training Requirements, Incorrect Issuances, Maximum Income and Coupon Allotments, and Benefit Determination and Proration Formulas

Proposed Readoption with Amendments: N.J.A.C. 10:87.

Proposed New Rules: N.J.A.C. 10:87-2.36, 3.16, 4.20, 5.11, 7.19, 11.32, and 11.33.

Proposed Repeal: N.J.A.C. 10:87-10.

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4B-2; 7 CFR 272.5, .6, and .8; 7 CFR 273.1 through .14, .16, and .18; 7 CFR 274.1 and .2; and 7 CFR 278.1(h).

Proposal Number: PRN 1988-541.

Submit comments by December 7, 1988 to:

Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order No. 66 (1978), N.J.A.C. 10:87 will expire on March 1, 1989. The Department of Human Services proposes to readopt N.J.A.C. 10:87, with the proposed amendments.

N.J.A.C. 10:87-1 sets forth the purpose of the food stamp program and provides general rules regarding its administration. It further provides rules proscribing discrimination on the basis of age, race, color, sex, handicap, religious creed, national origin, or political belief and describes the complaint procedures for persons who feel they have been subjected to discrimination. The subchapter also provides rules prohibiting the release of confidential information about program applicants and recipients.

N.J.A.C. 10:87-2 provides procedural requirements for the processing of an application for food stamp benefits. Rules regarding household composition, the filing of an application, interview and verification requirements, and application processing standards are furnished. In addition, it provides special procedures for recipients of Aid to Families with Dependent Children (AFDC), and Supplemental Security Income (SSI), categorically eligible AFDC/SSI households, and residents of drug and alcohol treatment centers, group living arrangements and shelters for battered women.

N.J.A.C. 10:87-3 details the nonfinancial requirements for receipt of program benefits, such as citizenship and alien status, the provision of social security numbers and the work registration requirement. It also provides special procedures for the eligibility determination for college students.

N.J.A.C. 10:87-4 defines resources for program purposes and specifies those that are counted and those that are excluded from consideration in the eligibility process. Rules are also provided that disqualify individuals from the food stamp program for knowingly transferring resources for the purpose of qualifying for program benefits.

N.J.A.C. 10:87-5 defines income for program purposes, specifying that which is counted and that which is excluded. Income deductions are also defined, such as allowances for medical expenses for the elderly and disabled, expenses for dependent care, and shelter costs.

N.J.A.C. 10:87-6 prescribes procedures for the certification of eligibility. The length of time of program certification and the treatment of income and income deductions within the certification period are detailed.

N.J.A.C. 10:87-7 provides direction for treatment of households with special income circumstances such as self-employment income, income of a disqualified or other nonhousehold member, residents of drug and alcoholic rehabilitation centers, group living arrangements, battered women's shelters, and sponsored aliens.

N.J.A.C. 10:87-8 details procedures for fair hearings, including information on how to apply for a fair hearing, actual procedures at a hearing, household rights, continuation of food stamp benefits pending the outcome of the hearing, hearing decisions, and the county welfare agencies (CWAs) rights and responsibilities.

N.J.A.C. 10:87-9 contains other certification-related procedures including recertification procedures, notices to clients, issuance of identification cards, replacement of authorizations to participate (ATPs) and coupons, record-keeping requirements and security and control of ATPs.

N.J.A.C. 10:87-10 details the program requirements related to work registration and the food stamp employment and training (E&T) requirements. It also provides special procedures for the eligibility determination of E&T participants in a training component at the post-secondary school level.

N.J.A.C. 10:87-11 provides procedures to be followed when a household has received an incorrect issuance of food stamps; explains the circumstances whereby a restoration of lost benefits is possible and how to compute the amount, distinguishes between an intentional program violation and inadvertent household and agency error claims, the calculation of the amount of a claim and the process to collect the overissuance.

N.J.A.C. 10:87-12 provides the formula, tables and allowable deductions necessary to determine financial eligibility for food stamps and the level of benefits.

N.J.A.C. 10:87 is under continual review by the staff of the Department's Division of Public Welfare. The Division of Public Welfare conducted an internal review and evaluation of the rules prior to this proposal for readoption. After such review of the rules, and addition of the concurrent amendments, that agency determined them to be adequate, reasonable and responsive to the purposes for which they are promulgated.

The following are significant changes to N.J.A.C. 10:87 since the last readoption.

1985

N.J.A.C. 10:87-4.1 was amended regarding resource determinations for households in which all members of the food stamp household applied for, or were receiving AFDC benefits. If resource eligible for AFDC, such households were to be considered automatically resource eligible for food stamp purposes.

N.J.A.C. 10:87-2.16 and 2.17 were amended to comply with Federal regulations to provide that food stamp households refusing to cooperate with a quality control review are ineligible to participate in the program until the household cooperated with the quality control reviewer, or until the household reapplied at least 96 days after the end of the annual review period.

Several amendments were required by the Food Stamp and Commodity Distribution Amendments of 1981 (P.L. 97-98) and the Food Stamp Act Amendments of 1982 (P.L. 97-253). Those amendments are summarized as follows: 1) N.J.A.C. 10:87-2.19 was amended to require that the consequences of voluntarily quitting a job be explained to applicant households at the time of the household's initial interview; 2) the work registration requirements at N.J.A.C. 10:87-3.17 were amended to provide that nonexempt participants be required to register for work once every 12 months after initial registration, rather than every six months; 3) the exemptions from the work registration requirements at N.J.A.C. 10:87-3.18 were amended to provide an exemption for care of a dependent child under the age of six, lowering the age limit from 12 to six, and to eliminate the exemption for care of a child under the age of 18 in a household where another parent is working or is registered for work; 4) persons failing to comply with an unemployment compensation/Work Incentive (WIN) program requirement comparable to a food stamp requirement were to be treated as though they had failed to comply with the corresponding food stamp requirement; 5) voluntary quit disqualifications were implemented for participating households; the voluntary quit

provision previously applied only to applicant households; and the disqualification period for voluntary quit was lengthened from two months to three months; 6) good cause for failure to comply with work requirements at N.J.A.C. 10:87-3.20 was expanded to include lack of adequate child care for children who have reached age six but are under the age of 12.

N.J.A.C. 10:87-1.14 was amended to require that CWAs administering the Food Stamp Program make case file information available to assist in the Child Support and Paternity (CSP) program under Title IV-D of the Social Security Act. This section was also amended to provide that Federal, State, and/or local law enforcement officials requesting information to assist in the investigation of an alleged Food Stamp Program violation must make the request in writing. Further amendments provided for the release of case file information to the United States Comptroller General's Office for audit examinations and provided CWAs the authority to verify for school officials that a household is participating in the Food Stamp Program for purposes of verifying eligibility for free school meals.

N.J.A.C. 10:87-5.7 was amended to comply with the requirements of the Food Stamp Act Amendments of 1982 (P.L. 97-253). Specifically, the amendments prohibit CWAs from increasing food stamp benefits to households which have decreased income resulting from recovery action imposed for intentional failure to comply with the requirements of another means-tested program such as AFDC, SSI, and General Assistance (GA). Additionally, as a result of the Deficit Reduction Act of 1984 (P.L. 98-369), this section was amended to require disregarded child support payments, authorized by P.L. 98-369, be counted as unearned income for food stamp purposes.

N.J.A.C. 10:87-2.21, 2.24, and 2.28 were amended to require duplicate participation cross-checks for all households at time of initial application. Clarifying language was added at N.J.A.C. 10:87-2.31 to require that when the delay in certifying a household is the fault of the household and the household is found eligible in the second or third 30-day period, such households are entitled to benefits only from the date the household took the required action. N.J.A.C. 10:87-2.35 was amended to allow migrant farm workers, certified under expedited processing rules, additional time to provide postponed verification. In addition, N.J.A.C. 10:87-11.29 was amended to include a provision that if a household has more than one claim for the repayment of overissuance of food stamps against it, only one intentional program violation claim and one inadvertent household error claim may be recovered at the same time without client consent.

Amendments to N.J.A.C. 10:87-2.38 clarified that a disabled household member who is certified to receive SSI or RSDI disability payments is to be considered disabled for purposes of the Food Stamp Program eligibility and benefit determination.

N.J.A.C. 10:87-5.9 was amended to provide that monies received from the Job Training Partnership Act (JTPA) of 1982 (P.L. 97-300) is to be excluded as income for food stamp purposes.

1986

The Food Security Act of 1985 (P.L. 99-198) mandated amendments to N.J.A.C. 10:87-4.13, 5.10, and 12.1. Specifically, the maximum resource limit for nonelderly households was increased to $2000.00. While the maximum resource limit for elderly households remained at $3000.00, the rule was amended such that a single person elderly household may also have $3000.00 in resources and remain Program-eligible. Prior to this change, to qualify for this standard, the household had to be comprised of at least two individuals. Public Law 99-198 also mandated amendments to N.J.A.C. 10:87-5.10 and 12.1 to increase the work allowance deduction from 18 percent to 20 percent and to separate the dependent care deduction from the shelter deduction and establish separate amounts for each of these deductions.

N.J.A.C. 10:87-5.4 and 5.5 were amended to reflect amendments to the Food Stamp Act required by P.L. 99-198. Specifically, income received under the General Assistance Employability Program (GAEP) was considered to be earned income and subject to the 20 percent earned income deduction. The change required that GAEP income be considered unearned income for food stamp purposes.

1987

The Food Security Act of 1985 (P.L. 99-198), enacted December 23, 1985, required extensive changes in the work requirements of the Food Stamp Program. Those changes were made at N.J.A.C. 10:87-2.3, 2.6, 2.19, and 3.13 through 3.21. That Act mandated that all states implement new employment and training programs, designed by the State and approved by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), effective April 1, 1987. The intent of the new requirements was to ensure that able-bodied food stamp recipients are involved in a meaningful work-related activity that will lead to paid employment and a decreased dependency on assistance programs. County welfare agencies are required to register all nonexempt household members for employment and training as a condition of eligibility for participation in the Food Stamp Program. Primary employment and training components included independent job search, job search training and vocational training through the JTPA classroom training courses. Regulations set forth general information and requirements pertaining to the State Plan for Food Stamp Employment and Training Programs as well as information regarding performance standards, reporting requirements, and data collection. The amendment at N.J.A.C. 10:87-2.6 revised the definition of head of household to specify that the head of household shall be the primary wage earner for purposes of applying disqualifications for failure to comply with work registration, work and training requirements, and voluntary quit provisions.

Amendments at N.J.A.C. 10:87-3.17 revised work registration procedures to be followed by CWAs. Amendments at N.J.A.C. 10:87-3.19 detailed revised work registrant requirements. Specifically, registrants are required to report to an assessment interview and/or an employment and training program component; participate in an employment and training program, if assigned; respond to a request for supplemental information regarding employment status or availability for work; report to an employer to whom referred; and accept a bona fide offer of suitable employment.

Amended rules at N.J.A.C. 10:87-3.19(d)6 and 3.21 provided specific actions a household can take to end voluntary quit and failure to comply sanctions. If a household is disqualified for voluntarily quitting a job, the disqualification period may be ended if the head of household secures new employment which is comparable to the job he or she quit. Sanctions for failure to comply with work registration and work and training requirements continue until the member causing the disqualification complies with the requirement, leaves the household or becomes exempt, or the two-month disqualification period expires.

The amendments specify that the sanction shall apply to the individual who committed the violation rather than the entire household, unless the individual committing the violation is the head of the household, in which case, the entire household is sanctioned.

The tables at N.J.A.C. 10:87-12 which provide income deductions, maximum net and gross income levels and maximum coupon allotments have been revised annually each time such updating was required by Federal regulations which necessitated changes to the amounts specified in those tables.

The proposed readoption of N.J.A.C. 10:87 contains numerous language, grammatical and technical changes as well as recodification of rules throughout the subchapters. In addition, cross-references in all subchapters have been updated and revised. These changes clarify and amend rules resulting in a complete update of the Food Stamp Program rules. In making these changes to N.J.A.C. 10:87, it is anticipated that it will result in a more organized, comprehensibe and complete chapter.

The proposed readoption of N.J.A.C. 10:87-1 with amendments contains numerous technical language and grammatical changes which clarify general provisions and procedures applicable to the Food Stamp Program. The amendment at N.J.A.C. 10:87-1.4 outlines minimum information requirements for CWAs, as required by 7 CFR 272.5, including display and distribution of nutrition information, informing households of their program rights and responsibilities, and the provision of such information in languages other than English, where required, including a nondiscrimination statement.

N.J.A.C. 10:87-1.13(e) and (f) are amended to provide that participants are ensured access to information regarding their rights, nondiscrimination policies and complaint procedures no later than 10 days from the date such material is requested and to require that applicants be advised that program applications will be processed without discrimination to conform to 7 CFR 272.6.

Amendments to N.J.A.C. 10:87-2.2 address policy changes and clarifications related to the household concept, to conform to N.J.A.C. 10:87-2.2(a) provides that an applicant household that has customarily purchased and prepared food separately in the past but, because of financial or other changes, is now temporarily buying and preparing food with others, be considered a separate household, provided the household intends to return to its former status upon receipt of food stamps. Language at N.J.A.C. 10:87-2.2(c) amends rules to permit a natural, adopted or step-child who is a parent of minor children and is living with

his or her parents to be a separate household together with his or her minor children. Similarly, if a sibling is the parent of minor children and he or she and the children are living with his or her sibling, the sibling together with his or her minor childern may also be granted separate household status. 7 CFR 273.1(a)(2)(i)(C).

N.J.A.C. 10:87-2.3 is amended to conform to and specify that an individual disqualified for noncompliance with work and training requirements shall be considered a nonhousehold member ineligible to participate in the program as a separate household to conform to 7 CFR 273.1(b)(2)(vii). The disqualified individual is not considered in determining the eligibility or allotment of remaining household members. Such individuals were originally considered excluded members and as such their income and resources were considered available to remaining household members, generally resulting in a reduced benefit level for the remaining household members.

N.J.A.C. 10:87-2.3(b), concerning boarders, is being amended to conform with Federal regulations at 7 CFR 273.1(c)(1), which clarify that in no event shall boarder status be granted to children or siblings residing with elderly or disabled parents or siblings or to those individuals or groups of individuals defined at N.J.A.C. 10:87-2.2(c) who are required to be a single household and not entitled to separate household status.

N.J.A.C. 10:87-2.4 is being amended to define homeless individuals for Food Stamp Program purposes in accordance with the Stewart B. McKinney Homeless Assistance Act (P.L. 100-77) and 7 CFR 273.1(e)(5). Those individuals include persons lacking a fixed and regular nighttime residence, including those living in shelters, welfare hotels, halfway houses, temporary accommodations, or any place not designed for regular sleeping accommodations such as hallways, bus stations and lobbies. Amendments at N.J.A.C. 10:87-2.10(e) define homeless meal provider and specify that such providers may not act as authorized representatives for homeless food stamp recipients.

Amendments at N.J.A.C. 10:87-2.12 provide that all applicants for food stamps shall be notified at the time of application and at each recertification that information available through the State Income Eligibility and Verification System (IEVS) will be used to verify eligibility to conform to 7 CFR 273.2(b).

The change at N.J.A.C. 10:87-2.17 requires the CWA to verify all factors of eligibility for households reapplying for food stamps after being terminated for refusal to cooperate with a quality control review, to conform to 7 CFR 273.2(f)(1)(ix).

The text at N.J.A.C. 10:87-2.18, concerning interviews, is being recodified at N.J.A.C. 10:87-2.19(a).

N.J.A.C. 10:87-2.21(h) revises procedures for obtaining and verifying Social Security numbers (SSNs) to conform to 7 CFR 273.2(f) and 273.6(b) through (g). Social Security numbers provided by the household must be verified with the Social Security Administration (SSA) by submitting them through the State management information system. Once verified, a permanent annotation is made in the household's case record to prevent unnecessary reverification in the future. Social Security numbers previously verified by another program participating in IEVS is acceptable for Food Stamp Program purposes. Individuals who are unable to provide, or do not have an SSN are required to apply for an SSN as a condition of eligibility for the program. Refusal or failure to cooperate in providing or obtaining an SSN without good cause results in disqualification of that individual. In determining if good cause for failure to provide an SSN exists, the CWA shall consider information from the household, the SSA and other State sources, that the household member has applied for and/or made every effort to obtain an SSN from SSA. Once an application for an SSN has been filed, the CWA must allow the member to participate pending notification of the household member's SSN. To conform to 7 CFR 273.2(f) and 273.6(b) through (g).

Information pertaining to the ALFX file has been recodified from N.J.A.C. 10:87-2.24 to 10:87-2.21(n)1.

Information pertaining to the Beneficiary Data Exchange (BENDEX)/State Data Exchange (SDX) has been recodified from N.J.A.C. 10:87-2.27 to 10:87-2.22.

Rules at N.J.A.C. 10:87-2.32, concerning eligibility for expedited service, are being expanded to include households in which all members are homeless and households whose combined monthly gross income and liquid resources are less than the household's monthly rent, to conform to 7 CFR 273.2(i)(1)(iii) and (iv), 7 CFR 273.2(i)(3)(i). For households entitled to expedited service, processing standards at N.J.A.C. 10:87-2.33 are being amended to require CWAs to make available to the recipient an authorization to participate (ATP) card or coupons not later than the fifth calendar day following the date the application was filed and to ensure that a reasonable opportunity exists for redemption of the ATP on the day of issuance. In addition, residents of drug addiction or alcoholic treatment and rehabilitation centers, residents of group living arrangements and shelters for battered women who are entitled to expedited service must also receive ATPs within the five calendar day timeframe to conform to 7 CFR 273.2(i)(1)(iii) and (iv), 7 CFR 273.2(i)(3)(i).

A new rule at N.J.A.C. 10:87-2.36, which conforms to 7 CFR 273.2(j), provides procedures to be followed for households considered categorically eligible because of their status as recipients of AFDC and/or SSI. Any household consisting solely of members receiving or authorized to receive AFDC and/or SSI benefits shall be considered a "pure" AFDC/SSI household and therefore categorically eligible for the Food Stamp Program. Individuals entitled to Medicaid and not AFDC/SSI and GA and State funded AFDC-N are not considered categorically eligible. If a household contains one or more AFDC-N individuals or a GA recipient, the household cannot be considered categorically eligible. Households in which all members are applying for AFDC and food stamps must complete a joint application and have a single interview for both programs. Further, rules detail household composition, application processing, verification and notification requirements, benefit entitlement and other requirements specific to categorical eligibility.

Amendments to N.J.A.C. 10:87-2.37 which conform to 7 CFR 273.2(k), concerning procedures for SSI jointly processed households provide a definition of SSI, stipulate that pure SSI households are categorically eligible for food stamps, and provide procedures to be followed by CWAs for food stamp applications received from the SSA.

N.J.A.C. 10:87-2.38 which defines "elderly or disabled" household member is being revised to conform with Federal regulations at 7 CFR 271.2. The amended definition expands and clarifies the definitions of "disabled" household member.

Verification of the residency requirement at N.J.A.C. 10:87-3.3 has been amended to temporarily exclude verification of residence in unusual cases such as homeless households, migrant farm worker households or households newly arrived to the project area where verification of residency cannot reasonably be accomplished, to conform to 7 CFR 273.2(f)(1)(iv).

N.J.A.C. 10:87-3.4 is amended to specify that when recording an applicant's address an otherwise eligible household cannot be required to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility to conform to 7 CFR 273.3.

N.J.A.C. 10:87-3.8, concerning eligible aliens, is being amended to conform with revised Federal regulations. The categories of eligible and potentially eligible aliens are expanded to comply with Federal regulations at 7 CFR 273.4.

N.J.A.C. 10:87-3.13 through 3.21 concerning the food stamp work registration and work and training requirements are being deleted from subchapter 3 and recodified at N.J.A.C. 10:87-10.1 et seq.

N.J.A.C. 10:87-3.13 describes the State Income Eligibility and Verification System (IEVS). The IEVS system is used to obtain wage and benefit information from other agencies to verify eligibility for, and amount of, food stamp benefits. Information about all applicant households must be requested immediately after the date of application even if the applicant household has been determined eligible. Rules specify procedures to be followed with respect to the use of IEVS and the information obtained/provided through that system. Appropriate privacy and procedural safeguards are specified for IEVS information to conform to 7 CFR 272.8.

Amendments at N.J.A.C. 10:87-3.14 define institutions of post-secondary education and expand student eligibility requirements to include persons assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act, to conform to 7 CFR 273.5).

The new rule at N.J.A.C. 10:87-3.16, previously located at N.J.A.C. 10:87-3.15, stipulates that each household member, not otherwise exempt, must register for work as a condition of eligibility for the Food Stamp Program and provides a cross-reference to N.J.A.C. 10:87-10.1 et seq. for further rules pertaining to work registration and employment and training requirements.

N.J.A.C. 10:87-4.1 is being amended to conform to 7 CFR 273.8(a) and to provide that categorically eligible households are not subject to the resource provisions of subchapter 4. As AFDC and/or SSI recipients, resource eligibility for food stamp purposes is already established.

Language at N.J.A.C. 10:87-4.8(a)7 is being revised to comply with Federal regulations at 7 CFR 273.8(e) which provides a resource exclusion

for rental and vacation homes if such property is producing income consistent with its fair market value. A resource exclusion is also being provided for non-liquid assets against which a lien has been placed as a result of taking out a business loan (7 CFR 273.8(e)(15)). Resources excluded by Federal law at N.J.A.C. 10:87-4.8(a)17 are being expanded to provide exclusions for relocation assistance to members of the Hopi and Navajo Tribes, educational assistance funded in whole or in part under Title IV of the Higher Education Act, and earned income tax credits received before January 1, 1980 in conformity with Federal regulations at 7 CFR 273.8(e)(11). Other resource exclusions being included in this amendment are HUD retroactive tax and utility cost subsidy payments issued pursuant to *Underwood v. Harris* (Civil No. 76-0469, D.D.C. and, where an exclusion applies because of use of a resource by or for a household member, the exclusion also applies when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources, to conform to 7 CFR 273.8(e).

Treatment of licensed vehicles at N.J.A.C. 10:87-4.12(a)1vi is being amended to provide an exclusion for property, real or personal, to the extent that it is directly related to the maintenance of a vehicle used for income producing purposes or a vehicle essential for employment, to conform to 7 CFR 273.8(h).

Language at N.J.A.C. 10:87-4.13 concerning maximum allowable resources is being amended to conform with the language of the Federal regulation at 7 CFR 273.8(b).

A new rule at N.J.A.C. 10:87-4.20 addresses the treatment of resources of nonhousehold members, to conform to 7 CFR 273.9, through cross-references to subchapters 2 and 7.

N.J.A.C. 10:87-5.1 is being amended to provide that categorically eligible households are not subject to the gross or net income eligibility provisions of subchapter 5. As AFDC and/or SSI recipients, income eligibility for food stamp purpose, is already established as provided for in 7 CFR 273.9(a).

The amendment at N.J.A.C. 10:87-5.4(a)4 provides that Realizing Economic Achievement (REACH) training allowances are not countable as income to the extent that such allowances are reimbursements for expenses related to participation in REACH. The amendment to N.J.A.C. 10:87-5.4(a)6 requires that earnings of individuals from on-the-job training programs under JTPA shall be counted as income. The provision does not apply to a household member under 19 years of age who is under the parental control of another adult member (see 7 CFR 273.9(b)(1)).

Language at N.J.A.C. 10:87-5.5 concerning unearned income is being revised to conform to clarify that assistance payments based on need are considered unearned income even if provided in the form of vendor payment to a third party and to 7 CFR 273.9(b)(2).

N.J.A.C. 10:87-5.9(a)2 is being revised to stipulate that education assistance provided to a third party for living expenses shall be counted as income (7 CFR 273.5). The amendment to N.J.A.C. 10:87-5.9(a)3 provides that HUD utility allowances are also counted as income. N.J.A.C. 10:87-5.9(a)4 specifies that an AFDC or GA payment which is not made directly to the household, but paid to a third party on behalf of the household to pay a household expense for medical, child care, energy or housing assistance shall not be counted. An additional income exclusion is being added at N.J.A.C. 10:87-5.9(a)5 for cash donations based on need from private nonprofit charitable organizations, not to exceed $300.00 in a Federal fiscal quarter, to conform to 7 CFR 273.9(c)(1). N.J.A.C. 10:87-5.9(a)15 expands exclusions of income required by Federal law to exclude payments provided to individuals from programs under the Senior Community Service Employment Program and other programs funded by Title V moneys and to exclude any educational assistance funded in whole or in part under Title IV of the Higher Education Act Amendments of 1986 or funded by the Bureau of Indian Affairs (BIA) to the extent that it is used for tuition, mandatory school fees, and other specified costs of education, as provided for in 7 CFR 273.9(c)(10).

N.J.A.C. 10:87-5.10(a)5iv(1)(E) is being amended to conform to 7 CFR 273.9(d)(6) and to provide that households that receive a Home Energy Assistance payment are eligible to use the heating utility allowance. N.J.A.C. 10:87-5.10(a)5iv(4) is amended to permit households to switch between actual utility costs and the utility allowance at time of recertification and one additional time during each 12 month period. Under the prior regulation, once the household made an election between actual expenses and a utility allowance, the household was not permitted to switch more frequently than once every 12 months.

A new rule, which conforms to 7 CFR 273.9(c), concerning treatment of education assistance is being proposed at N.J.A.C. 10:87-5.11. That rule provides definitions of mandatory school fees, institutions of post-secondary education and grantor, for purposes of treatment of educational assistance. Federal educational assistance, funded in whole or in part under Title IV of the Higher Education Act of 1986, or by the Bureau of Indian Affairs, which is used by the student for tuition, mandatory school fees or specified costs of education, is excluded from income. Assistance provided for room, board and dependent care shall not be excluded. Budget sheets prepared by the institution of post-secondary education or grantor which indicate anticipated educational expenses serve as appropriate documentation for purposes of excluding such funds. State and private educational assistance is excluded to the same extent as Federal educational assistance if the funds are designated by the grantor or the financial aid office of the school when that office takes part in determining eligibility for, and level of educational assistance. An award letter or other document in which funds are designated for specific educational expenses is considered acceptable verification. No portion of Federal or non-Federal educational assistance that provides income assistance for living expenses shall be excluded.

N.J.A.C. 10:87-6.2 and 6.3 revise and clarify language concerning procedures related to an application for recertification and specifies circumstances under which the first month of a new certification period shall be considered an initial month, to conform to 7 CFR 273.14. If a household submits an application for recertification before the end of its current certification period but is found ineligible for the first month following the end of that period, then the first month of any subsequent participation shall be considered an initial month and subject to proration. In this circumstance, if the deadline for filing an application for recertification or for providing missing verification falls after the end of the current certification period, the household shall not be subject to proration for the first month of the new certification period. Conversely, if a household is found eligible for the first month, then that month shall not be considered an initial month.

N.J.A.C. 10:87-6.11(a)1 is amended to conform to 7 CFR 273.4 and to provide an income exclusion for energy assistance vendor payments made under the Home Energy Assistance program. In addition, the rule clarifies that expenses for services shall only be deductible if the service is provided by someone outside the household and the household actually makes a money payment for the service.

N.J.A.C. 10:87-6.15, calculating net and gross income and benefit levels, is being amended to conform with corresponding income eligibility rules in subchapter 5 and 7 CFR 273.10. This section is also being amended to require that each individual's monthly earned and unearned income be rounded prior to determining the household's total monthly gross income. This change is necessary in order to comply with FNS requirements to maintain individual income information in the management information system.

N.J.A.C. 10:87-6.19 is amended to state that under no circumstances shall food stamp benefits be continued beyond the end of a certification period without a new determination of eligibility, to conform to 7 CFR 273.10(f).

N.J.A.C. 10:87-6.23, concerning assignment of certification periods, is being amended to provide that households subject to monthly reporting be assigned a certification period of not less than six months and not more than 12 months. In addition, households granted separate household status because the household consists of an individual and that individual's minor children living with the individual's parent or sibling shall be assigned a certification period of not more than six months, to conform to 7 CFR 273.10(f).

References to the 18 percent earned income disregard throughout subchapter 7 have been corrected to reflect the current 20 percent earned income disregard.

The rule at N.J.A.C. 10:87-7.3 provides that self-employment income which represents a household's annual income shall be annualized over a 12-month period even if the income is received within a short period of time during that 12-month period. The rule is being amended to provide an exception to the method for annualizing income. If the annualized income does not accurately reflect the households actual circumstances because of a substantial increase or decrease in business, self-employment income is to be calculated on anticipated earnings. When a substantial increase or decrease in business has occurred, self-employment income shall not be calculated on the basis of prior income such as income tax returns, to conform to 7 CFR 273.11(a)(1).

N.J.A.C. 10:87-7.6 is being amended to conform with revised Federal regulations at 7 CFR 273.11(a)(2) concerning determining monthly income from self-employment. Specifically, the determination of net monthly income from self-employment is being amended to provide that

when the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses are to be offset first against non-farm self-employment income and, second against the total of any other countable income. To be considered a self-employed farmer, the farmer must receive, or anticipate receiving, annual gross proceeds of $1000.00 or more from the farming enterprise. The standard deduction, dependent care and shelter costs, if appropriate shall be subtracted from the offset income to determine the monthly net income of the household. Net losses from self-employment income as a farmer shall be prorated over the year.

N.J.A.C. 10:87-7.14 is being updated to conform to revised Federal language at 7 CFR 273.11(c) concerning treatment of income and resources of certain nonhousehold members. The amendments revise language to change references to "excluded" household members to be "ineligible" household members.

N.J.A.C. 10:87-7.15 is being revised to clarify that nonhousehold members (other than those determined ineligible due to ineligible alien status, disqualified due to intentional program violation, or failure/refusal to provide a Social Security number), such as ineligible students, shall not be included when determining household size for the purpose of assigning a benefit level, comparing the household's income with the income eligibility standard or comparing household resources with the resource eligibility limits (7 CFR 273.11(d)).

Federal regulations at 7 CFR 273.11(i) concerning deeming of income and resources of sponsored aliens have been revised, necessitating revisions to the rules at N.J.A.C. 10:87-7.18 as follows: 1) sponsored alien deeming rules are not to be applied when the alien's sponsor is participating in the Food Stamp Program separate and apart from the alien; 2) the amount of income and resources deemed to the sponsored alien is to be considered in determining the eligibility and benefit level of the household in which the alien is a member; 3) if the sponsored alien loses his or her sponsor during the three-year period, the deemed income and resources of the sponsor shall continue to be attributed to the alien until the alien obtains a new sponsor or the three-year period for applying sponsored alien provisions expire; 4) if the alien's sponsor becomes deceased, the deemed income and resources shall no longer be attributed to the alien; 5) the sponsored alien and his or her spouse are responsible for obtaining cooperation of the sponsor and for providing information and documentation necessary to calculate deemed income and resoures; 6) the sponsored alien is also responsible for reporting changes in sponsor income and employment, names and identifying factors of other aliens sponsored by the same sponsor, or the sponsor becoming deceased; 7) if a sponsored alien refuses to cooperate in providing or verifying needed information, other adult members of the alien household are responsible for providing required documentation; 8) if the sponsor fails to provide the needed information and is responsible for the entire household, that household shall be ineligible until the needed information is provided; and 9) in the case of claims for overissuances against the sponsor, the sponsor is entitled to a fair hearing either to contest a determination that the sponsor was at fault where it was determined that incorrect information has been provided or to contest the amount of a claim.

A new rule at N.J.A.C. 10:87-7.19 addresses homeless food stamp households and homeless meal providers. Specifically, the rule permits homeless food stamp households to use the food stamp coupons to purchase prepared meals from approved homeless meal providers. Homeless meal providers are defined as public or private nonprofit organizations that apply for and qualify to accept food stamps from homeless food stamp recipients. Homeless meal providers must obtain written approval from FNS prior to accepting food stamps, in accordance with 7 CFR 273.11(h) and 278.1(h).

The amendment to N.J.A.C. 10:87-8.1 provides that the conduct of fair hearings shall be governed by the Uniform Administrative Procedure Rules in N.J.A.C. 1:1 and the rules on Public Welfare hearings contained in N.J.A.C. 1:10, and further specifies that, where any rule in N.J.A.C. 10:87-8 is inconsistent with those rules, N.J.A.C. 1:1 and 1:10 shall take precedence.

The amended language in N.J.A.C. 10:87-8.2A, which conforms to 7 CFR 273.7(f), states that households do not have a right to a continuation of benefits pending a fair hearing during a period of federally mandated reduction, suspension or cancellation of food stamp benefits, thus avoiding expenditure of funds beyond those appropriated by Congress. The household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the CWA was directed to reduce benefits.

N.J.A.C. 10:87-8.4 is being amended to provide rules concerning the conduct of pre-hearing settlement conferences concerning Food Stamp Program appeals, except for those appeals involving intentional program violation (IPV) issues. The CWA is required to contact the appellant to schedule a pre-hearing conference. The CWA fair hearing liaison is required to act as mediator between the appellant and other CWA staff. The CWA is required to report the disposition of each food stamp pre-hearing request/conference to the Division of Public Welfare.

Amendments at N.J.A.C. 10:87-9.1 and 9.2 revise rules concerning action on applications for rectification and notices of expiration (NOE) to conform to revised Federal regulations at 7 CFR 273.14(a), (c) and (f). Revised language at N.J.S.A. 10:87-9.1(a) requires the CWA to complete the application process, if the household meets all requirements, and approve or deny the application, prior to the end of the household's current certification period. All eligible households must be provided the opportunity to participate in the month following the end of its current certification period. A household loses its right to uninterrupted benefits if the household fails to comply with the interview/verification requirements. If the household corrects such failures, the CWA must provide benefits as follow: 1) for food stamp recertification applications filed prior to the last month of the certification period, benefits shall be issued on the next normal issuance date of the first month of the new certification period; and 2) for food stamp recertification applications filed during the last month of the certification, benefits shall be issued no later than 30 days subsequent to the date of application.

The amended rules at N.J.A.C. 10:87-9.1(b), which conform to 7 CFR 273.14(a),(c) and (f), require CWAs to provide a notice of expiration (NOE) to each food stamp household at the time of certification to any household certified for one month or, two months when the certification action is not completed until the second month of the two-month certification period. For all other household, the CWA must ensure that the household receives the NOE in the month prior to the last month of the household's certification period. The NOE must be received by the household at least one day before the first day of the last month of the certification period, but no earlier than the first day of the next to the last month of the certification period. Non-monthly reporting (MR) households that are certified for one month, or certified for two months in the second month of a two-month certification, shall have 15 days from the date of the NOE is received to file a timely application for recertification. All other non-MR households which submit identifiable applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification. For month reporting households, the filing deadline for recertifications shall be the normal date for filing a monthly report. Households consisting of SSI applicants/recipients who apply for food stamp recertification at a Social Security Administration (SSA) office shall be considered to have filed a timely application for recertification when the application is received by SSA.

Amendments at N.J.A.C. 10:87-9.2, which conform to 7 CFR 273.14(a),(c) and (f), eliminate the good cause provision for filing a late application. If an application for recertification is not received until after the current certification period has expired, the month of application shall be the month in which the application is filed. Benefits for the month of application shall be subject to proration.

The amendments at N.J.A.C. 10:87-9.5(f) provide rules concerning procedures related to mass changes in food stamp benefits as a result of changes in Federal or other program benefits, such as RSDI, SSI, or AFDC benefits. Such changes shall be reflected no later than the second allotment issued after the month in which the change becomes effective. Amendments at N.J.A.C. 10:87-9.5(g), (h) and (i) specify procedures to be followed whenever food stamp benefits are altered as a result of a change in AFDC benefits. Two new exemptions to the adverse action notice requirements are established. The first exemption is for households which voluntarily request in writing, or in the presence of a caseworker that its participation in the Food Stamp Program be terminated. The CWA must respond to all non-written requests by sending a letter confirming its voluntary withdrawal. The other exemption provides that a notice of adverse action need not be sent if the CWA determines, based on reliable information, that the household is departing from the county of current residence prior to the next issuance and therefore will not be able to obtain and negotiate its next ATP (7 CFR 272.12(e) and 273.13(b)).

Rules concerning the replacement of nondelivered ATPs, previously found in N.J.A.C. 10:87-10, are being added at N.J.A.C. 10:87-9.7(i) to conform to Federal regulations at 7 CFR 274.2(h)(1)(v). The New Jersey Administrative Code will provide that the CWA shall deny or delay replacement of the ATP in cases which documentation indicates that the request for replacement is fraudulent and report all ATPs reported lost

or stolen in the mail to the appropriate office of the Postal Inspection Service on a monthly basis.

N.J.A.C. 10:87-9.8 is amended to conform to Federal regulations at 7 CFR 274.1(a) to provide that each CWA is responsible for the timely and accurate issuance of benefits, including a standardized issuance and accountability system. In addition, the CWA is required to assist elderly and disabled households and homeless householsd with no fixed address in obtaining their coupons.

The current text of N.J.A.C. 10:87-10.1 concerning fiscal procedures is being repealed in its entirety. Relevant accountability rules already exist in subchapter 9. New Jersey's unique fiscal operating procedures are addressed in the new Appendix A as such operations are subject to continual revision and update for purposes of fiscal accountability.

The text at N.J.A.C. 10:87-3.13 through 3.21 has been recodified at N.J.A.C. 10:87-10.1 through 10.24. Changes to the rules are identified in this summary using the new codification.

N.J.A.C. 10:87-10.1 has been amended to conform to 7 CFR 273.7(h)(5) and to provide that, for purposes of retaining eligibility for the Food Stamp Program, a work registrant must comply with the provisions of subchapter 10 and the State Plan for Food Stamp and Employment and Training Programs.

The amendment to N.J.A.C. 10:87-10.3(d)4 conforms to 7 CFR 273.7(o)(2) and provides that if participation in one type of employment and training (E&T) component is not continuous, the participant may be counted as having been placed only at the time of his or her initial commencement of the component. Previously, such individuals could be counted as placed more than once in the same component.

N.J.A.C. 10:87-10.7(b) concerning exemptions from the work registration requirement is amended to provide that persons registering for, but not actively participating in a GA work requirement through the General Assistance Employability Program (GAEP), may be subject to the food stamp work registration and employment and training requirements. This change aligns the GA work registration exemption with the Title IV-A (AFDC) work registration exemption.

The amendment at N.J.A.C. 10:87-10.8 provides that persons losing exempt status due to a change in circumstances that is not subject to the reporting requirements of N.J.A.C. 10:87-9.5(a) is required to register for employment at the time of the household's next recertification. These changes have been made to conform to 7 CFR 273.7(b)(2).

N.J.A.C. 10:87-10.9(c)5 is amended to clarify that all participants in an employment and training program shall receive a participant allowance provided through the CWA for costs related to participation at the flat rate of $25.00 per month for all participants. These changes have been made to conform to 7 CFR 273.7(d)(1)(ii).

Amendments at N.J.A.C. 10:87-10.19(c) and (d), which conform to 7 CFR 273.5(b), address the continued eligibility of participants enrolled in an institution of post-secondary education who become subject to the restrictive student eligibility criteria. Unless such a participant is assigned to an institution of higher learning through a program authorized/ approved under JTPA, that participant may only be referred to higher educational components on a less than half-time basis in order to preclude ineligibility for the Food Stamp Program.

N.J.A.C. 10:87-10.23 concerning good cause for noncompliance is being amended to provide that, if good cause for noncompliance no longer exists, the person shall be referred to a service component as soon as possible.

N.J.A.C. 10:87-11.28 is amended to comply with Federal regulations at 7 CFR 273.18(c)(1) and (2), concerning establishment of an intentional program violation (IPV) claim. Specifically, the amendment provides that if a household received a larger allotment than it was entitled to receive, the CWA shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. Additionally, when determining the amount of benefits the household should have received, the CWA shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report. These amendments clarify the calculation of an IPV claim.

A new rule is established at N.J.A.C. 10:87-11.32 concerning interstate claims collection to conform with Federal regulations at 7 CFR 273.18(k). The rule provides procedures to be followed for a household which is subject to claims collection for any overissuance and relocates from another state into a project area in New Jersey. The state agency which overissued benefits shall have the first opportunity to collect an overissuance. If that state fails or is unwilling to take prompt collection action, the CWA should initiate action to collect the overissuance.

The new rule at N.J.A.C. 10:87-11.33 is being established to comply with Federal regulations at 7 CFR 273.16(i). The rule outlines CWA reporting requirements for incorrect issuances. Each CWA is required to report information concerning individuals disqualified for IPV, administrative disqualification hearings, court of appropriate jurisdiction and those who signed a waiver of right to a disqualification hearing, or consent agreement within 30 calendar days after the action is executed.

Social Impact

The Food Stamp Program was designed to promote the general welfare and to safeguard the health and well-being of the population by raising the levels of nutrition in low-income households. The program is authorized by the United States Congress and regulated by the United States Department of Agriculture. These rules serve to delineate the policies and procedures applicable to the determination of eligibility and issuance of food stamp benefits for all households which apply for participation in the program.

The Department of Human Services is responsible for amending these rules as necessary to ensure that policies and procedures for administration of the program are revised in accordance with amendments to the Food Stamp Act and Federal regulations governing the program.

The Food Stamp Program provides an opportunity for low-income households to receive benefits, in the form of food stamp coupons, to supplement the household's budget for the purchase of food. The most recent data available indicates that 375,100 individuals, comprising 141,420 households, participate in the Food Stamp Program each month. If the program were not available, a significant number of these individuals would lack sufficient means to purchase adequate food to meet their nutritional needs.

As indicated in the Summary, a significant number of amendments is contained in the proposed amendments in order to conform with the numerous changes mandated by Federal law and regulations. Generally, the amendments provide for program clarification and improve the integrity and administration of the program.

Economic Impact

The Food Stamp Program provides for a positive economic impact on both individual recipients and the economy of the State, as food stamp benefits are 100 percent federally funded and the Federal matching for administrative costs is 50 percent.

Individual recipients receive an average benefit of $49.00 per month. In terms of Federal funds coming into the State, benefit dollars for State Fiscal Year 1988 exceeded $218,320,000. It is anticipated that benefit dollars for State Fiscal Year 1989 will be $205,900,000.

The amendments contained in this proposal will not impact significantly on administrative costs of the Department or county governments. Additionally, the Federal government fully funds expenditures for food stamp benefits.

Regulatory Flexibility Statement

This proposed readoption has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rulemaking imposes no compliance requirements on small businesses, therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:87, as amended and supplemented by the New Jersey Register.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 10:87-10.

Full text of the proposed amendments to the readoption and proposed new rules follows (additions indicated in boldface **thus**; deletions indicated by brackets [thus]).

10:87-1.2 Administration of the Program

(a) The Program is authorized by the U.S. Congress and regulated by the U.S. Department of Agriculture (USDA). In New Jersey, the county welfare agencies (**CWAs**) are responsible for certifying eligible households and arranging for coupon issuance outlets. Only persons employed by a [county welfare agency] **CWA** are legally empowered to enroll applicants in the program.

(b) Although the counties directly administer the [p]Program, the State is ultimately responsible for [i]ensuring that program operations conform [completely] with [f]Federal laws and **USDA** regulations.

(c) The county administration of the Food Stamp Program is supported by a centralized **computer management information** system [as a means of] **to** comply[ing] with the requirement [of] **for keeping** a uniform system of records and accounts throughout the State. [Through Central Operations for Data Exchange and Services (CODES), county welfare agencies] **CWAs** have access to [a] **the** management information system that performs routine clerical tasks, determines eligibility status, calculates the coupon allotment, produces food stamp **Authorizations to Participate** (ATPs), and management and fiscal reports. [CODES] **This automated system** expedites [the] implementation of **policy** changes [in policy], eliminates duplication of effort, and allows for efficient updating of information.

10:87-1.3 Legal basis of the Program

Policies and procedures for the administration of the program are derived from the Food Stamp Act **of 1977 (7 U.S.C. 2011-2029)** and current USDA, **Food and Nutrition Service (FNS)**, regulations and instructions (which are uniform nationwide). [The New Jersey Food Stamp Manual is a compilation of these rules.]

10:87-1.4 Program informational activities

[County welfare agencies shall be required to display posters and make available pamphlets and other printed material supplied by the Division of Public Welfare. Applicants shall be informed of the availability of this material at the time of initial application and recertification.]

(a) The Division of Public Welfare (DPW) will supply CWAs with posters and pamphlets concerning nutritional information, and, where available, explanations of Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP) explanations. CWAs shall display the posters and make the pamphlets available at all food stamp and public assistance offices.

(b) CWAs shall inform participant and applicant households of their program rights and responsibilities. The information may be provided through whatever means DPW deems appropriate.

(c) All informational material shall be available in languages other than English as required by FNS bilingual guidelines (see 7 CFR 272.4(b)) and shall include a statement that the program is available to all without regard to race, color, sex, age, handicap, religious creed, national origin, or political belief.

10:87-1.5 Purpose of the New Jersey Food Stamp Manual

The purpose of this manual is to outline the policies and procedures applicable to the certification and/or recertification of those who apply for food stamps. The policies and procedures [of] **contained in** this manual shall be used to determine eligibility **criteria** and issuance **requirements** for food stamp benefits for all **qualified** households regardless of **their** eligibility [requirements of] **for** other assistance programs.

10:87-1.6 The concept of reasonable certainty: situations not covered by the [M]manual

(a) While this manual attempts to minimize discretionary action on the part of the certification worker, there will be situations which are [only generally] **not specifically** covered by existing policy guidelines. In **those** cases [of this nature,] the certification worker shall be expected to make a judgment, based on [his/her] **his or her** experience and/or knowledge of the Program, which can be defended as both reasonable and prudent.

(b) In cases where the treatment of a situation is neither specifically nor generally addressed in this [M]manual, the matter shall be referred to [Division of Public Welfare (DPW)] **DPW** for resolution.

10:87-1.7 Assignment of [M]manual

Copies of this manual shall be assigned to administrative [staff] and [to] other staff working with applicants and recipients. Each staff member is expected to be thoroughly familiar with its contents [in order] **so** that policy and procedures may be consistently applied.

10:87-1.8 Responsibility of [M]manual holders

Each holder of the [M]manual shall be responsible for maintaining a current and up-to-date [M]manual. [The Division of Public Welfare] **DPW** shall issue revisions and changes as necessary; the [M]manual holder shall insert new material and remove obsolete pages promptly.

10:87-1.9 Retention of obsolete material

The [county welfare agency] **CWA** shall retain one copy of obsolete manual material for [the] administrative purposes.

10:87-1.10 Public access to the [M]manual

(a) This [M]manual is a public document and shall be made accessible in [the following manner:] **accordance with (b) through (h) below.**

[1.](**b**) Fair hearings: Specific policy material necessary for an applicant, recipient, **and**/or [his/her] representative to determine whether or not a hearing should be requested, or to prepare for a hearing, shall be provided to such persons without charge.

[2.](**c**) Libraries: All public and [university] **private** libraries which have agreed to [keep] **maintain** the [M]manual [up-to-date] **on a current up-to-date basis** shall [have] **make** a copy available [under their regulations] **to the public, subject to their own regulations.**

[3.](**d**) Legal services: Each **county** legal services office shall be furnished with a copy of this [M]manual.

[4.](**e**) Service organizations: Welfare, social service and other nonprofit organizations shall be furnished with a **free** copy of [this Manual, at no cost,] **the manual** upon receipt by [the Division of Public Welfare] **DPW** of an official, written request.

[5.](**f**) Individuals: A current up-to-date copy of the [M]manual, or any part of it, shall be available from [the Division of Public Welfare] **DPW**, at the cost of printing and mailing, to anyone who requests [such] **it** in writing.

[6.](**g**) Public examination: A current up-to-date copy of the manual will be maintained in each CWA for examination by members of the public [on regular work days] during regular working hours.

[(b)](**h**) All supplementary State policy directives [(Circular Letters)] shall be [routinely] sent to those who have been supplied with the [M]manual. A mailing list shall be maintained by [the New Jersey Division of Public Welfare] **DPW for that purpose**.

10:87-1.11 Policy of nondiscrimination

[County welfare agencies] **CWAs** shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings [, or the conduct of] **or** any other program service, for reasons of age, race, color, sex, handicap, religious creed, national origin or political belief[s].

10:87-1.12 Complaint procedures

(a) [People] **Persons** who believe that they have been subject to discrimination as described in [section 11 of this subchapter] **N.J.A.C. 10:87-1.11** may complain directly to [the U.S. Department of Agriculture] **USDA and**/or to [the Division of Public Welfare] **DPW**. The CWA shall explain the complaint procedures and advise the individual(s) of [the] **their** right to file a complaint.

(b) Time limit for filing a complaint: A complaint must be filed no later than 180 days from the date of alleged discrimination, unless [such] **the** period is extended by [the Secretary of the U.S. Department of Agriculture] **USDA**.

(c) CWA responsibility: The CWA shall accept all complaints of discrimination[, written or oral] and forward them promptly to the Director[, Division of Public Welfare,] **of DPW** who will in turn forward them to [the U.S. Department of Agriculture] **USDA**.

(d) [In the event an individual orally alleges] **If a person alleges verbally** that a discriminatory act has been committed [but the individual] **and** does not **(or cannot)** put it in writing, the CWA worker receiving the complaint shall do so. If possible, the following information shall be [solicited] **obtained** from the complainant:

1. (No change.)

2. Identity of the sources of discrimination: Location and name of the organization or office **and/or person(s)** [which is] accused of discriminatory practices;

3. Nature of incident: The nature of the incident, action, or aspect of the program administration that led [the person] to **the** alleged discrimination;

4. (No change.)

5. Identity of others having knowledge of discrimination: Names, titles (if appropriate), and addresses of persons (**other than the complainant**) who may have knowledge of the discriminatory act[s](**s**);

6. (No change.)

(e) Incomplete complaints: Written complaints shall be forwarded to the Director[, Division of Public Welfare,] **of DPW** even if the information **in (d)** above is not complete. Persons who file complaints shall be encouraged to provide this information to facilitate the investigation of the alleged discrimination[. The complainant] **and** shall be advised that investigations by [the U.S. Department of Agriculture] **USDA** will be conducted only if information specified in paragraphs (d)2, 3, and 4 [subsection (d) of this section] **above** is provided.

10:87-1.13 Public Notification Plan

[(a) The county welfare agency shall institute a Public Notification Plan comprised of the following elements:]

(a) The CWA shall publicize the procedure described in N.J.A.C. 10:87-1.12.

[1.](**b**) Minority group contacts: At least once every fiscal year, the [county welfare agency] **CWA** shall advise local minority group organizations, in writing, that the Food Stamp Program is available to all eligible households on a nondiscriminatory basis and of the complaint procedures. If there are no minority group organizations in the county, the [county welfare agency] **CWA** shall contact minority ministers, teachers, and/or other community leaders in the county, informing them of this **non**discrimination policy.

[i.](**c**) Records relating to the Public Notification Plan: The [county welfare agency] **CWA** shall maintain file copies of correspondence concerning public notification of nondiscrimination. These documents shall be available for inspection during audits and compliance reviews conducted by State and [f]Federal offices.

[2.](**d**) [Nondiscrimination poster: A] **The CWA shall display a** nondiscrimination poster (supplied by FNS **and/or DPW**) [, shall be prominently displayed] in all local food stamp certification offices. [Copies shall be available, without charge, from the State office.]

[3. Nondiscrimination statement on application: An applicant for program participation will be advised that his/her application shall be processed without discrimination. The statement on the application form which advises the applicant of his/her rights may be construed as fulfilling the county welfare agency's obligation with regard to this provision.

4. Nondiscrimination statement on informational literature: All publications informing the public of program benefits shall include the following statement: "Standards for participation in the Food Stamp Program are same for everyone without regard to age, race, sex, handicap, color, religious creed, national origin or political beliefs." The county welfare agency may exhaust present supplies of forms and publications; however, all new literature shall include the nondiscriminatory statement cited above.

5. Access to information: Each CWA shall ensure that participants and other low income households may access, within ten days of the date of such request, to information regarding nondiscrimination statutes and policies, complaint procedures, and the rights of participants.]

(e) The CWA shall ensure that participants (and other low-income households) have access to information regarding their rights, nondiscrimination statutes and policies and complaint procedures, no later than 10 days from the date the information is requested.

(f) The CWA shall advise applicants for program participation that his or her application shall be processed without discrimination in accordance with N.J.A.C. 10:87-1.11.

10:87-1.14 Confidentiality and disclosure of information

(a) Confidentiality of information: The [county welfare agency] **CWA** shall restrict the use or disclosure of information obtained [form] **from** applicant **or recipient** households to persons directly connected with the administration or enforcement of the Food Stamp Program, AFDC, SSI, Medicaid, Child Support and Paternity program **(CSP), Income Eligibility Verification System (IEVS)**, or with any other Federal or federally aided, means-tested assistance programs.

(b) Disclosure of information: The [county welfare agency] **CWA** may release information concerning an applicant **or recipient** household in the following situations only:

1. Law enforcement agencies: Upon written requests, the [county welfare agency] **CWA** shall cooperate in furnishing information to Federal, State or local law enforcement agencies in any investigation which concerns a household **or person** fraudulently obtaining coupons or otherwise violating the statutory provisions of the Food Stamp Act **and**/or FNS **and/or State** regulations. [(See (a) above.)] The law enforcement agency must provide a written request which shall include the identity of the individual requesting the information and his or her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested.

2. Judicial summons: Staff members shall provide such testimony as may be mandated by a court of competent jurisdiction in connection with administration and enforcement of the Food Stamp Program (see [subsection] (a) [of this section)] **above**).

3. Waiver of confidentiality: Upon **written** request by the household, [in writing,] the household may waive its rights to confidentiality of information[,] **and** the [county welfare agency] **CWA** shall make disclosure of information, but only to the extent specifically authorized by the waiver.

4. Client review: If there is a **written** request by **a responsible member of** the household, its **currently** authorized representative, or a person acting in its behalf to review materials in its case file, the material and information contained in the case file shall be made available during normal business hours.

i. Confidential information: The CWA may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

5. Fair hearings: Information and records shall be released to parties directly involved in a fair hearing procedure (see N.J.A.C. 10:87-8.6(a)[1ii]. and 10:87-8.15(a)[1]).

6. Release of lists of names and addresses: The furnishing of any lists of names **and**/ or addresses or both for purposes not directly related to **the** provisions [of subsection (a) of this section] **of (a) above** is specifically prohibited.

7. (No change.)

8. Parent Locator Service: The CWA shall make available, to the [Child Support and Paternity program's] **CSP's** Parent Locator Service, food stamp case file information to assist [in] the [Child Support and Paternity (CSP)] **CSP** program, under Title IV-D of the Social Security Act.

9.-10. (No change.)

10:87-1.15 Public access to information

(a) Copies of the [New Jersey Food Stamp M]**m**anual, supplementary directives [(Circular Letters)] issued for use in certifying applicant households, and food stamp fair hearing reports shall be readily available for public inspection in [the central Food Stamp Office of the county welfare agency] **all CWA central food stamp offices.**

(b) In addition, Federal food stamp statutes, **FNS** regulations, instructions, [and] the State Plan of Operation**, and a copy of this manual** shall be readily available for public inspection **during regular office hours in the central DPW office** [in the State Food Stamp Office] as well as **the FNS Regional Office.**

(c) DPW, at its option, may require other CWA offices within the State to maintain a copy of Federal statutes and FNS regulations.

10:87-1.16 Appeals

An applicant or recipient shall have the right to appeal any action or inaction[,] **concerning the Program** on the part of the [county welfare agency] **CWA** [, which] **that** affects [his/her] **his or her** household[. (See] (**see** N.J.A.C. 10:87-8 [of this chapter, Fair Hearings.)] **concerning fair hearings**).

10:87-1.17 Suits against county

(a) The[county welfare agency] **CWA** shall notify the [Division of Public Welfare] **DPW immediately** of **any** suit(s) filed by any person/organization against the [county] **CWA and/or DPW** which involve(s) [its] administration of the Food Stamp Program and shall

furnish [the Division] **DPW** with copies of the original pleadings and all subsequently filed pleadings.

(b) Failure to comply: If the [county welfare agency] **CWA** fails to comply with the provisions of [subsection] (a) [of this section] **above** and is ordered by a court to take actions which are determined by USDA to be inconsistent with the Food Stamp Act **of 1977** and its **FNS** regulations or instructions, the [county welfare agency] **CWA** may be liable for the amount of coupons issued pursuant to the court order.

10:87-2.2 Household defined

(a) A household may be composed of any of the following individuals or groups of individuals:

1.-3. (No change.)

4. Elderly and disabled individual living with others: An individual who is 60 years of age or older (and the spouse of such individual) living with others who is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or suffers from some other physical or mental nondisease-related, severe, permanent disability **may be a separate household** (see definition of elderly or disabled in N.J.A.C. 10:87-2.38 and verification requirements in N.J.A.C. 10:87-2.21**(i)** [(a)8ii)]). However, the gross monthly income of the household with which the individual resides cannot exceed the gross monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.7. This income determination shall be made in accordance with the following procedures:

i. (No change.)

ii. The gross monthly income of the others shall then be compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.7 [(Appendix A, Table VII)] to determine if the income is within the prescribed limit. The elderly, disabled person and his or her spouse would not be considered as household members for this comparison.

5. An applicant household that has customarily purchased and prepared food separately in the past but, because of changes in financial or other circumstances, is now temporarily buying and preparing food with others, shall be considered a separate household, providing it intends to return to its former status upon receipt of food stamps. The applicant household's statements on past and intended practices shall suffice, except when the information provided is questionable according to the criteria at N.J.A.C. 10:87-2.21(j). If the applicant household does not return to its former status, the actual household composition will prevail and will be considered a client-reportable change in accordance with N.J.A.C. 10:87-9.5(a). The 10-day period for reporting that the applicant household has not returned to its former status will commence upon receipt of food stamp benefits.

(b) (No change.)

(c) In no event shall nonhousehold member status or separate household status be granted to:

1. Parents living with their natural, adopted, or step children [or] **and** such children living with such parents, unless at least one parent is elderly or disabled as defined in N.J.A.C. 10:87-2.38;

i. If the natural, adopted or step child is a parent of minor children and he or she and the children are living with his or her parents, the parent of the minor children together with such children, may be granted separate household status.

2.-3. (No change.)

4. Siblings (natural, adopted, half or step brothers and sisters), unless at least one sibling is elderly or disabled as defined in N.J.A.C. 10:87-2.38.

i. If a sibling is the parent of minor children and he or she and the children are living with his or her sibling, the sibling who is the parent of the minor children, together with such children, may be granted separate household status.

10:87-2.3 Nonhousehold members, boarders and excluded household members

(a) Nonhousehold members: The individuals in (a)1 and 2 below residing with a household shall not be considered household members in determining a household's eligibility or allotment.

1. (No change.)

2. The following nonhousehold members are ineligible to participate in the program as separate households.

i. Ineligible student of an institution of higher education: Persons enrolled in an institution of [higher] **post-secondary** education who are ineligible because they fail to meet the eligibility criteria in N.J.A.C. 10:87-[3.23(a)]**5.9(a)12**.

ii. Individuals disqualified for noncompliance with the work registration, work and training requirements or voluntary quit provisions (see N.J.A.C. 10:87-10 regarding work requirements).

(b) Boarders: Boarders are defined as individuals or groups of individuals residing with a household and paying reasonable compensation to the household for lodging and meals **excluding residents of a commercial boarding house**.

1. (No change.)

2. Parents, children, spouse or sibling: In no event shall boarder status be granted to **children or siblings residing with elderly or disabled parents or siblings or to** those individuals or groups of individuals described in N.J.A.C. 10:87-2.2(c).

3.-5. (No change.)

(c) Excluded household members: The following individuals residing with a household shall be excluded from the household when determining the household's size for the purpose of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of an excluded household member shall be considered available to the remaining household members in accordance with N.J.A.C. 10:87-7.14. Excluded household members may not participate in the program as separate households.

1. Intentional program violation: Individuals disqualified for intentional program violation (see N.J.A.C. 10:87-11.1 **through 11.5**);

2. Social Security number: Individuals disqualified for failure to obtain or refusal to provide a Social Security number (see N.J.A.C. 10:87-3.[24(a)3]**15(a)**);

3. Ineligible alien status: Individuals who do not meet the [criteria for] **citizenship or** eligible alien status **requirements** [(see] **of** N.J.A.C. 10:87-3.8 [for listing of eligible aliens)] **or the eligible sponsored alien requirements of N.J.A.C. 10:87-7.18**; **or**

4. Questionable citizenship status: Individuals whose citizenship is questionable (see N.J.A.C. 10:87-2.21[(a)8iii](**j**) regarding verification of questionable citizenship) [; or].

[5. Disqualification for noncompliance with work requirements: Individuals disqualified for noncompliance with the work registration, work and training requirements or voluntary quit provisions (see N.J.A.C. 10:87-3.15 through 3.21 regarding work requirements).]

10:87-2.4 Residents of institutions **and homeless individuals defined**

(a) Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services [and the institution has not been authorized to accept coupons]. Residents of institutions are not eligible for participation in the Food Stamp Program, with the following exceptions:

1. (No change.)

2. Narcotic addicts or alcoholics: Narcotic addicts or alcoholics who, for the purpose of regular participation in a drug or an alcohol treatment and rehabilitation program, reside at a facility or treatment center as described in N.J.A.C. 10:87-2.7[(a)4](**e**);

3. Group living arrangements: Blind and/or disabled individuals who receive benefits under Title II (Retirement, Survivors, Disability Insurance benefits) or Title XVI (SSI) of the Social Security Act and who reside in a public or private nonprofit group living arrangement that serves no more than 16 residents (see N.J.A.C. 10:87-2.7[(a)5)] (**f**)); **and**

4. (No change.)

5. Residents of public or private nonprofit shelters for homeless persons.

(b) Homeless individual means an individual who lacks a fixed and regular nighttime residence or whose primary nighttime residence is:

1. A supervised shelter designed to provide temporary accommodations, such as a welfare hotel or congregate shelter;

2. A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

3. A temporary accommodation in the residence of another individual; or

4. A place not designed for, or ordinarily used, as regular sleeping accomodation for human beings (a hallway, a bus station, a lobby or similar places).

10:87-2.6 Head of household

(a) (No change.)

(b) For purposes of failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner.

1. Principal wage earner: The principal wage earner shall be the household member (including excluded members, see N.J.A.C. 10:87-2.3(c) who has the greatest source of earned income in the two months prior to the month of the work registration, work or training requirement or voluntary quit violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.

i.-ii. (No change.)

10:87-2.7 Authorized representatives

(a) The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the [following capacities:] **functions described in (b) through (f) below.**

[1.]**(b)** (No change in text.)

[i.]**1.** (No change in text.)

[ii.]**2.** (No change in text.)

[2.]**(c)** (No change in text.)

[i.]**1.** (No change in text.)

[3.]**(d)** (No change in text.)

[4.]**(e)** Drug or alcoholic treatment centers as authorized representatives: Narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis may elect to participate in the Food Stamp Program. The resident shall apply and be certified for program participation through the use of an authorized representative who shall be an employee of and designated by **the publicly operated community mental health center or** the private nonprofit organization or institution which is administering the treatment and rehabilitation program. The organization or institution shall apply on behalf of each addict or alcoholic and shall receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic. The organization or institution shall also be responsible for complying with the requirements set forth in N.J.A.C. 10:87-7.16.

[i.]**1.** (No change in text.)

[ii.]**2.** (No change in text.)

[(1)]**i.** (No change in text.)

[(2)]**ii.** (No change in text.)

[5.]**(f)** Group living arrangement facility as authorized representative: Residents of group living arrangements shall either apply and be certified through use of an authorized representative employed and designated by the group living facility or apply and be certified on their own behalf or through an authorized representative of their own choice. Prior to certifying any residents for food stamps, the CWA shall verify that the facility is authorized by FNS or certified by the Department of Human Services (see [(a)5i](**f**)**1** below).

[i.]**1.** (No change in text.)

[(1)]**i.** (No change in text.)

[(2)]**ii.** (No change in text.)

Renumber ii through vi as 2 through 6 (No change in text.)

10:87-2.10 Restrictions on authorized representatives

[(a) The following restrictions apply to authorized representatives:]

[1.]**(a)** (No change in text.)

[2.]**(b)** Disqualified household members: Individuals disqualified for [fraud] **intentional program violation** shall not act as authorized representatives during the period of disqualification, unless the disqualified individual is the only adult member of the household able to act on its behalf and the CWA has determined that no one else is available to serve as an authorized representative. The CWA shall separately determine whether or not these individuals are needed to apply on behalf of the household, to obtain coupons, and to use coupons for food for the household. For example, the household may have an authorized representative to obtain its coupons each month but may not be able to find anyone to purchase food regularly with the coupons. If the CWA also is unable to find anyone to serve as authorized representative to purchase food regularly with the coupons, the disqualified member shall be allowed to do so.

[3.]**(c)** (No change in text.)

[4.]**(d)** (No change in text.)

(e) Homeless meal providers may not act as authorized representatives for homeless food stamp recipients. A homeless meal provider means a public or private nonprofit establishment (for example, soup kitchens, temporary shelter), approved by the N.J. Department of Human Services, that feeds homeless persons.

1. The Division of Public Welfare, or another appropriate State or local governmental agency identified by the New Jersey Department of Human Services, shall approve establishments and shelters serving the homeless. The establishment or shelter is required to present sufficient evidence, as determined by the State agency, that it does in fact serve meals to homeless persons. The Division of Public Welfare will remain responsible for ensuring effective compliance with these provisions when another agency has been identified to approve establishments or shelters serving the homeless.

10:87-2.11 Application for food stamps

The application process includes filing and completion of an application form, interview of the applicant, and verification of certain information. The CWA shall act promptly (see [sections 30 and 31 of this subchapter] **N.J.A.C. 10:87-2.30 and 2.31**) on all applications and provide food stamp benefits retroactive to the month of application to those households which have completed the application process and have been determined eligible. Expedited service shall be available to households in immediate need (see[sections 32 through 35 of this subchapter] **N.J.A.C. 10:87-2.32 through 2.34**).

10:87-2.12 Food stamp application form

(a) The composition of the applicant household will determine the appropriate food stamp application to be used:

1. PA households: Public Assistance (PA) households are those food stamp households (as determined in [section 2 of this subchapter] **N.J.A.C. 10:87-2.2**) in which any or all members are also applying for AFDC. For such households the appropriate application form is the Form PA-1J, "Application and Affidavit for [AFDC, MA, CRA, IRP, and Food Stamps] **Public Assistance**", which will serve as a joint application for [one or more of those programs] **public assistance and food stamps**.

2. **NPA households**: Non-public Assistance (NPA) households are those households (as determined in [section 2 of this subchapter] **N.J.A.C. 10:87-2.2**) in which none of the members are also applying for [AFDC, MA, CRA or IRP] **public assistance**. For such households, the appropriate application form is the Form FSP-901, "Application for Participation in the Food Stamp Program [(NPA)]".

3. SSI jointly processed households: SSI jointly processed households are those [householdsd] **households** in which all members are applicants for, or recipients of, SSI and are neither certified for, nor have an application for food stamps pending and have applied for food stamps at a Social Security Administration district office (SSA/DO). For such households, the appropriate application form is [the] Form FSP-901A, "**SSI** Jointly Processed Application and Recertification for Participation in the Food Stamp Program" (see N.J.A.C. 10:87-2.37).

(b) All applicants for food stamp benefits shall be notified at the time of application, and at each recertification, through a written statement, that information available through the State income and eligibility verification system will be requested to verify eligibility. Discrepancies found are subject to additional verification through collateral contact and such information may affect the household's eligibility and benefits.

10:87-2.13 Filing an application

(a) Households must file a food stamp application by submitting the appropriate form to the food stamp office in person, through an authorized representative, or by mail. The amount of time for the CWA to deliver benefits is calculated from the date the application

is filed in the food stamp office designated to accept the household's application **(see N.J.A.C. 10:87-2.30 and 2.31)**. Households subject to SSI joint processing (see N.J.A.C. 10:87-2.12(a)3) must file a food stamp application by submitting the appropriate form to the SSA/DO in person, through an authorized representative, or by mail. The amount of time for the CWA to deliver benefits is calculated from the date the application is filed in the SSA/DO designated to accept the household's application[. See] **(see** N.J.A.C. 10:87-2.30[.])**.**

(b) Right to file: Each household has the right to file an application during office hours of the same day it contacts the food stamp office within the county of its residence. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application.

1. Minimum requirements for application: In order to be considered an application for food stamp purposes, the application must contain, at a minimum, the applicant's name and address, and must be signed by a responsible member of the household or the household's authorized representative (see [section 7 of this subchapter] **N.J.A.C. 10:87-2.7**).

2.-3. (No change.)

(c) Contacting the food stamp office: The CWA shall encourage households to file an application the same day the household or its representative contacts the certification office, in person or by telephone, and expresses interest in obtaining food stamp assistance.

1. (No change.)

2. Contacting the wrong office: If a household contacts the wrong certification office within the county, either in person or by telephone, that certification office shall, in addition to meeting the requirements in [paragraph 1 of this subsection] **1 above**, give the household the address and telephone number of the appropriate office, explain how to file an application, and encourage the household to file its application in person or by mail at the appropriate office that same day. The certification office shall also offer to mail the household's application to the appropriate office that same day if the household has completed enough information to file. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its request or application for food assistance to the wrong office, the certification office shall mail the request or application to the appropriate office on the same day.

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

10:87-2.14 Household cooperation

To determine eligibility for program benefits, the application must be completed and signed, the household (or its authorized representative) interviewed, and certain information (see [section 20 of this subchapter] **N.J.A.C. 10:87-2.21**) must be verified. If the household refuses to cooperate with the CWA in completing this process, the application shall be denied at the time of refusal.

10:87-2.17 Refusal to cooperate with Quality Control reviews

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

(c) The CWA shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a quality control reviewer and who reapply 96 days from the end of the annual review period.

10:87-2.18 [Interviews] **(Reserved)**

[All applicant households, including those submitting applications by mail, shall have a face-to-face interview with a qualified eligibility worker, prior to initial certification and all recertifications.]

10:87-2.19 Interview process

(a) **All applicant households, including those submitting applications by mail, shall have a face-to-face interview with a qualified eligibility worker, prior to initial certification and all recertifications.** All interviews for food stamp benefits shall meet the requirements below.

[1.]**(b)** (No change in text.)

[2.]**(c)** Responsibilities of interviewer: The interviewer shall not simply review the information which appears on the application but shall explore and resolve with the household any unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including an explanation of the processing standards and the household's responsibility to report changes.

[i.]**1.** The interviewer shall explain to the applicant the work registration and employment and training requirements and the consequences of the household's principal wage earner quitting his or her job without good cause (see N.J.A.C. 10:87-[3.19(d)] **10.11**).

[3.]**(d)** (No change in text.)

[4.]**(e)** Waiver of office interview: The office interview shall be waived for any household which is unable to appoint an authorized representative (see [section 7 of this subchapter] **N.J.A.C. 10:87-2.7**) and which has no household members able to come to the food stamp office because they are 65 years of age or older, or are mentally or physically handicapped. The CWA shall waive the office interview on a case by case basis for any household which reports it is unable to appoint an authorized representative and has no members able to come to the Food Stamp office because of transportation difficulties or similar hardships.

[i.]**1.** Hardships: [For the purpose of this item, h] Hardship conditions include but are not limited to: illness, care of a household member, prolonged severe weather, or work hours which preclude **an** in-office certification. If a waiver is granted, the CWA shall document the reason for the determination in the case record.

Renumber ii through iv as 2 through 4 (No change in text.)

[5.]**(f)** (No change in text.)

[i.]**1.** (No change in text.)

[6.]**(g)** (No change in text.)

[7.]**(h)** (No change in text.)

10:87-2.21 Mandatory verification

(a) The CWA shall verify the following information **in (b) through (n) below** prior to certification for households initially applying for food stamp benefits.

[1.]**(b)** (No change in text.)

[2.]**(c)** Alien status: For each household member identified on the application as an alien, the CWA shall determine if that member is an eligible alien (see N.J.A.C. 10:87-3.8) by requiring that the household present verification for each alien member.

[i.]**1.** Verification of immigrant status and continuous residence: Aliens lawfully admitted as immigrants [(see N.J.A.C. 10:87-3.8(a)1)] and aliens in continuous residence (see N.J.A.C. 10:87-3.8(a)[2]) shall present INS Form I-151 or Form I-551 "Alien Registration Receipt Card" or the "Re-entry Permit", a passport booklet for lawful permanent resident aliens.

[(1) INS Form I-181-B: Form I-181-B, an interim document pending issuance of I-551 cards, is provided to some new immigrants at the time of adjustment of status to lawful permanent residence. This card is imprinted with the stamped annotation "Processed for I-551, Temporary Evidence of Lawful Admission for Permanent Residence" and may be used to verify alien status.]

[ii.]**2.** INS Form I-94: Aliens in the categories specified in N.J.A.C. 10:87-3.8(a)3 through 7 shall present an INS Form I-94, "Arrival—Departure Record". The CWA shall accept the INS Form I-94 only if it is annotated with Section [203(a)(7),] 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act; or if the form is annotated with one of the following terms or combination of terms: refugee, parolee, paroled, or asylum. [However, an INS Form I-94 annotated with Section 203(a)(7) of the Immigration and Nationality Act must have been issued prior to April 1, 1980 to be considered as acceptable verification.]

[(1)]**i.** (No change in text.)

[(2)]**ii.** If the INS Form I-94 does not bear any acceptable annotations and the alien has no other verification of alien classifications in his or her possession; the CWA shall advise the alien to submit Form G-641, Application for Verification of Information from Immigration and Naturalization Service Records, to INS. The CWA shall accept this form when presented by the alien and properly annotated at the bottom by an INS representative as evidence of lawful admission for permanent residence or parole for humanitarian reasons. The alien shall also be advised that classification under Sections [203(a)(7),] 207, 208, 212(d)(5) or 243(h) of the Immigration and

Nationality Act shall result in eligible status. Additionally, the alien shall also be advised that he or she may be eligible if acceptable verification is obtained and that the alien may contact INS or otherwise obtain the necessary verification. If the alien so wishes and signs a written consent, the CWA will contact INS to obtain clarification of the alien's status.

[iii.]**3.** (No change in text.)

[iv.]**4.** Other documentation of alien status: If the proper INS documentation is not available, the alien may state the reason and submit other conclusive verification. The CWA shall accept other forms of documentation or corroboration from INS that the alien is classified pursuant to Section 101(a)(15), 101(a)(20), [203(a)(7),] 207, 208, 212(d)(5), 243 or 249 of the Immigration and Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act.

[v.]**5.** Awaiting verification of alien status: While awaiting acceptable verification, the alien whose status is questionable shall be ineligible. If the alien does not wish to contact INS or give permission for the CWA to contact INS, the household shall be given the option of withdrawing its application or participating without that member. The income and resources of the ineligible alien shall be treated in the same manner as an excluded individual as set forth in N.J.A.C. 10:87-7.14[(c)] and shall be considered available in determining the eligibility of any remaining household members.

[vi.]**6.** (No change in text.)

[(1)]**i.** (No change in text.)

[3.]**(d)** (No change in text.)

[i.]**1.** (No change in text.)

[4.]**(e)** (No change in text.)

[5.]**(f) Residency**: Residency (see N.J.A.C. 10:87-3.2 **and 3.3**) shall be verified except in unusual cases (such as **homeless household,** some migrant farmworker households or households newly arrived in the county) when verification of residency cannot reasonably be accomplished. Acceptable verification of residency should be accomplished, to the extent possible, in conjunction with the verification of other information such as but not limited to rent and mortgage payments, utility expenses and identity. If verification cannot be accomplished in conjunction with the verification of other information, the CWA shall use a collateral contact or other readily available documentary evidence. Any documents or collateral contacts which reasonably establish the household's residency shall be accepted and no requirements for a specific type may be imposed **(see also N.J.A.C. 10:87-3.4).**

[6.]**(g)** (No change in text.)

[i.]**1.** (No change in text.)

[7. Verification of Social Security numbers: Social Security numbers (SSN) (see N.J.A.C. 10:87-3.24) provided to the CWA by household members shall be verified by observing the household member's Social Security card or other official document containing the Social Security number, through use of information supplied by the Social Security Administration (SSA) such as the BENDEX or SDX, or by the CWA submitting or having the individual submit Form SS-5, Application for a Social Security Number, to SSA. If the household member does not have a SSN or the SSN appears questionable, the CWA shall verify the SSN only through information supplied by SSA.

i. Documentation of Social Security numbers: Once a SSN has been verified, the CWA shall document the number in the case record accordingly to preclude the necessity of subsequent reverification of the SSN. The CWA shall accept as verified a SSN which has already been validated for AFDC, Medicaid, or other similar programs.

ii. Delays in verification of Social Security numbers: Although the CWA must verify SSNs provided by the household, the agency shall not delay certification of an otherwise eligible household solely to validate any member's SSN, even if the 30 day processing period has not expired. If verification of a previously reported SSN is not completed at initial certification, it shall be completed at the time of, or prior to, the household's next recertification.

iii. Subsequent verification of Social Security numbers: A verified SSN shall be reverified only if the identity of the individual or the SSN becomes questionable. If the CWA determines that an individual's SSN is questionable, the CWA shall verify the SSN only through information provided by the SSA, such as the BENDEX, SDX, or by submitting Form SS-5 to the SSA.]

(h) Procedures for obtaining and verifying Social Security numbers are as follows:

1. The CWA shall verify the Social Security numbers (SSNs) provided by the household with the Social Security Administration (SSA) by submitting them through the management information system. Certification for, or issuance of benefits to, an otherwise eligible household shall not be delayed pending SSN verification. Once the SSNs have been verified, the CWA shall make a permanent annotation to the household case file to prevent unnecessary reverification of the SSN in the future. Social Security numbers previously verified by another program participating in the Income Eligibility Verification System shall be acceptable to the CWA for Food Stamp Program participation.

2. The CWA shall require an individual who is unable to provide, or does not have, a Social Security number to submit an application for a SSN (Form SS-5) to the Social Security Administration. The CWA shall advise the household member that proof of application from the SSA will be required prior to certification. The Social Security Administration receipt for application for a SSN, Form SSA-5028, may be used as evidence that an individual has applied for a Social Security number. Refusal or failure without good cause to provide a Social Security number will result in disqualification of the individual for whom a SSN is not obtained.

i. If the county welfare agency determines that a household member has refused or failed without good cause to provide or apply for a SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual for whom the SSN is not provided, and not to the entire household. The earned or unearned income and resources of an individual disqualified for failure to obtain or provide a SSN shall be counted as household income and resources.

3. Determining good cause procedures are as follows:

i. In determining if good cause exists, the CWA shall consider information from the household member, Social Security Administration and other State sources, that the household member has applied for, and/or made every effort to obtain a SSN from the Social Security Administration. Good cause does not include delays due to illness, lack of transportation or temporary absences, as the Social Security Administration makes provisions for mailing applications in lieu of applying in person. If a household member can show good cause why an application for a SSN has not been completed, that person shall be allowed to participate for one month in addition to the month of application. The CWA caseworker should make every effort to assist the individual in obtaining documents required to support an application for a Social Security number.

ii. Good cause for failure to apply must be shown monthly in order for a household member to continue participation. Once an application has been filed, the CWA shall permit the member to participate pending notification of the household member's SSN.

4. The disqualified household member(s) may end the disqualification and become eligible upon providing the CWA with a SSN.

5. The CWA is authorized to use SSNs in the administration of the Food Stamp Program and shall enter all SSNs obtained into the management information system. CWAs shall have access to information regarding individual Food Stamp Program applicants and participants who receive SSI benefits under Title XVI of the Social Security Act to determine such a household's eligibility for and level of food stamp benefits, or to verify information related to benefits received by such households. The CWA shall also use the SSN(s) to prevent duplicate participation and to determine the accuracy and/or reliability of information given by households.

[8.] (i) Verification of questionable information: With the exception of liquid resources and loans, the CWA shall verify all other factors of eligibility prior to certification only if they are questionable and affect the household's eligibility or benefit level. Procedures for verifying loans and liquid resources are described in [(a)8v] **(m)** below.

[i.]**1.** (No change in text.)

[ii.]**(j)** Household composition: The CWA shall veryify any factors affecting the composition of a household if questionable.

[(1)]**1.** (No change in text.)

[(2)]**2.** Elderly [and] **or** disabled individuals as described in N.J.A.C. 10:87-2.2(a)4 who wish to be a separate household, shall be responsible for obtaining the cooperation of the individuals with whom they reside in providing the necessary income information to the CWA and for providing (at the CWA's request) a physician's statement that they cannot purchase and prepare their own meals. **Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors at N.J.A.C. 10:87-2.38, shall be responsible for proving such claims.**

[(3)]**3.** For any surviving spouse or child of a veteran claiming a permanent disability that is questionable (not apparent) to the CWA, under N.J.A.C. 10:87-2.38(a)[7]**9** of the definition of "elderly or disabled member", the household shall provide (at the CWA's request) a statement from a physician or licensed or certified psychologist which substantiates the applicant's claim of disability.

[iii.](**k**) Citizenship: When a household's statement that one or more of its members is a U.S. citizen is questionable, the household shall be asked to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, or certificates of citizenship or naturalization provided by INS, such as Identification Cards for Use of Resident Citizens in the U.S. (INS Form I-179 or INS Form I-97) or U.S. Passports.

Renumber (1) through (3) as 1. through 3. (No change in text.)

[iv.](**l**) Deductible expenses. Deductible expenses other than utility costs which exceed the standard (see [paragraph 3 of this subsection] **(d) above**) shall be verified only if questionable and if allowing the expense would actually result in a deduction. For example, rent, even if questionable, would not be verified if the household's child care expenses exceed the limit on the combined dependent care/shelter deduction since the amount of the rent can not alter the amount of the deductions.

[(1)]**1.** (No change in text.)

[(2)]**2.** (No change in text.)

[(3)]**3.** Subsequent verification: If the household subsequently provides the missing verification, the CWA shall redetermine the household's benefits, and provide increased benefits, if any in accordance with the timeliness standards [in Section IX] on reported changes. The household shall be entitled to the restoration of any benefits lost as a result of the disallowance of the expense only if the expense could not be verified within the 30-day processing standard because the CWA failed to allow the household sufficient time (as defined in N.J.A.C. 10:87-2.31 [(a)1](**c**)) to verify the expense. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in [section 30 and 31 of this subchapter] **N.J.A.C. 10:87-2.30 and 2.31.**

[v.](**m**) Liquid resources and loans: The CWA shall verify liquid resources and whether or not moneys received by the household are loans whenever such items are questionable (see [subparagraph i of this paragraph] **(i)1 above**).

[(1)]**1.** (No change in text.)

[(2)]**2.** (No change in text.)

[9.](**n**) Verification for PA households (as defined in N.J.A.C. 10:87-2.12(a)1): These verification procedures shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For [these] **those** factors of eligibility which are needed to determine both AFDC eligibility and food stamp eligibility, the CWA may use the AFDC verification rules. However, the CWA shall not delay the household's food stamp benefits if, at the end of 30 days following the date the application was filed, the CWA has sufficient verification to meet food stamp verification requirements but does not have sufficient verification to meet the AFDC verification rules.

[10.]**1.** Duplicate participation cross-checks: The CWAs shall check each household member by name through the [ALFN] **ALFX** file to verify that each individual is not already participating in the Food Stamp Program as part of another household [(see N.J.A.C. 10:87-2.24)]. **The ALFX file is an alphabetical listing, whithin the State's management information system, of the names of all individuals receiving AFDC and Food Stamp benefits in New Jersey. The ALFX file is available on computer terminal, and enables a worker to locate an individual's case record, when the case number is not known, by alphabetic cross-reference to all cases and recipients in the State.**

10:87-2.22 Verification of [SSI jointly processed households of] **Social Security and/or SSI using SDX/BENDEX**

(**a**) The CWA shall ensure that the required verifications are obtained prior to certification. [The CWA may verify information (except for wage information) through the SDX/BENDEX (see N.J.A.C. 10:87-2.27), and such information shall not be reverified unless it is questionable.] **If documentary evidence of Social Security and/or SSI benefits is not readily available from the applicant, CWA may verify the income through the Beneficiary Data Exchange (BENDEX) and/or the State Data Exchange (SDX). The CWA shall not verify wages through use of the BENDEX.** Any further contact by the CWA must be done by home visit (with permission of the SSI household), telephone or letter only, and shall not constitute a second food stamp certification interview.

(b) The CWA may use the BENDEX/SDX data to verify other food stamp eligibility criteria provided the household is given an opportunity to verify the information from another source if the BENDEX/SDX information is contradictory to the household's information or is unavailable. However, determination of a household's eligibility and benefit level shall not be delayed beyond the application processing time standards (see N.J.A.C. 10:87-2.30), if the BENDEX/SDX data are unavailable.

[10:87-2.24 ALFX file

The ALFX file is an alphabetical listing, within the State's computerized Central Operation for Data Exchange and Services (CODES) system, of the names of all individuals receiving AFDC and food stamp benefits in New Jersey. The ALFX file is available on computer terminal, and enables a worker to locate an individual's case record, when the case number is not known, by alphabetic cross-reference to all cases and recipients in the State]

10:87-2.[26]**24** (No change in text.)

10:87-2.26 (Reserved)

10:87-2.27 [BENDEX/SDX] **(Reserved)**

[If documentary evidence of Social Security and/or SSI benefits is not readily available from the applicant, the CWA may verify the income through the Beneficiary Data Exchange (BENDEX) and/or the State Data Exchange (SDX). The CWA shall not verify wages through use of the BENDEX. The CWA may use the BENDEX/SDX data to verify any other food stamp eligibility criteria provided the household is given an opportunity to verify the information from another source if the BENDEX/SDX information is contradictory to the household's information or is unavailable. However, determination of a household's eligibility and benefit level shall not be delayed beyond the application processing time standards (see N.J.A.C. 10:87-2.30) if the BENDEX/SDX data are not available.]

10:87-2.28 Verification subsequent to initial certification

(a) At recertification, the CWA shall verify a change in income, medical expenses or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than $25.00 since the last time they were verified.

[1.](**b**) Questionable information: The CWA may verify income, actual utility expenses or medical expenses claimed by households which are unchanged or have changed by $25.00 or less, only if the information is questionable as defined in N.J.A.C. 10:87-2.21[(a)8i] **(i)1.** All other changes reported at the time of recertification shall be subject to the same verification procedures that apply at initial certification.

[i.]**1.** Unchanged information: Unchanged information, other than income and medical or utility expenses, shall not be verified at recertification unless the information is questionable as defined in N.J.A.C. 10:87-2.21[(a)8i](**i**)**1.**

[2.](**c**) Changes: Changes reported during the certification period shall be subject to the same verification procedures that apply at initial certification, except that the CWA is not required to verify income, medical expenses or actual utility expenses if the source has

not changed and the amount has changed by $25.00 or less since the last time they were verified.

[i.]**1.** Change in household composition: If the change reported is a change in household composition, the CWA shall verify through the ALFX system that no household member is participating in the Food Stamp Program as part of another household (see N.J.A.C. 10:87-2[24]**21(n)1**).

[3.]**(d)** Social Security numbers: Newly obtained Social Security numbers shall be verified at recertification in accordance with verification procedures in N.J.A.C. 10:87-2.21[(a)]**(h)**.

10:87-2.30 Normal processing standard

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

(c) Processing standards during a period of Federal reduction, suspension or cancellation of food stamp benefits: Determinations of eligibility shall be made in accordance with normal processing standards. For a household entitled to expedited processing as specified in N.J.A.C. 10:87-2.3[5]**4 et seq.**, issuance of benefits shall be made in accordance with the following provisions:

1.-2. (No change in text.)

10:87-2.31 Delays in processing

(a) If the CWA does not determine a household's eligibility and provide an opportunity to participate within 30 days of the date the application was filed, the CWA shall take action as indicated below.

[1.]**(b)** Failure to appear for two interviews: If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the CWA to express interest in pursuing the application, the CWA shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. (See [paragraph 2iv of this subsection] **(c)5 below**) for households which express interest in pursuing the application after failing to appear for two scheduled interviews.

[2.]**(c)** Determining cause: The CWA shall determine the cause of the delay. A delay shall be considered the fault of the household if the household has failed to complete the application process even though the CWA has taken all the action required to assist the household. The CWA must have taken the following actions before a delay can be considered the fault of the household:

[i.]**1.** (No change in text.)

[ii.]**2.** Failure to register for work: If one or more members of the household have failed to register for work (as required in N.J.A.C. 10:87-[3.15]**10.4**), the CWA must have informed the household of the need to register for work and given the household at least 10 days from the date of notification to register those members.

[iii.]**3.** Incomplete verification: In cases where verification is incomplete, the CWA must have provided assistance when required, as specified in N.J.A.C. 10:87-2.23[(d)], and allowed the household sufficient time to provide the missing verification.

[(1)]**4.** Sufficient time to **provide missing verification** shall be at least 10 days from the date of the CWA's initial request for the particular verification which was missing.

[iv.]**5.** (No change in text.)

Renumber (1) through (3) as i. through iii. (No change in text.)

[3.]**(d)** Fault of the CWA: Delays that are the fault of the CWA include, but are not limited to those cases in which the CWA failed to take one or more of the actions described in [paragraph 2 of this subsection] **(c) above**.

[4]**(e)** (No change in text.)

[i.]**1.** (No change in text.)

[ii.]**2.** (No change in text.)

[5.]**(f)** (No change in text.)

[i.]**1.** (No change in text.)

[6.]**(g)** Delays beyond 60 days: The following procedures apply as appropriate when a delay occurs in the second 30-day period.

[i.]**1.** (No change in text.)

[(1)]**i.** (No change in text.)

[(2)]**ii.** (No change in text.)

[ii.]**2.** (No change in text.)

[iii.]**3.** (No change in text.)

10:87-2.32 Expedited service

(a) The following households are entitled to expedited service [provided that the household's liquid resources (for example, cash on hand, checking or savings accounts, savings certificates and lump sum payments as described in N.J.A.C. 10:87-5.9(a)10 do not exceed $100.00]:

1. Households with less than $150.00 in monthly gross income, as computed in N.J.A.C. 10:87-6.15 **provided that the household's liquid resources (for example, cash on hand, checking or savings accounts, savings certificates and lump sum payments as described in N.J.A.C. 10:87-5.9(a)10) do not exceed $100.00**; [or]

2. Migrant or seasonal farmworker households who are destitute as defined in N.J.A.C. 10:87-[6.16]**6.18 provided that the household's liquid resources (for example, cash on hand, checking or savings accounts, savings certificates and lump sum payments as described in N.J.A.C. 10:87-5.9(a)10) do not exceed $100.00** [.];

3. Eligible households in which all members are homeless as defined in N.J.A.C. 10:87-2.4; and

4. Eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and utilities.

(b) The CWAs application procedures shall be designed to identify households eligible for expedited service at the time of a request for food stamp assistance. The household shall be prescreened for entitlement to expedited service. For example, a receptionist, volunteer or other agency employee shall screen applications as they are filed or as individuals come in to apply.

[10:87-2.33 Identifying households needing expedited service

At the time of a request for food assistance, the household shall be prescreened for entitlement to expedited service. For example, a receptionist, volunteer or other agency employee shall screen applications as they are filed or as individuals come in to apply.]

10:87-2.3[4]**3 Expedited service** [P]processing standards

[(a) Except as specified in subsections (b), (c) and (e) below, for households entitled to expedited service, the ATP shall be mailed or be available for pickup by the household no later than the close of business on the fifth calendar day following the day the application was filed.]

(a) For households entitled to expedited service, the CWA shall make available to the recipient an ATP card not later than the fifth calendar day following the date an application was filed in the appropriate food stamp office. The CWA shall ensure that a reasonable opportunity for ATP redemption exists on the day of issuance within the time limits specified in this section.

(b) Drug addicts and alcoholics, and residents of group living arrangement facilities: For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements (see N.J.A.C. 10:87-7.16(c)1) who are entitled to expedited service, the CWA shall [mail an ATP, or have the ATP available to be picked up no later than seven working days following the date the application was filed] **make an ATP available to the recipient no later than the fifth calendar day following the date an application was filed**.

(c) Out-of-office interviews: If a household is entitled to expedited service and is also entitled to a waiver of office interview (see N.J.A.C. 10:87-2.19[(a)4)]**(e)**), the CWA shall conduct the interview (unless the household cannot be reached) and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing.

1. (No change.)

(d) (No change.)

[(e) SSI jointly processed households: The CWA shall act on the application for these households within the standards specified in N.J.A.C. 10:87-2.34 except that the processing standards shall be calculated from the date the food stamp application is received at the correct CWA. The CWA shall prescreen all applications received from the SSA/DO for entitlement to expedited service on the day the application is received at the correct food stamp office.

(f) Negotiating the ATP: The CWA shall ensure that any applicant who receives an ATP card under expedited service is able to negotiate that ATP card at a coupon issuance site within one calendar day of

receiving it excluding weekends and holidays. Issuance services must be made available to participants Monday throughout Friday through the entire month. At a minimum, therefore, at least one site must be available for this purpose, provided that all participants reside within 30 miles of that site. (See N.J.A.C. 10:87-9.17(d).)]

(e) Residents of shelters for battered women and children who are otherwise entitled to expedited service shall be handled within the time limits specified in this section.

10:87-2.3[5]**4** Special procedures for expediting service

(a) The CWA shall use the following procedures when expediting certification and issuance.

1. Verification procedure: In order to expedite the certification process, the CWA shall use the following verification procedures:

i. (No change.)

ii. All reasonable efforts shall be made to verify, within the expedited processing standards, the household's residency, income statements (including a statement that the household has no income), liquid resources and all other verification factors required in N.J.A.C. 10:87-2.21 through collateral contacts or readily available documentary evidence;

(1) Benefits shall not be delayed beyond the delivery standards prescribed in N.J.A.C. 10:87-2.3[4]**3** solely because these eligibility factors have not been verified.

iii. CWAs shall attempt to obtain as much additional verification as possible during the interview, but shall not delay the certification of households entitled to expedited services for the full time frame prescribed in N.J.A.C. 10:87-2.3[4]**3** when the CWA has determined it is unlikely that other verification can be obtained within the expedited processing standards; and

iv. Households entitled to expedited service shall be asked to furnish or apply for a Social Security number for each household member before the first full month of participation. [Those households unable to provide the required Social Security numbers or who do not have an SSN prior to their next issuance shall be allowed 30 days from the first day of the first full month of participation to obtain the SSN, in accordance with N.J.A.C. 10:87-3.24.] **Those household members unable to provide the required SSNs or who do not have one prior to the first full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirement specified in N.J.A.C. 10:87-2.21(h).**

v.-vii. (No change.)

2. (No change.)

3. Certification period: Households which are certified on an expedited basis and have provided all necessary verification required in N.J.A.C. 10:87-[2.20] **2.21** prior to certification shall be assigned a normal certification period (see N.J.A.C. 10:87-6.19). If verification is postponed, the CWA shall certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the option of the CWA, shall assign the normal certification period warranted by the household's circumstances. However, in no event will benefits be continued past the month of application if verification is not obtained. Federally mandated reduction, suspension, or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households.

i.-iv. (No change.)

4. Expedited service during a period of Federal reduction, suspension or cancellation of food stamp benefits: Households eligible to receive expedited processing which apply for program benefits during a month in which a reduction, suspension, or cancellation is in effect, shall have their cases processed in accordance with the above procedures, subject to the following provisions:

i. Reduction: Households which receive expedited service in a month in which a reduction is in effect and which are determined to be eligible, shall be issued allotments that are reduced in accordance with the reduction in effect. The reduced allotments shall be made available to the households within the time frame specified in N.J.A.C. 10:87-7[2.34]**2.33**.

ii. Suspension: Households which receive expedited service in a month in which a suspension is in effect and that are determined to be eligible, shall have benefits issued within the time frame specified in N.J.A.C. 10:87-[2.34]**2.33** unless the suspension is still in effect at the time issuance is to be made.

iii. Cancellation: Households eligible to receive expedited processing which apply for benefits during a month in which cancellation is in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be [two] **five** days or the end of the month of application, whichever date is later. All other regulations pertaining to expedited service shall be applicable to these cases.

5. Work registration: The CWA shall at a minimum, require the applicant to register for work unless exempt [or unless the household has designated an authorized representative to apply on its behalf].

i.-iii. (No change.)

10:87-2.3[6]**5** AFDC eligibility determination (**PA households**)

(a) Action on the food stamp portion of the application shall not be delayed nor the application denied on the grounds that **the** AFDC eligibility determination has not been made.

1. (No change.)

2. Retroactive AFDC payments: Portions of initial AFDC payments intended to retroactively cover a previous month shall be disregarded as lump-sum payments in accordance with N.J.A.C. 10:87-5.9[(a)10](**m**).

3.-5. (No change.)

10:87-2.36 Categorically eligible AFDC/SSI households

(a) Any household consisting solely of members who are receiving or are authorized to receive AFDC and/or SSI benefits shall be considered a "pure" AFDC/SSI household and, therefore, categorically eligible for the Food Stamp Program.

1. Authorized to receive means that an individual is considered a recipient if he or she has been determined eligible for AFDC/SSI but has not yet received or, is not currently entitled to, a money payment.

2. Categorically eligible recipients shall include those persons determined eligible to receive AFDC/SSI but currently not entitled to cash benefits; that is, persons whose benefits are being recovered and/or suspended subject to retrospective budgeting when the household is temporarily ineligible in a prior budget month, and AFDC recipients whose benefits are less than $10.00 and are therefore not payable.

3. Individuals entitled only to Medicaid and not AFDC/SSI shall not be considered categorically eligible. Additionally, General Assistance (GA) and AFDC-N recipients shall not be considered categorically eligible for food stamp purposes.

i. If an AFDC household contains one or more -N segment individuals or a GA recipient, the household shall not be considered categorically eligible.

(b) For any household that is otherwise categorically eligible, no person shall be included as a member of that household if that person is:

1. An ineligible alien as defined in N.J.A.C. 10:87-3.7 through 3.9;

2. An ineligible student as defined in N.J.A.C. 10:87-2.3(a)2; or

3. Institutionalized in a non-exempt facility (see N.J.A.C. 10:87-2.4).

4. When determining benefit levels for households containing ineligible individuals, the income and resources of such ineligible members shall be treated in accordance with procedures at NJ.A.C. 10:87-7.

(c) No household shall be considered categorically eligible for food stamps if any member of that household is disqualified for:

1. An intentional program violation (see N.J.A.C. 10:87-11.1 et seq.);

2. Failure to comply with monthly reporting requirements in accordance with N.J.A.C. 10:90; or

3. Failure to comply with the work and training requirements contained in N.J.A.C. 10:87-10.

4. Such households are subject to all food stamp eligibility criteria and benefit determination provisions.

(d) The factors which are deemed for food stamp eligibility without the verification required by N.J.A.C. 10:87-2.21 because of AFDC/SSI status are:

1. Gross and net income limits;

2. Resource limits;

3. Social Security number information;

4. Sponsored alien information; and
5. Residency.

(e) If any of the following factors are questionable, the CWA shall verify, in accordance with N.J.A.C. 10:87-2.21, that the household which is considered categorically eligible contains;

1. Only members that are AFDC or SSI recipients;
2. Meets the definition of a household in accordance with N.J.A.C. 10:87-2.2;
3. Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for AFDC or SSI purposes; and
4. Includes no person disqualified as specified in (c) above (see also N.J.A.C. 10:87-3.20, 10:87-10 and 10:87-11).

(f) The exemptions concerning work registration in the food stamp employment and training program shall be applied to individuals in categorically eligible households. Individual(s) not exempt from work registration shall be subject to work requirements contained in N.J.A.C. 10:87-10.

(g) Households in which all members are applying for AFDC/SSI shall be allowed to apply for food stamp benefits at the same time they apply for AFDC/SSI benefits. Such households' food stamp eligibility and benefit level shall be based on food stamp eligibility criteria. Households, whether jointly processed and/or eligible because of their AFDC/SSI status, shall be certified in accordance with the notice, procedural and timeliness requirements of N.J.A.C. 10:87-2.29 through 2.37.

(h) Households applying for both AFDC and food stamps shall complete a joint application for both programs. The joint application shall clearly indicate that the household is providing information for both programs and is subject to the criminal penalties of both programs for making false statements.

(i) The CWA shall conduct a single interview at intial application for both AFDC and food stamp purposes. AFDC households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements to obtain the benefits of both programs.

i. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for food stamps and AFDC.

ii. A household's eligibility for a food stamp out-of-office interview does not relieve the household of any responsibility for a face-to-face interview to be certified for AFDC.

(j) For households applying for both AFDC and food stamps, the verification procedures described in N.J.A.C. 10:87-2.21 shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both AFDC eligibility and food stamp eligibility, the CWA may use the AFDC verification rules.

i. However, the CWA shall not delay the household's food stamp benefits if, at the end of 30 days following the date the application was filed, the CWA has sufficient verification to meet the food stamp verification requirements, but insufficient verification to meet the AFDC verification rules.

(k) In order to determine if a household will be eligible due to its status as a recipient AFDC/SSI household, the CWA may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination, if the household is not entitled to expedited service and appears to be categorically eligible. However, the CWA shall postpone denying a potentially categorically eligible household until the 30th day, in the event that the household is determined eligible to receive AFDC/SSI benefits.

1. Once the AFDC/SSI application is approved, the household is to be considered categorically eligible if it meets all categorical eligibility criteria.

2. If the CWA can anticipate the amount and the date of receipt of the initial AFDC/SSI payment, but the payment will not be received until a subsequent month, the CWA shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial AFDC/SSI payments intended to retroactively cover a previous month shall be disregarded as lump sum payments.

3. If the amount or date of receipt of the initial AFDC/SSI payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the AFDC/SSI payments shall be handled as a change in circumstances.

(l) The CWA is not required to send a notice of adverse action if the receipt of the AFDC/SSI grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible.

(m) The CWA shall ensure that a denied application of a potentially categorically eligible household is easily retrievable, in the event that the household is subsequently found to be categorically eligible.

(n) For a household filing a joint application for food stamps and AFDC/SSI benefits, or a household that has an AFDC/SSI application pending and is denied food stamps but is later determined eligible to receive AFDC/SSI benefits and is otherwise categorically eligible, the CWA shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Benefits shall be paid from the beginning of the period for which AFDC/SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later.

1. The CWA shall not reinterview the household, but shall use any available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Changes shall be initialed and the updated application resigned by the authorized representative or household member. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985.

(o) Any household determined AFDC/SSI eligible which is categorically eligible within the 30-day food stamp processing time shall be provided benefits back to the date of the food stamp application. Benefits shall be prorated in accordance with current procedures.

(p) Households that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable or the date of the original food stamp application.

(q) The CWA shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's AFDC and/or SSI eligibility. The household shall be informed on the notice of denial to notify the CWA if its AFDC or SSI benefits are approved. Households who file joint applications for food stamps and AFDC/SSI and are subsequently denied may be required to file a new food stamp application or have their food stamp eligibility determined on the basis of the original applications.

(r) The CWA shall notify households of the need for a new application. If a required new application is filed within 30 days of the original application, the filing date of the new application shall be the filing date of the original joint application.

10:87-2.37 Procedures for SSI jointly processed households

(a) Supplemental Security Income (SSI) is defined as Federal SSI payments made under Title XVI of the Social Security Act, federally administered optional supplementary payments under section 1616 of that Act, or federally administered mandatory supplementary payments made under section 212(a) of Public Law 93-66. Households may apply and be certified for food stamp benefits in accordance with the procedures described herein and with the notice, procedural and timeliness requirements of the Food Stamp Act.

1. Households applying simultaneously for SSI and food stamps shall be eligible to receive benefits based solely on food stamp eligibility criteria until the household is considered categorically eligible. Households denied NPA food stamps that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility should they become SSI recipients.

Renumber (a) through (c) as (b) through (d). (No change in text.)

(e) The CWA receiving food stamp applications from SSA for SSI households are required to determine if any member of the SSI household is currently participating in the Food Stamp Program.

(f) The CWA shall ensure that information required by N.J.A.C. 10:87-2.21 and 2.22 is verified prior to certification for households initially applying for food stamps. Households shall be provided the opportunity to provide verification from another source if all necessary SSI benefit payment information is not available on/through the State Data Exchange (SDX) or Beneficiary Data Exchange (BENDEX) (see N.J.A.C. 10:87-2.22 above).

(g) Households identified as categorically eligible due to their pure SSI status and requiring expedited service shall be handled in accordance with the provisions of N.J.A.C. 10:87-2.34 above.

(h) An applicant or recipient of social security benefits under Title II of the Social Security Act shall be informed by the SSA/DO of the availability of benefits and an application at the SSA office. Interviews and application processing is not required by the SSA/DO unless an eligibility worker has been outstationed at the SSA office.

10:87-2.38 [Elderly or disabled defined] **Elderly or disabled household members**

[(a) Elderly or disabled member is defined as a member of household who:

1. Is 60 years of age or older (or becomes 60 in the month of application);

2. Is certified for Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act (including emergency benefits based on presumptive eligibility);

3. Is certified for disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;

4. Is a veteran with a service-connected disability rated or paid as total under Title 38 of the United States Code (USC) or is considered in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

5. Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound under Title 38 of the United States Code;

6. Is a surviving child of a veteran and considered to be permanently incapable of self-support under Title 38 of the United States Code;

7. Is a surviving spouse or child of a veteran and entitled to (but not necessarily receiving) compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act. Entitled as used in this definition refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such payments, but are not receiving them.]

(a) Elderly or disabled member of a food stamp household is defined as a member who:

1. Is 60 years of age or older;

2. Receives supplemental security income benefits under Title XVI of the Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;

3. Receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act;

4. Receives federally or State-administered supplemental benefits under section 212(a) of P.L. 93-66;

5. Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;

6. Is a veteran with service-connected or non-service-connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under Title 38 of the United States Code;

7. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

8. Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code;

9. Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them; or

10. Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled, based upon the criteria used under Title XVI of the Social Security Act.

10:87-3.1 Applicability

Nonfinancial eligibility factors in this section shall apply equally to all applicant households **(see N.J.A.C. 10:87-2.21 for verification requirements).** [(See section 20 of this subchapter for verification requirements.)]

10:87-3.2 Residency in the county

(a) A household must be a resident of the county in which it files an application for participation. No individual may participate as a member of more than one household, or **in** more than one county, in any month except as [follows in (a)1 below.] **provided for in this section.**

[1.](**b**) (No change in text.)

[i.]**1.** (No change in text.)

10:87-3.3 Determination of residency

(a) For purposes of the Food Stamp Program, a person shall be considered a resident in the place in which [he/she] **he or she** actually lives, without regard to legal residence or intent to remain permanently. There shall be no requirement that a person reside in the county for a specified period of time prior to application. A fixed residence is not required; for example, migrant campsites satisfy the residency requirement.

1. The residency requirement shall be verified except in unusual cases such as homeless households, migrant farmworker households or households newly arrived to the project area where verification of residency cannot reasonably be accomplished.

(b) Vacationer excluded: A person temporarily visiting the county [soley] **solely** on a vacation shall not be considered a resident.

10:87-3.4 Recording applicant's address

The county welfare agency shall be responsible for recording the applicant's correct address, **or location where the applicant may be contacted,** in the case record. **The CWA shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility.**

10:87-3.6 U.S. citizen defined

For the purposes of [section 5 of this subchapter] **N.J.A.C. 10:87-3.5,** the United States shall be defined as the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Swain's Island, American Samoa, and the Northern Mariana Islands. [(]Citizenship shall be verified only if questionable in accordance with N.J.A.C. 10:87-2.21[(a)8.)](**c**).

10:87-3.7 Eligible alien

(a) Aliens who have been lawfully admitted for permanent U.S. residence and/or who are permanently and lawfully residing in the U.S. shall be eligible for participation in the Food Stamp Program. [(]For a specific listing of aliens eligible for program benefits, see [section 8 of this subchapter.)] **N.J.A.C. 10:87-3.8.**

(b) Ineligible alien as a member of the household: The presence of a person in the household who is ineligible for participation in the program because of [his/her] **his or her** alien status shall not prevent the remainder of the household from being certified for program benefits, if eligible[. (See) (**see** also N.J.A.C. 10:87-2.21 [(a)2v](**c**)).

(c) (No change.)

10:87-3.8 Eligible aliens; listing

(a) With the provision that all other eligibility requirements are met, the following aliens shall be eligible for participation in the Food Stamp Program:

1. Immigrants: An alien lawfully admitted for permanent residence as an immigrant [pursuant to] **as defined in** sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (**However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in (a)8 and 9 below**) (see N.J.A.C. 10:87-2.21[(a)2](c) for verification);

2. Continuous residence: An alien who entered the United States prior to [June 30, 1948,] **January 1, 1972,** or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.21[(a)2](c) for verification);

3. Conditional entry after March 31, 1980: An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.21[(a)2](c) for verification);

4. Conditional entry prior to April 1, 1980: An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(a)(7) of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.21[(a)2](c) for verification);

5. (No change.)

6. Emergent reasons: An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General (see N.J.A.C. 10:87-2.21[(a)2](c) for verification);

7. Deportation withheld: An alien living within the United States [to] **from** whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion (see N.J.A.C. 10:87-2.21[(a)2](c) for verification)[.];

8. An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for permanent residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act (Such aliens may obtain lawful permanent resident status under section 245A(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988);

9. An alien who is granted lawful temporary resident status pursuant to section 245A of the Immigration and Nationality Act at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A of the Immigration and Nationality Act (Such aliens may obtain temporary residence status no earlier than May 5, 1987);

10. An alien who is, as of June 1, 1987 or thereafter, a special agricultural worker (SAW) and lawfully admitted for temporary residence in accordance with section 210(A) of the Immigration and Nationality Act; or

11. An alien who is lawfully admitted for temporary residence as an additional special agricultural worker (ASAW), as of October 1, 1989 through September 30, 1993, in accordance with section 210A(a) of the Immigration and Nationality Act.

10:87-3.9 Ineligible aliens

[No a]Aliens other than those described in [section 8 of this subchapter] **N.J.A.C. 10:87-3.8** are **not** eligible to participate in the program as a member of any household. Among those excluded are alien visitors, tourists, diplomats, and students, who enter the United States **temporarily** with no intention of abandoning their residence in a foreign country.

10:87-3.11 Awaiting verification

(a) If verification of eligible alien status or citizenship as required by N.J.A.C. 10:87-2.21[(a)2 and (a)8, respectively,] (c) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The income and resources of the alien(s) whose status is unverified or individual whose citizenship is questionable shall be treated in the same manner as an excluded member as specified in N.J.A.C. 10:87-7.14(c) and considered available in determining the eligibility of the remaining household members.

[1.](b) (No change in text.)

10:87-3.12 Eligibility to use coupons for prepared meals

(a) The following individuals, if members of an eligible household, may use food coupons to purchase prepared meals from any communal dining facility, meal delivery service, alcoholic and/or drug treatment center, group living arrangement, [or] shelter for battered women and children **or homeless meal provider** which is currently authorized by FNS to accept food coupons.

1.-2. (No change.)

3. Addicts and alcoholics: Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program may use coupons to purchase food prepared for them during the course of such program by a private nonprofit organization, [or] institution **or a publicly operated community mental health center** authorized by FNS.

4.-5. (No change.)

6. Homeless food stamp households who obtain meals prepared for and served by an authorized public or private nonprofit establishment such as a soup kitchen or temporary shelter approved by the DPW or its designee.

OAL Note: N.J.A.C. 10:87-3.13 through 3.21 are proposed for recodification as N.J.A.C. 10:87-10.1 through 10.24.

10:87-3.13 State Income and Eligibility Verification System

(a) DPW shall maintain and use the Income and Eligibility Verification System (IEVS) as specified in this section. By means of IEVS, DPW shall request wage and benefit information from the agencies identified below and use that information in verifying eligibility for, and the amount of, food stamp benefits due to eligible households.

1. Such information shall be requested and used with respect to all household members, including any excluded household members, as specified in N.J.A.C. 10:87-7.14, whenever the SSNs of such included household members are available. (If not otherwise documented, DPW shall obtain written agreements from those information provider agencies that they shall not record any information about individual food stamp households and that staff of those agencies are subject to the disclosure restrictions of N.J.A.C. 10:87-1.14).

2. The wage and benefit information available through IEVS are:

i. Wage information maintained by the State Wage Information Collection Agency (SWICA);

ii. Information about net earnings from self-employment, wages, and Internal Revenue Service (IRS) data, retirement payments and unearned income maintained by the SSA and available pursuant to sections 6103(1)(7)(A) and (B) of the IRS Code; Federal retirement, survivors, disability, SSI and related benefit information available from the SSA; and

iii. Claim information from the agency administering Unemployment Insurance Benefits (UIB) and any information, in addition to information about wages and UIB, which is useful for verifying eligibility and benefits, subject to the provisions and limitations of section 303(d) of the Social Security Act.

(b) DPW shall exchange information with other State agencies administering certain other programs in the IEVS about food stamp households' circumstances which may be of use in establishing or verifying eligibility and/or benefits under the program. CWAs may exchange information with agencies in other states when they determine that the same objectives are likely to be met.

1. These programs are:

i. Aid to Families with Dependent Children (AFDC);

ii. Medicaid;

iii. Unemployment Compensation (UC);

iv. Food Stamps; and

v. Any State program administered under a plan approved under Title I, X, or XIV (the adult categories), or Title XVI of the Social Security Act.

2. DPW shall provide information to people administering the Child Support Program (Title IV-D of the Social Security Act) and Titles II (Federal Old Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(c) The CWA shall use information obtained from IEVS for the purposes of:

1. Verifying a household's eligibility;

2. Verifying the proper amount of benefits;

3. Investigating to determine whether participating households received benefits to which they were not entitled; and

4. Obtaining information which will be used in conducting criminal or civil prosecutions based on receipt of benefits to which participating households are not entitled.

(d) CWAs shall request through DPW, and use information about members of all applicant households as specified below:

1. Information shall be requested at the next available opportunity after the date of application even if the applicant household has been determined eligible by that time. Information about members of applicant households who cannot provide SSNs at application shall be requested at the next available opportunity after the CWA is notified of the household members' SSNs. Information received within the 30-day application period shall be used to determine household eligibility and benefits if the information is received timely enough. However, CWAs shall make eligibility and benefit determinations without waiting for receipt of IEVS data to conform with the promptness standards of N.J.A.C. 10:87-2.30. Information received after an eligibility determination has been made shall be used as specified in paragraphs (e) and (f) below.

2. Information from the SWICA, SSA, IRS, and claim information from the agency administering UIB shall be requested and used as specified in (d)1 above. Requests to SWICAs shall access the most recent SWICA data available. Requests to SSA and IRS shall be submitted according to procedures specified by those organizations.

3. Any information, other than wage and UIB which UC agencies may have and that DPW determines would be useful in verifying eligibility or benefits of applicant households, shall be requested by methods and at intervals to which DPW and UC agencies agree, and shall be used as specified in paragraph (d)1 above; and

4. Exchanges of information about applicant households with other programs specified in (b) above shall be made as the DPW and other programs may agree.

(e) Except as provided in (e)7 below, with respect to all members of recipient households, DPW shall:

1. Request information from the SWICA quarterly, such requests shall include all households which participated in any month of the quarter;

2. Request information about household members from SSA data bases no later than the second month of the certification period, when requests at application did not establish automatic reporting to the CWA of changes in SSA data. Requests shall be submitted according to procedures specified by the SSA;

3. Request information from IRS annually for all current recipients. Requests shall be submitted to IRS according to procedures specified by the IRS;

4. Exchange information with other programs specified in paragraph (a) above as the DPW and these other programs may agree;

5. Request information about UIB from the agency administering that program as follows:

i. For all household members about whom requests at application indicate no receipt of UIB, information shall be requested for the three months following the month of application or until the receipt of UIB is reported, whichever is earlier;

ii. For all household members who report a loss of employment, information shall be requested for the three months following the month the loss is reported or until the receipt of UIB is reported, whichever is earlier; and

iii. For all household members receiving UIB, information shall be requested monthly until UIB are exhausted; and

6. Request from UC agencies any information other than UIB information which DPW determines would be useful in verifying eligibility or benefits of recipient households. Requests shall be made by methods and at intervals to which the DPW and the UC agencies agree.

7. Under certain conditions DPW may exclude from the requests for information specified in this subsection those members of recipient households who are participating in one of the other programs listed in (b) above. The conditions for such exclusion are that:

i. The agency responsible for administering the other program is requesting and acting on information on food stamp recipients who are participating in that program as required by the pertinent regulations for that program, including any concerning selective criteria for follow-up action;

ii. The other program agency agrees to inform the CWA of the information obtained from its follow-up action when that information shows discrepancies between actual circumstances of food stamp recipients and circumstances known by the other program agency;

iii. The other program agency agrees to make available, at the request of the CWA, information about food stamp recipients that it did not follow up on; and

iv. The follow-up action taken by the other program agency is at least as beneficial as similar action would be if taken by the CWA.

(f) With respect to information received as a result of requests made according to (e) above, CWAs shall initiate and pursue actions according to the specific attachment to the State Plan of Operation.

1. CWA action on information items about recipient households shall include:

i. Reviewing the information and comparing it to case record information;

ii. For all new or previously unverified information received, contacting the households to resolve discrepancies as specified in (d) and (e) above.

iii. If discrepancies warrant reducing benefits or terminating eligibility, sending out notices of adverse action.

2. CWAs shall initiate and pursue the actions specified above so that they are completed within 45 days of receipt of the information. Actions may be completed later than 45 days from the receipt of information on no more than 20 percent of the information if:

i. The only reason that the actions cannot be completed is the nonreceipt of verification requested from collateral contacts; and

ii. The actions are completed, as specified in N.J.A.C. 10:87-9.5, when verification from a collateral contact is received or, in conjunction with the next case action, when such verification is not received, whichever is earlier.

3. When the actions specified in (f)1 above substantiate an overissuance, CWAs shall take action on claims as specified in N.J.A.C. 10:87-11.23 through 11.32, inclusive.

4. State agencies shall use appropriate procedures to monitor the timeliness requirements in (f)2 above.

5. Except for the claims actions specified in (f)3 above, under the conditions of (e)7 above, CWAs may exclude from the actions required in (f) above, information items pertaining to household members who are participating in one of the other programs listed in (b) above.

(g) IEVS information and quality control responsibilities are:

1. In compliance with Federal regulations, the DPW uses an administrative system (IEVS) to measure the extent and number of, and occasion and basis for, errors of benefit issuance and/or eligibility in the program.

2. The CWA shall be responsible for investigating and then initiating and implementing actions designed to bring the incidence of errors, as established by DPW's Bureau of Quality Control, within certain preset tolerance limits.

[10:87-3.22 (Reserved)]

10:87-3.[23]**14** Procedures for students in an institution of higher education

(a) A [S]student in an institution of higher education defined[:] is [A]any person who is between the ages of 18 and 60 who is physically and mentally fit and is enrolled at least half time in an institution of higher education. Excluded from this definition are persons who are attending high school, participating in on-the-job training pro-

grams and training programs which are not institutions of higher education.

[1. Institution of higher education defined: An institution of higher education is any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities and vocational or technical schools at the post-high school level.]

(b) Institution of post secondary education defined: An institution of post secondary education is any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the legal age of compulsory school attendance, provided that the institution is legally authorized by the State to provide an educational program beyond secondary education or provides a training program to prepare students for gainful employment.

[2.](c) (No change in text.)

[(b)](d) Student eligibility requirements: In order to be eligible to participate in the Food Stamp Program, any student (as defined in (a) above) must meet at least one of the following criteria:

1.-5. (No change.)

6. Be assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act (JTPA).

[(c)](e) Ineligible student living with household: The income and resources of an ineligible student living with a household shall not be considered in determining eligibility or level of benefits of the household (see N.J.A.C. 10:87-5.9(a)[9]**12**).

10:87-3.[24]**15** Social Security numbers

[(a)] The CWA shall require that a household participating or applying for participation in the Food Stamp Program provide the CWA with the Social Security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The CWA shall explain to applicants and participants that refusal or inability to provide a SSN will result in disqualification of the individual for whom the number has not been provided.

[1. Participation while awaiting a Social Security number: Household members required to provide a SSN shall be eligible to participate while waiting for the Social Security Administration (SSA) to issue a number. Such participation is permitted for 30 days from the first day of the first full month of participation while awaiting receipt of the SSN. Households entitled to expedited service will be asked to furnish a Social Security number for each household member or apply for one for each household member before the first full month of participation. Those households unable to provide the required SSNs or who do not have one prior to their next issuance shall be allowed 30 days from the first full month of participation to obtain the SSN.

2. Obtaining a SSN: For those household members who do not have a SSN and must apply for one, the CWA shall complete Form SS-5 and submit it to the appropriate SSA office. The CWA shall retain a copy of the completed SS-5 in the case file. Upon receipt of the SSN, the CWA shall record it in the case record.

i. When a household member states that he or she has already applied for a SSN, the CWA shall make note of this in the case file. The CWA shall also request that the household member ask for proof of application from SSA in the event that his or her application is not processed within the 30 day time period described in (a) above. If the member has not received the SSN within 30 days of the first day of the first full month of participation, it shall be the member's responsibility to demonstrate good cause as outlined in (a)4 below.

3. Failure to comply: When a household member required to provide or apply for a SSN refuses to do so, he or she shall be ineligible to participate in the Food Stamp Program. The disqualified household member may become eligible upon providing the CWA with a SSN, or demonstrating that an application has been made for a SSN. If the CWA determines that an individual who was required to provide a SSN within 30 days of the first day of the first full month of participation has failed to do so without good cause, that individual shall be ineligible to participate until he or she complies.

4. Determining good cause: To determine good cause for failure to provide a SSN, the CWA shall consider information from the household member, SSA, or the CWA itself (especially if the CWA was designated to submit Form SS-5 to SSA and either did not process the form or did not process it in a timely manner). Documentary evidence or collateral information that indicates the individual has applied for a SSN, or made every effort to supply SSA with the necessary information, shall be considered good cause for not complying with this requirement in a timely manner. If the household member(s) can show good cause why a SSN has not been provided in a timely manner, he or she shall be allowed to participate for an additional 30 days. If the individual applying for a SSN has been unable to obtain the documents required by SSA, the certification worker must make every effort to assist the individual in obtaining the necessary documents.]

10:87-3.16 Work registration

(a) Each household member who is not exempt shall be registered for employment by the CWA at time of application, and at least once every 12 months as a condition of eligibility for participation in the Food Stamp Program.

(b) The CWA shall provide work registration forms to the applicant or the household's authorized representative for each household member required to register for employment and permit the applicant or authorized representative to complete the form.

(c) See N.J.A.C. 10:87-10.1 et seq. for details concerning work registration, and employment and training requirements.

10:87-4.1 Applicability

(a) The resource criteria and eligibility standards of this [section] **subchapter** apply to all applicant households, except those in which all members are also applicants for, or recipients of, AFDC and AFDC resource eligibility is **or has been** established.

1. (No change.)

(b) Households that are categorically eligible as defined at N.J.A.C. 10:87-2.36 et seq. do not have to meet the resource limits or definitions of this subchapter.

10:87-4.3 Resources defined

(a) The resources of a household shall include the following which shall be recorded by the [county welfare agency] **CWA** in sufficient detail to permit verification [as] **if** necessary (see N.J.A.C. 10:87-[2.20]**2.21** and 4.5).

1. Liquid resources: Liquid resources such as cash on hand, money in checking **and**/or savings accounts, savings certificates, stocks and **/or** bonds, lump-sum payments as described in N.J.A.C. 10:87-5.9(a)10, funds held in Individual Retirement Accounts (IRAs), and funds held in Keogh plans [which] **that** do not involve the household member in a contractual relationship with individuals who are not household members.

i.-ii. (No change.)

2. Nonliquid resources: Nonliquid resources, such as personal property, licensed and unlicensed vehicles, buildings, land, recreational property, and any other property not specifically excluded under N.J.A.C. 10:87-[4.7]**4.8**.

3. (No change.)

10:87-4.4 Jointly owned resources

(a) Resources held jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resources, **only** the value of that portion [of the resource] shall be counted toward the household's resource level.

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

10:87-4.5 Verification of resource information

Resource information shall be verified prior to certification only if questionable (see N.J.A.C. 10:87-2.21[(a)4](i)).

10:87-4.6 Resources of nonhousehold [members] and excluded household members

(a) (No change.)

(b) Excluded household members: The resources of excluded household members, as described in N.J.A.C. 10:87-2.3(c), shall be

counted as available to the remaining household members in accordance with N.J.A.C. 10:87-7.14(b)[1] and (c)[1].

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the [county welfare agency] **CWA**:

1. Home and surrounding property: The home and surrounding property which is not separated from the home by intervening property owned by others.

i. Public rights of way: Public rights of way, such as road [which] **that** run through the surrounding property and separate it from the home, will not affect the exclusion of the property.

ii. Home temporarily unoccupied: The home and surrounding property shall remain excluded when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, [so long as] **only if** the household intends to return **to the home**.

iii. (No change.)

2.-5. (No change.)

6. Pension funds: The cash value of pension plans or funds, [as long as] **only if** the funds remain in the pension plans[, except that]. Keogh plans [which] **that** involve no contractual relationship with individuals who are not **non**household members and Individual Retirement Accounts (IRAs) shall not be excluded.

i. (No change.)

7. Income producing property: Property which annually produces income consistent with its fair market value, even if used only on a seasonal basis[;]. **Such property shall include rental and vacation homes.**

i. Rental homes used for vacations: Rental homes which are used for vacation purposes by a member of the household shall be counted as resources on a prorated basis unless excluded by (a)7 above.

8. Property essential for employment: Property, such as farm land [and rental homes], which is essential to the employment or self-employment of a household member.

[i. Rental homes used for vacations: Rental homes which are used for vacation purposes at some time during the year shall be counted as resources unless excluded by paragraph 7 of this subsection.]

9. (No change.)

10. Certain licensed vehicles: See N.J.A.C. 10:87-4.12 [(a)1].

11. (No change.)

12. Certain disaster payments: Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended. For example, payments made by the Department of Housing and Urban Development (HUD) through the individual and family grant program or disaster loans or grants made by the Small Business Administration (**SBA**) [qualify under this provision] **shall be excluded**.

13. Inaccessible resources: Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds (see (a)14 below for treatment of irrevocable trusts), security deposits on rental property or utilities, property in probate and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold.

i. (No change.)

ii. Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the creditor from selling the asset(s) shall be excluded.

14. Irrevocable trusts: Any funds **held** in a trust or transferred to a trust, and the income produced by that trust, to the extent it is not available to the household, shall be considered inaccessible if all of the following criteria apply:

i. Controlled by the trustee: The trustee administering the funds is either:

(1) (No change.)

(2) An individual (who may be a household member) appointed by the court who has court-imposed limitations placed on his or her use of the funds [which] **that** meet the requirements of this paragraph;

ii. Funds held in irrevocable trust: The funds held in an irrevocable trust are either:

(1) (No change.)

(2) Established from **non**household funds by a nonhousehold member;

iii.-iv. (No change.)

v. Power to revoke: No household member has the power to revoke the trust arrangement or change the name of the [student] beneficiary during the certification period.

15. Resources counted as income: Resources, such as those of students or self-employed persons, [which] **that** have been counted as income [under subchapter 5 of this chapter] **(see N.J.A.C. 10:87-5.4(a) et seq)**.

16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal [law] **statute**. [Resources currently excluded by this provision appear below.] **The following is a listing of resources excluded by Federal statute:**

i.-x. (No change.)

xi. Payments for relocation assistance to members of the Hopi and Navajo Tribes shall be excluded from both resources and income (Public Law 93-531);

xii. Financial assistance provided by a program funded in whole or in part under Title IV of the Higher Education Act in accordance with Public Law 99-498.

xiii. Earned income tax credits received before January 1, 1980, as a result of the Revenue Act of 1978 (Public Law 95-600).

18. HUD retroactive tax and utility cost subsidy payments issued pursuant to settlement of Underwood vs. Harris against HUD, for the month in which the payment was received and for the following month.

19. Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. (See N.J.A.C. 10:87-4.7.)

10:87-4.9 Treatment of excluded funds

(a) Any monies excluded by the provisions of [section 8 of this subchapter] **N.J.A.C. 10:87-4.8** shall retain the resource exclusion for an unlimited period of time so long as such monies are kept in a separate account and [are] not commingled in an account with nonexcluded funds.

(b) Commingled funds: The resources of students and self-employ-[ment]**ed** [households] **persons** [which] **that** are excluded as provided in N.J.A.C. 10:87-4.8(a)15 and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded monies which are commingled in an account **with nonexcluded funds** shall retain their exclusion for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

10:87-4.10 Value of resources

The value of **a** nonexempt resource[s] (except for licensed vehicles as described in [section 12 of this subchapter] **N.J.A.C. 10:87-4.12**) shall be its equity value. The equity value is the fair market value less encumbrances. When necessary, the value of resources shall be determined by consulting sources knowledgeable [in] **as to** the value of such resources. The source **and result** of **any such** verification shall be documented in the case record.

10:87-4.11 Fair market value of licensed vehicles

(a) The fair market value of licensed automobiles, trucks, and vans will be determined by the value of those vehicles as indicated by the "Average Wholesale Value" in the most recent edition of The Red Book; Official Used Car Valuations. The CWA shall not increase the basic value of a vehicle by adding the value of low mileage or other[s] **factors** such as optional equipment. If a new vehicle is not [yet] listed in the Red Book, the CWA shall determine the wholesale value [through] **by** some other means such as, but not limited to, contacting a car dealer [which] **that** sells that make of vehicle.

(b) Households claiming Red Book value does not apply: A household may indicate that, for some reason such as body damage or inoperability, a vehicle is in less than average condition. Any house-

hold [which] **that** claims that the Red Book value does not apply to its vehicle shall be given the opportunity to acquire verification of the true value from a reliable source.

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

(e) Vehicle no longer listed in Red Book: If a vehicle is no longer listed in the Red Book, the household's estimate of the value of the vehicle shall be accepted unless the CWA has reason to believe the estimate is incorrect. In that case, and if it appears that the vehicle's value will affect eligibility, the household shall obtain an appraisal or produce other evidence of its value, such as newspaper advertisement which indicates the amount for which [like] **similar** vehicles are being sold.

10:87-4.12 Treatment of licensed vehicles

(a) The value of licensed vehicles shall be excluded or counted as a resource as follows:

1. Vehicles totally excluded: The entire value of any licensed vehicle shall be excluded if the vehicle meets **any** one of the criteria below. If found to apply, this exclusion shall continue when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

i.-ii. (No change.)

iii. Vehicle essential to employment: The vehicle is necessary for long distance travel, other than daily commuting, which is essential to the employment of a household member (or excluded individual whose resources are being considered available to the household); for example, the vehicle of a traveling [sales person] **salesperson** or of a migrant [farm worker] **farmworker** following the work stream.

[iv. Vehicle necessary for subsistence hunting and fishing: The vehicle is necessary for subsistence hunting or fishing.]

[v.]**iv.** Vehicle used as a home: The vehicle is used as a home and therefore excluded under N.J.A.C. 10:87-4.8(a)[1].

[vi.]**v.** Vehicle necessary to transport a physically disabled household member: The vehicle is necessary to transport a physically disabled household member (or excluded individual whose resources are being considered available to the household) regardless of the purpose of such transportation. This exclusion is limited to one vehicle per physically disabled household member. [The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.] A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is:

(1) (No change.)

(2) Specially equipped to meet the specific needs of the disabled person. **However, the vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.**

vi. Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under (a)1i, ii, or iii above. Only that portion of real property determined necessary for maintenance or use is excludable under this provision.

(1) For example, a household that owns a produce truck to earn a living may be prohibited from parking the truck in a residential area. The household may own a five-acre field and use a quarter-acre to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision. (It is possible that the entire five acres are excludable under other resource exclusions at N.J.A.C. 10:87-4.8(a).)

[2.]**(b)** Vehicles evaluated at fair market value: All licensed vehicles not excluded [by the provisions of] **under** [paragraph 1] **(a)1** above shall be individually evaluated for fair market value (see [section 11 of this subchapter] **N.J.A.C. 10:87-4.11**) and that portion of the value which exceeds $4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicle. For example, a household owning an automobile with a fair market value of $5,500 shall have $1,000 applied to its resource level even though it still owes $2,000 toward the purchase of the vehicle.

[i.]**1.** (No change in text.)

[3.]**(c)** Vehicles evaluated at equity value: Except as provided for below, the equity value of licensed vehicles and unlicensed vehicles not excluded under N.J.A.C. 10:87-4.8(a)7, 8 and 9 shall be attributed toward the household's resource level. [(]Equity value is defined [in] **at N.J.A.C. 10:87-4.10**[)].

[i.]**(d)** Vehicles not evaluated at equity value: The following vehicles shall not be evaluated at equity value:

[(1)]**1.** Vehicles excluded by paragraph **(a)**1 [of this subsection] **above**;

[(2)]**2.** (No change in text.)

[(3)]**3.** Any licensed vehicles used to transport household members (or excluded individuals whose resources are being considered available to the household to and from employment or to and from training or education which is preparatory to employment, or to [such] **seek** employment in compliance with the [job search] **employment and training** criteria. A vehicle customarily used to commute to and from employment shall be covered by [the] **this** equity value exclusion during temporary periods of unemployment.

[4.]**(e)** Vehicles assigned both fair market and equity value: In the event a licensed vehicle is assigned both a fair market value in excess of $4,500 and an equity value, only the greater of the two amounts shall be counted as a resource. For example, a second car [which] **that** is not used by a household member to go to work will be evaluated for both fair market [value and for] **and** equity values. If the fair market value is $5,000 and the equity value is $1,000, the household shall be credited with only the $1,000 equity value, and the $500 excess fair market value will not be counted.

[5.]**(f)** Summary: In summary, each licensed vehicle shall be handled as follows: First, it will be evaluated to determine if it is exempt as an income producer or as a home. If not exempt, it will be evaluated to determine if its fair market value exceeds $4,500. If worth more than $4,500, the portion in excess of $4,500 shall be counted as a resource. The vehicle will also be evaluated to see if it is equity-exempt as the household's primary vehicle or necessary for employment reasons. If not equity-exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than $4,500 and also has a countable equity value, only the greater of the two amounts shall be counted as a resource.

10:87-4.13 [Resource eligibility standards] **Maximum allowable resources**

[(a) The following resource eligibility standards apply to all applicant households.

1. Resource maximum of $3,000: Participation in the program shall be denied or terminated if the total value of the household's nonexcluded resources exceeds $3,000 and the household includes an individual who is at least 60 years of age.

2. Resource maximum of $2,000: Participation in the program shall be denied or terminated if the total value of the household's nonexcluded resources exceeds $2,000 and the household does not meet the criteria of (a)1 above.]

(a) The maximum allowable resources, including both liquid and nonliquid assets of all members of the household, shall not exceed $2,000 for the household; except that for households including a member or members aged 60 or over, such resources shall not exceed $3,000.

(b) If the household's non-excludable resources exceed the above amounts at any point in time, the household's participation in the program shall be denied or terminated.

10:87-4.15 Disqualification

Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified for up to one year (see schedule [in section 19 of this subchapter] **at N.J.A.C. 10:87-4.19**) from the date of discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified for benefits and which are then transferred to prevent the household from exceeding the maximum resource limit.

10:87-4.16 Transfers not subject to disqualification

(a) Eligibility for the program will not be affected by the following transfers:

1. Resources not affecting eligibility: Resources which would not otherwise affect eligibility; for example, resources consisting of excluded personal property such as furniture or [of] money that, when added to other nonexcluded household resources, totalled less than the allowable resource limit at the time of **the** transfer;

2. Transfer at fair market value: Resources [which] **that** are sold or traded at, or near, fair market value;

3.-4. (No change.)

10:87-4.19 Period of disqualification

The length of **the** disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceed the allowable limits. For example, if a one-person, non-elderly household with $1,750 in a bank account transferred ownership of a car worth $5,000, $250**.00** of that transfer would be considered in determining the period of ineligibility because the first $4,500 of the car's value is excluded and an additional $250 **.00** of the transferred asset can be applied toward the $2,000 resource limit. The following chart [will] **shall** be used to determine the period of disqualification[.]:

Disqualification Period Chart

Amount in Excess of the Resource Limit	Period of Household Disqualification
$ 0.01-$ 249.99	1 month
250- 999.99	3 months
1,000- 2,999.99	6 months
3,000- 4,999.99	9 months
5,000 and over	12 months

10:87-4.20 Resources of nonhousehold members

(a) The resources of nonhousehold members, as defined in N.J.A.C. 10:87-2.3(a) shall be handled as outlined in N.J.A.C. 10:87-7.15.

(b) The resources of excluded members, as defined in N.J.A.C. 10:87-2.3(c) shall be handled as outlined in N.J.A.C. 10:87-7.14 and 7.15, as appropriate.

10:87-5.1 Applicability

(a) All households which do not contain an elderly or disabled member, including those in which all members are recipients of public assistance, shall meet both the net and gross income eligibility standards set forth in N.J.A.C. 10:87-12.3 and 12.4 [(Tables III and IV)], respectively, in order to be eligible for program participation. Households which contain an elderly or disabled member shall meet the net income eligibility standards in N.J.A.C. 10:87-12.3 [(Table III)]. Net [F]food [S]stamp [I]income shall be determined in accordance with procedures contained in this [section] **subchapter**.

(b) Households that are categorically eligible as defined in N.J.A.C. 10:87-2.36 do not have to meet either the gross or net income eligibility standards.

10:87-5.2 Responsibilities regarding the reporting of income

(a) Responsibilit[y]**ies** for the reporting of income shall be [divided] as follows:

1. Applicant Responsibility: At the time of certification or recertification, the applicant shall report all income currently being received by all members of the household and any income **changes or additions** which the household [expects to receive] **anticipates** during the course of the certification period. [Additionally,] **The** applicant **also** has the responsibility of reporting **actual** income changes during the certification period.

2. Responsibility of [county welfare agency] **CWA**: The [county welfare agency] **CWA** shall determine that **the** total income to the household, as reported by the applicant during the certification **or recertification** interview, is completely [and definitively] identified on the FSP-901, and in [detail] sufficient **detail** to permit verification[.] ([See] **see** also N.J.A.C. 10:87-2.21[(a)1.])**(b)**.

10:87-5.3 Income defined

Household income shall be defined as all income from whatever source unless such income is specifically excluded under the provisions of [section 8 of this subchapter] **N.J.S.A. 10:87-5.9**.

10:87-5.4 Earned income

(a) For the purposes of determining [N]**net** [F]food [S]stamp [I] income, earned income shall include:

1. (No change.)

2. Combined income of household members and nonhousehold members: When the earned income of one or more household members and the earned income of a nonhousehold member are combined into one wage, the income of the household members shall be determined as follows:

i.-ii. (No change.)

3. Self-employment income: The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business[. (See)] (**see** N.J.A.C. 10:87-5.9(a)[10.]**14**).

i. Rental property: Ownership of rental property shall be considered a self-employment enterprise. However, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property for an average of at least 20 hours per week[.] ([See] **see** also N.J.A.C. 10:87-5.5(a)3[.]).

ii. (No change.)

4. Training allowances: Training allowances from vocational and rehabilitative programs recognized by [f]Federal, State, or local governments, such as the Work Incentive Program (WIN), **Realizing Economic Achievement (REACH)** [and] **or** programs authorized by the Comprehensive Employment **and Training** Act (CETA) to the extent they are not a reimbursement[.] ([See] **see** N.J.A.C. 10:87-5.9[(a)6iii(1).] **(a)9iii(1)**).

5. Payments to volunteers: Payments to volunteers under Title I (VISTA, University Year for Action, and so forth) of the Domestic Volunteer Service Act of 1973 (P.L. 93-113) shall be considered earned income and subject to the earned income deduction specified in N.J.A.C. 10:87-5.10(a)2, excluding payments to households as set forth in N.J.A.C. 10:87-5.9[(a)12iii](**a)15iii**.

6. Earnings to individuals who are participating in on-the-job training programs under the JTPA. This provision does not apply to a household member under 19 years of age who is under the parental control of another adult member.

10:87-5.5 Unearned income

(a) For the purposes of determining [N]**net** [F]food [S]stamp [I] income, unearned income shall include, but not be limited to:

1. Assistance payments: Assistance payments from [f]Federal or federally aided public assistance programs such as SSI[,] **or** AFDC; and General Assistance **program** payments; **or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment to a third party on behalf of the household, unless specifically exempt as countable income under the provisions of N.J.A.C. 10:87-5.9(a)1 and 2.**

i. All assistance payments from programs which require, as a condition of eligibility, the actual performance of work **such as the General Assistance Employability Program (GAEP),** without compensation other than the assistance payments themselves, shall be considered unearned income.

2. Annuities, pension, Social Security, and other benefits: Annuities, pensions, retirement benefits, [V]veteran's benefits, **old-age, survivors, or** disability benefits, workman's compensation, unemployment compensation, Social Security benefits, strike benefits, and [F]foster [C]care payments for children or adults;

3. Income from rental property: Gross income (minus the cost of doing business) derived from rental property in which a household member is not actively engaged in management of the property at least 20 hours a week (see N.J.A.C. 10:87-5.4(a)[2]**3**i);

4. Educational grants and loans: Scholarships, educational grants, deferred payment loans for education, [V]veteran's educational benefits, **fellowships** and the like in excess of amounts excluded in N.J.A.C. 10:87-5.9(a)[4]**7**;

5. (No change.)

6. Payments from government-sponsored programs: Payments from **Federal, State or local** government-sponsored programs which can be construed to be a gain or benefit;

7.-10. (No change.)

10:87-5.6 Income of [disqualified] **excluded** individuals

(a) Income of individual [disqualified] **excluded** for intentional program violation: The earned or unearned income of an individual disqualified from the household for intentional program violation as set forth in N.J.A.C. 10:87-11.1 et seq. shall continue to be attributed in its entirety to the remaining household members (see N.J.A.C. 10:87-7.14(b)).

(b) Income of individual excluded for other causes: The earned or unearned income of individuals excluded from the household for failing to comply with the requirement to provide a Social Security number (see N.J.A.C. 10:87-[3.24(a)3)]**21.1(h)** or for being an ineligible alien (see N.J.A.C. 10:87-3.8**(a) et seq.** for listing of eligible aliens) or for having questionable citizenship status (see N.J.A.C. 10:87-2.21[(a)8]**(k)** shall continue to be counted as income, less the pro rata share for that individual, to the remaining household members. Procedures for calculating this pro rata share are described in N.J.A.C. 10:87-7.14[(c)].

10:87-5.7 Treatment of recovery moneys and Title IV-D child support payments

(a) (No change.)

(b) Moneys used for recovery of overpayments caused by intentional noncompliance with requirements of other programs: Moneys withheld from a Federal, State, or local assistance grant such as AFDC, GA or SSI, for the purpose of recovering a prior overpayment which resulted from recipient fraud or intentional failure to comply with **the other** program's requirements, shall be included as income.

1. For the purposes of this provision, intentional noncompliance shall be defined as follows:

i.-ii. (No change.)

[2.]**(c)** Benefit determination in cases with recovery due to fraud or intentional noncompliance: The CWA shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in assistance payments has been imposed for fraud or intentional failure to comply with a Federal, State, or local welfare program such as AFDC, SSI or GA. Procedures for determining food stamp benefits when there is such a decrease in assistance are as follows:

[i.]**1.** (No change in text.)

[(1)]**i.** (No change in text.)

[(2)]**ii.** (No change in text.)

[ii.] **2.** (No change in text.)

[(c)]**(d)** Child support under Title IV-D: Child support payments received by recipients which must be transferred to the CWA pursuant to Title IV-D of the Social Security Act to maintain AFDC eligibility shall not be counted as income except for the following:

1. (No change.)

10:87-5.8 Income exclusions

Income which is classified as an exclusion shall not be considered for [the] purposes of determining [N]net [F]food [S]stamp [I]income.

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; [and] no other income shall be excluded.

1. (No change.)

2. Vendor payments: A payment made in money on behalf of a household shall be considered a vendor payment when a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend who is not a household member pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household.

i.-iv. (No change.)

v. Moneys otherwise payable to the household: Moneys which are legally obligated and otherwise payable to the household but which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded as a vendor payment. The distinction is whether or not the person or organization making the payment on behalf of the household is using funds which otherwise would have to be paid to the household. Such funds include wages earned by a household member and therefore owed to the household, a public assistance grant to which the household is legally entitled, [and] support and alimony payments in amounts which legally must be paid to a household member, **and student educational assistance that is provided on behalf of the household to a third party for living expenses.**

(1) Funds owed to the household: if any employer, agency, former spouse, or other person who owes these funds to a household diverts them instead to a third party to pay for a household expense, these payments shall be counted as income to the household. **Diverted educational assistance payments made to the household for living expenses shall also be counted.**

(2) (No change.)

3. HUD utility allowance payments which may be made directly to the individual, the utility or the landlord are counted as income and not excluded as a vendor payment.

4. An AFDC or GA payment which is not made directly to the household, but paid to a third party on behalf of the household to pay a household expense, shall be considered an excludable vendor payment and not counted as income to the household if the payment is for:

i. Medical assistance;

ii. Child care assistance;

iii. Energy assistance (as defined in N.J.A.C. 10:87-5.9(a)15viii); or

iv. Housing assistance payments made to a third party for a household residing in temporary housing if the latter unit lacks facilities for the preparation and cooking of hot meals and/or refrigerated food storage. Such vendor payments shall be excluded under this provision if paid to the housing provider during the period from October 20, 1987 to September 30, 1989.

5. Cash donations based on need which were received on or after February 1, 1988 from private nonprofit charitable organizations that do not exceed $300.00 in a Federal fiscal year quarter.

[3.]**6.** (No change in text.)

[4.]**7.** Educational grants and loans: Educational loans on which payment is deferred, grants, scholarships, fellowships, [V]veteran's educational benefits and the like shall be excluded to the extent that they are used for tuition and mandatory school fees, **books, supplies, transportation, and miscellaneous personal expenses for a student attending school on at least a half-time basis as determined by the** [at an] institution of [higher] **post-secondary** education, including correspondence schools at that level, or a school [at any level] for the physically or mentally handicapped **at any level (See N.J.A.C. 10:87-5.11).**

[i. Mandatory school fees defined: Mandatory school fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, and equipment charged to all students in order to enroll in a chemistry course are excluded. However, transportation, supplies and text book expenses are uniformly charged to all students and, therefore, are not excluded as mandatory school fees.]

[5.]**8.** Loans: All loans, including loans from private individuals as well as commercial institutions, **are excluded from income and resources. Additionally, deferred payment** [other than] educational loans [on which payment is deferred] **that provide income assistance beyond that used for tuition and mandatory fees** shall be excluded **if the lender/financial aid office of the school specifically designates portions of the loan as educational expenses rather than living expenses** [. (See](**see** N.J.A.C. 10:87-2.21[(a)4vi]**(m)** [for verification of loans.]).

[6.]**9.** Reimbursements: Reimbursements for past or future expenses shall be excluded to the extent that they do not exceed [such] **actual** expenses and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage **payments,** personal clothing, or food eaten at home are a gain or benefit [and, therefore,] are not excluded.

i.-ii. (No change.)

iii. Examples of excludable reimbursements: Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(1)-(3) (No change.)

(4) **Non-Federal** [R]reimbursements or allowances to students for specific educational expenses, such as travel or books, but not allowances for living expenses such as food, rent, or clothing. Portion of **a loan**, [a general] grant, or scholarship must be specifically [earmarked] **designated** by the grantor for educational expenses, rather than living expenses, to be excluded as a reimbursement.

(5) (No change.)

[7.]**10.** (No change in text.)

[8.]**11.** Earned income of a student under [18] **19** years of age: Earned income (as defined in [section 4 of this subchapter] **N.J.A.C. 10:87-5.4**) of students (as defined in N.J.A.C. 10:87-[3.18(b)3] **10.7(b)3**) under [18] **19** years of age shall be excluded. This exclusion will continue to apply during temporary interruptions in school attendance due to semester or vacation breaks; provided the child's enrollment will resume following the break.

i.-ii. (No change.)

[9.]**12.** Income of an ineligible student: The income, either earned or unearned, of an ineligible student as defined in N.J.A.C. 10:87-2.3(a)[5]**2**, shall be excluded.

[10.]**13.** Nonrecurring lump-sum payments: Moneys received in the form of nonrecurring lump-sum payments including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum Social Security, SSI, public assistance, [R]railroad [R]retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities, shall be excluded. Such payments will be counted as resources in the month received in accordance with N.J.A.C. 10:87-4.3(a)[1], unless excluded by N.J.A.C. 10:87-4.8(a)17.

[11.]**14.** The cost of producing self-employment income: The cost of producing self-employment income shall be excluded. The procedures for computing the cost of producing self-employment income are described in N.J.A.C. 10:87-7.[2]**6**.

[12.]**15.** Income excluded by Federal law: Any income that is specifically excluded by any other [law] **Federal statute** from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i-ii. (No change.)

iii. Payments to volunteers: Any payment to volunteers under Title II (RSVP, [f]Foster [g]Grandparents [and other], **and so forth**) of the Domestic Volunteer Services Act of 1973 (Public Law 93-113), as amended, shall be excluded. Payments to volunteers under Title I of that Act (including payments from such Title I programs as VISTA, University Year for Action, and **the** Urban Crime Prevention Program) shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which were receiving an income exclusion for VISTA or other Title I subsistence allowance at the time of conversion to the Food Stamp Act of 1977, shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once the initial determination has been made. New applicants who were not receiving public assistance or food stamps when they joined VISTA shall have these volunteer payments included as earned income.

iv. Income from certain Indian lands: Income derived from certain submarginal land of the United States [which] **that** is held in trust for certain Indian tribes (Public Law 94-114).

[v. Crisis Intervention Program: Payments from the Energy Crisis Assistance and Crisis Intervention Programs administered by the Community Services Administration.]

v. Payments of relocation assistance to members of the Navajo and Hopi Tribes under Public Law 93-531.

vi.-vii. (No change.)

viii. Payments or allowances made under any Federal, State, or local law for the purpose of energy assistance. In order to qualify for this exclusion, the **State or locally authorized** payments, [or] allowances, **or tax credits** must be [clearly identified] **approved** by the [legislative body authorizing the program or the funds] **FNS.** The State programs of Lifeline, **Tenants Lifeline Assistance Program (TLAP)**, Home Energy Assistance, **and the food stamp energy disregard portion of AFDC and GA payments** qualify for this exclusion.

ix.-xi. (No change.)

xii. Job Training Partnership Act: Any allowances, earnings or payments provided to individuals participating in **on-the-job training** programs [classified] under the Job Training Partnership Act of 1982 (Public Law 97-300). **This provision does not apply to household members under 19 who are under the parental control of another adult member.**

xiii. Any allowances, earnings or payments provided to individuals under the Senior Community Service Employment Program (SCSEP) enacted by the Older Americans Act Amendments of 1987 (Public Law 100-175). Programs funded by Title V moneys include, but are not limited to, Green Thumb, Inc., National Council on Aging, Inc. (NCOA), National Council of Senior Citizens' (NCSC) Senior Aide Program, and United Progress, Inc. (UPI).

xiv. Any educational assistance funded in whole or in part under Title IV of the Higher Education Act Amendments of 1986 or funded by the Bureau of Indian Affairs (BIA) Higher Education Grant Program to the extent it is used for tuition, mandatory school fee, and other specified costs of education (see N.J.A.C. 10:87-5.11).

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1. Standard deduction: The standard deduction, **specified at** N.J.A.C. 10:87-12.1, shall be deducted from income, whether earned or unearned.

2. Work allowance deduction: An amount equal to 20 percent of earned income, as defined in N.J.A.C. 10:87-5.4, after application of income exclusions in N.J.A.C. 10:87-[5.8 and] 5.9, shall be deducted.

3. Excess medical deduction: That portion of medical expenses in excess of $35.00 per month, excluding the cost of special diets, incurred by any household member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. Spouses or other persons (i.e., essential persons) receiving benefits as dependents of the SSI or disability [or] **and/or** blindness recipient are not eligible to receive this deduction. [but] [p]Persons receiving "emergency" SSI benefits based on presumptive eligibility are eligible for this deduction.

i. Allowable medical costs: The following items are allowable medical costs:

(1)-(3) (No change.)

(4) Health and hospital insurance: Health and hospitalization insurance policy premiums. When polic[y]**ies** [premiums] include individuals who are not eligible for a medical deduction, only that portion **of the premiums** which covers the individual(s) eligible for the deduction shall be deductible. If that portion is not identifiable, then [the] **a** prorated share may be used to determine the allowable amount (see N.J.A.C. 10:87-7.14(b)). This deduction only applies when **the** policy holder is a member of the eligible household. The costs of health and accident policies such as those payable in lump-sum settlements for death or dismemberment or income maintainence policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible:

(5)-(10) (No change.)

4. Dependent care deduction: Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job-search criteria (or an equivalent effort by those not subject to job-search), or to attend training or pursue education which is preparatory to employment, shall be deducted. The amount of this deduction shall be the actual cost of such care, not to exceed the amount in N.J.A.C. 10:87-12.1.

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after **all other** [the] deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1 [(Table I)] unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed[s] 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual

are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i. Allowable shelter costs: Only the following shall be considered in [the determination of] **determining** the shelter cost deduction:

(1)-(2) (No change.)

(3) Utilities: The costs of heating and cooking fuel; cooling and electricity; water and sew[er]age; garbage and trash collection fees; the basic service fee, **plus tax,** for one telephone (the uniform telephone rate is found in N.J.A.C. 10:87-12.1) and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

ii. Shelter costs of unoccupied home: Shelter costs for a home not occupied **temporarily** by the household because of employment or training away from home, illness, or abandonment [caused by] **because of** a natural disaster or casualty loss, shall be deductible[. (See] (**see** N.J.A.C. 10:87-2.21[(a)8](**1**) for verification requirement[.]). The following conditions must be met in order to qualify for this deduction:

(1) (No change.)

(2) Duplicate claim of shelter costs: Current occupants, if any, of the home must not be claiming the shelter costs **of that home** for food stamp purposes.

(3) (No change.)

iii. Charges for repair of a home: Charges for the repair of a home which was substantially damaged or destroyed due to a natural disaster, such as a fire or flood, **shall be deductible**. Shelter costs shall not include charges for **home** repairs [of a home] that [has] **have** been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

iv. Utility standard: Households which incur certain utility costs separate and apart from their rent or mortgage payments are entitled to claim the appropriate utility allowance (See N.J.A.C. 10:87-12.1[, Table I, Appendix A]) in accordance with the following provisions[.]:

(1) Households [which] **that** pay directly for their primary source of heat separate and apart from rent or mortgage **payments** may claim [a] **the** heating utility allowance (HUA) [as follows: households whose utility costs are paid in part by an energy assistance vendor payment are entitled only to the HUA/Vendor standard; households not receiving energy assistance vendor payments may claim the HUA/Non-Vendor standard]. The CWA shall verify that the household is responsible for primary heating costs.

(A) Households that are charged only for excess heating costs are not eligible for [an] **the** HUA.

(B) Households that are responsible only for secondary sources of heat are not eligible for [an] **the** HUA.

(C) Households that heat with wood must actually purchase the wood to be used as fuel to be eligible for [an] **the** HUA.

(D) Renters who are billed by their landlords for heating fuel costs according to actual usage as determined by individual metering may claim [an] **the** HUA.

(E) Households that receive a Home Energy Assistance payment are eligible for the HUA.

(2) Households [which] **that** do not incur heating costs separate and apart from rent or mortgage **payments** but [which] **do** incur a utility charge (other than telephone, water, sew[er]age, or garbage collection fees) are entitled to use [a] **the** standard utility allowance (SUA) [as follows: households whose utility costs are paid in part by an energy assistance vendor payment are entitled only to the SUA/Vendor standard; households not receiving energy assistance vendor payments may claim the SUA/Non-Vendor standard]. The CWA shall verify that the household incurs such utility charges.

(3) (No change.)

(4) Recipient of energy payments under the HEA program.

[(4)] (**A**) Once a household has made an election between [a] **the** utility allowance and actual utility expenses, [the household may not switch for a period of 12 months after initial selection and not more frequently than once every 12 months thereafter] **the CWA shall permit the household to switch between actual utility costs and the utility allowance at the time of recertification and one additional time during each 12 month period.**

[(A)](**B**) (No change in text.)

(5)-(6) (No change.)

(7) When a household shares a residence and the utility costs with other individuals, the [utility allowance] **SUA or HUA** shall be divided equally among the parties [which contribute to meeting] **who pay** the utility costs. In such cases, the household shall [only] be permitted to use **only** its share of the utility allowance, unless the household elects to use its actual costs.

10:87-5.11 Treatment of educational assistance

(a) Mandatory school fees, those charged to all students or those charged to all students within a certain curriculum shall be excluded in determining the amount of educational assistance. For example, uniforms, lab fees, or equipment charged to all students in order to enroll in a chemistry course are excluded.

(b) Any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in New Jersey. The institution must be legally authorized or recognized by the State to provide an educational program beyond secondary education or a training program to prepare students for gainful employment.

(c) For purposes of State or other non-Federal educational assistance administered by the school for which the financial aid office takes part in determining eligibility for and level of educational assistance, the financial aid office of the school is to be considered as acting in the capacity of "grantor" for the purpose of determining the educational expenses each student incurs, or is likely to incur, during the semester.

(d) Federal education assistance, funded in whole or part under Title IV of the Higher Education Act of 1986 (Public Law 99-498) or by the Bureau, of Indian Affairs (BIA) Higher Education Grant Program, which is used by the student for tuition, mandatory school fees or specified costs related to college expenses shall be excluded from both income and resources. Title IV programs include Pell, Supplemental Educational Opportunity Grants (SEOG), State Student Incentive (SSIG) Grants, the National Direct Student Loan (NDSL) and Perkins Loans (GSL), the PLUS program, the College Work Study Program, and the Byrd Honor Scholarships.

1. Specified costs of education that must be treated as income exclusions are tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials or supplies required of all students in the same course of study; an allowance for books, supplies, transportation and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

2. The institution or grantor shall indicate on budget sheets or other appropriate documentation that the assistance is meant to be used for allowable costs of attendance. The student is not required to verify how the assistance is actually used. However, assistance provided for room, board and dependent care shall not be excluded under this provision.

(e) State educational assistance such as Tuition Assistance Grants (TAG), Educational Opportunity Fund (EOF), Garden State Scholarships, and the PLUS program, shall be excluded from income to the extent that it is used for tuition, mandatory school fees and specified costs relating to education as designated by the "grantor" or the financial aid office of the school when that office takes part in determining eligibility for, and level of educational assistance.

(f) Non-Federal educational assistance (local and private) shall be excluded from income to the extent that it is used by the student for tuition, mandatory school fees and specified costs of education such as books, supplies, transportation, and other miscellaneous educational expenses. In order to be excluded, private educational assistance must be "earmarked" by the "grantor" for specific educational expenses.

(g) Verification of educational expenses for non-federal educational assistance.

1. In order to exclude State or other non-Federal educational assistance, administered by the school for which the financial aid office takes part in determining eligibility for and level of assistance, educational expenses must be identified by the financial aid office of the institution of post-secondary education.

2. An award letter by the post-secondary school administering the non-Federal educational assistance which distinctly identifies anticipated educational expenses separate and apart from normal living expenses shall be considered satisfactory verification for the purpose of determining countable student income.

3. For private educational assistance, an award letter or other document in which the "grantor" designates the funds for specific educational expenses shall be considered acceptable verification.

(h) The following shall not be considered as excludable reimbursements:

1. No portion of benefits provided under Title IV-A of the Social Security Act to the extent that such benefits are attributed to an adjustment for work-related or child care expenses.

2. No portion of any Federal educational grant, scholarship, fellowship, or veteran's educational benefit, to the extent that it provides income assistance beyond that used for tuition and mandatory fees as set forth in N.J.A.C. 10:87-5.9(a)7. This provision does not apply to assistance provided by programs funded under Title IV of the Higher Education Act, except as specified under N.J.A.C. 10:87-5.9(a)15xiv below.

3. No portion of any non-Federal (State, local or private) educational grant, scholarship, fellowship, or veteran's educational benefit that provides for living expenses such as food, rent, or clothing.

4. No portion of educational assistance, from sources other than Title IV, shall be excluded if such funds are not utilized for tuition, mandatory fees, origination fees, and insurance premiums for student loans or designated by the grantor or financial aid office for other specific educational expenses.

10:87-6.2 Month of application

(a) (No change.)

(b) Initial month defined: The term initial month means the first month [for which] **that** the household is certified for participation in the Food Stamp Program or, for ongoing cases, the first month [for which] **that** the household is certified for participation following any period of time during which the household was not certified for participation.

1. Recertifications shall be processed in accordance with N.J.A.C. 10:87-6.3.

[1.]**2.** (No change in text.)

[2.]**(c)** Determining benefit level for initial month: A household's benefit level for the initial month will be based on the day of the month it applies for benefits. Using a 30-day calendar month, households shall receive benefits prorated from the day of application to the end of the month. A household applying on the 31st of the month will be treated as though it applied on the 30th of the month. The $10.00 minimum benefit for one- [or] **and** two-person households shall be prorated. To determine the amount of the prorated allotment for the month of application the CWA shall use the Allotment Proration Table found in N.J.A.C. 10:87-12.5 [(Appendix A, Table V)]. If the allotment for the initial month is less than $10.00 the CWA shall not issue benefits to that household.

10:87-6.3 [Recertification]**Application for recertification**

[(a) Eligibility and the level of benefits for recertification shall be determined on circumstances anticipated for the certification period starting the month following the expiration of the current certification period.

(b) Untimely application for recertification: If an application for recertification is not received until after the current certification period has expired, unless good cause exists, the month of application shall be the month in which the application was filed, as for any initial application. The initial month's benefits shall be prorated as outlined in N.J.A.C. 10:87-6.2(b)2.

1. Good cause shall be determined on a case by case basis and shall include, but not be limited to, failure to receive a timely notice of expiration and personal illness.

2. If the application for recertification is received prior to the end of the certification period but an eligibility determination is not made until after the beginning of the next month, the benefits shall not be prorated.]

(a) Eligibility for recertification shall be determined by circumstances anticipated for the certification period beginning with the month following the expiration of the current certification period. The level of benefits for recertification shall be based on the same anticipated circumstances, except for retrospectively budgeted households which shall be recertified in accordance with N.J.A.C. 10:90-2.6.

(b) If an application for recertification is submitted after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with N.J.A.C. 10:87-6.2(c).

1. If the household submits an application for recertification before the end of its certification period but is found ineligible for the first month following the end of that period, then the first month of any subsequent participation shall be considered an initial month.

2. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month for that household.

(c) Any household that receives certification, as discussed in N.J.A.C. 10:87-9.1(a) et seq., shall not be subject to proration for the first month of its certification period if the deadline for filing for recertification falls after the end of its current certification period. However, households found ineligible for the first month following the end of their certification shall have the first month of any subsequent participation considered an initial month.

(d) For all households that the CWA elects the timeframe for providing missing verification, as outlined in N.J.A.C. 10:87-2.21 through 2.28, and the end of the timeframe falls after the end of that household's current certification period, the household shall not be subject to proration for the first month following the end of its current certification period, if it has provided the missing verification and is otherwise eligible.

10:87-6.5 Ineligibility for month of application

(a) A household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for both the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in N.J.A.C. 10:87-2.30 and 2.31.

[1.]**(b)** (No change in text.)

[2.]**(c)** Eligible for month of application but [entitled to no benefits] **disqualified on an ongoing basis**: A household's gross income could be low enough to make it eligible while its net income could be high enough to [entitle the household to no benefits] **disqualify it** on an ongoing basis. The CWA shall deny these households participation on the grounds that their net income exceeds the level below which benefits are issued.

10:87-6.6 Varying allotments

As a result of [anticipating] **anticipated** changes, the household's allotment for the [month of] application **month** may differ from its allotment in subsequent months. The CWA must establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary [month to month] **on a monthly basis** within the certification period, to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in N.J.A.C. 10:87-6.9[(a)5]**(f)**.

10:87-6.7 Determining resources and income

The procedures contained [within sections 8 and 9 of this subchapter] in **N.J.A.C. 10:87-6.8 and 6.9** shall be used to determine financial eligibility and benefit levels[. (See also subchapter 7 of this chapter] **(see also N.J.A.C. 10:87-7** for households with special income circumstances[.]).

10:87-6.8 Resources

The household's resources at the time the application is filed shall be used to determine whether or not they exceed the maximums [described in] **prescribed at** N.J.A.C. 10:87-4.13.

10:87-6.9 Income **determination**

(a) For the purposes of determining the household's eligibility and basis of issuance, the CWA shall consider the income already received by the household during the certification period and any anticipated income that the household and the CWA are reasonably certain will be received during the remainder of the certification period. Income from a new source anticipated after application shall not be counted if the household is destitute (see [section 16 of this subchapter] **N.J.A.C. 10:87-6.16 through 6.18**).

[1.](**b**) Uncertain income: If the amount of income which will be received, or when it will be received, is uncertain, that portion of the household's income which is uncertain shall not be counted by the CWA. For example, a household anticipating income from a new source, such as a new job or public assistance benefits recently applied for, may be uncertain as to the timing and amount of the initial payment. These [monies] **moneys** shall not be anticipated by the CWA unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. Households shall be advised to report all changes in gross monthly income in accordance with N.J.A.C. 10:87-9.[7(a)1]**5(b)**.

[i.]**1.** Exact amount unknown: If the exact amount of the income is not known, [that] **the** portion [of it which] **that** can be anticipated with reasonable certainty shall be considered income.

[ii.]**2.** Fluctuating income: In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to average income in accordance with [paragraph 5 of this subsection] (**f**) **below**.

[2.](**c**) Anticipated income: Income received during the [past] **most recent** thirty-day[s] **period** shall be used as an indicator of anticipated income. However, the CWA shall not use past income as an indicator of income anticipated for the certification if changes in income have occurred or can be anticipated.

Renumber i through iii as **1 through 3** (No change in text.)

[3.](**d**) Income only in month received: Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged in accordance with [paragraph 5 of this subsection] (**f**) **below**.

[i.]**1.** (No change in text.)

[ii.]**2.** Nonrecurring lump-sum payments: Non-recurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income[. (See)] (**see** N.J.A.C. 10:87-4.3[(a)1] and N.J.A.C. 10:87-5.9(a)10[.]).

[iii.]**3.** (No change in text.)

[iv.]**4.** (No change in text.)

[v.]**5.** Fluctuations caused by mailing cycles: Households receiving public assistance payments (e.g., AFDC, GA, or SSI) or Social Security benefits on a [recurring,] **regular** monthly basis shall not have their monthly income from these sources varied merely because mailing cycles may cause two payments to be received in one month and none in the next.

[4.](**e**) Averaging self-employment or contract income: Households which, by contract or self-employment, derive their annual income in a period of time shorter than one year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers or to destitute households. The procedures for averaging self-employed income are described in N.J.A.C. 10:87-7.2.

[5.](**f**) Averaging fluctuating income: Households, except destitute households, may elect to have income averaged. Income shall not be averaged for a destitute household since averaging would result in assigning to the month of application income from future periods [which] **that** is not available to the destitute household for its current food needs.

[i.]**1.** (No change in text.)

[6.](**g**) (No change in text.)

10:87-6.10 Determining deductions

Deductible expenses include only certain costs of dependent care, [and] shelter **and medical costs** as described in N.J.A.C. 10:87-5.10[(a)3 and 4].

10:87-6.11 Disallowed expenses

(a) The following shall not be included in the determination of deductions:

1. Expense covered by excluded income: An expense covered by an excluded reimbursement or vendor payment (see N.J.A.C. 10:87-[5.8]**5.9**) **except an energy assistance vendor payment made under the Low Income Home Energy Assistance Act (LIHEAA),** shall not be deductible. For example, that portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. Households entitled to the medical deduction shall have the nonreimbursable portion considered at the time the amount of reimbursement is received or can otherwise be verified.

[2. Services provided by household member: Expenses shall not be deductible if the service is provided by a household member. For example, a dependent care deduction shall not be allowed if another household member provides the care.

3. Compensation through in-kind benefit: Expenses shall not be deductible if the household provides compensation for the service through an in-kind benefit. For example, a dependent care deduction shall not be allowed if compensation for the care is provided in the form of an in-kind benefit such as food.]

2. Expenses shall not be deductible if the household provides compensation for the service through an in-kind benefit or if another household member provides the service. For example, a dependent care deduction shall not be allowed if compensation for the care is provided in the form of an in-kind benefit such as food. Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service.

10:87-6.12 Billed expenses

(a) Except as provided in [section 13 of this subchapter] **N.J.A.C. 10:87-6.13,** a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense.

(b) (No change.)

10:87-6.13 Averaging expenses

(a) (No change.)

(b) One-time only expenses: The household may elect to have a one-time only expense, such as **an** installation charge for utilities, averaged over the entire certification period in which it is billed. Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of their certification period. Averaging would begin **with** the month the change [would] becomes effective. The CWA worker shall explain to the household the advantages of averaging the expense or treating it as a one-time deduction.

10:87-6.14 Anticipating expenses

(a) (No change.)

(b) Updating utility bills: When the household is not claiming a utility allowance, the CWA may anticipate changes during the certification period based on last year's bills updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period[s] may be based on utility company estimates for the type of dwelling and utilities used by the household.

(c) Past expenses: The CWA shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs[,] for the certification period.

(d) Conversion of deductions: The income conversion procedures in N.J.A.C. 10:87-6.9[(a)3i](**d**)**1** shall also apply to expenses billed on a weekly or biweekly basis.

10:87-6.15 Calculating net and gross income and benefit levels

(a) The procedures below shall be used to calculate net and gross income and benefit levels.

[1.](**b**) Net and gross monthly income: To determine a household's net monthly income, the CWA shall follow steps [(a)1i]**1** through [viii]**8** below. To determine a household's total gross income, the CWA shall add [the gross monthly income earned by all household members and the total monthly unearned income of all household members], **after rounding (according to procedures at (c)1 below), each individual's monthly earned and unearned income(s). This total,** minus income exclusions (see N.J.A.C. 10:87-5.9) **provides the sum** [. The] total gross monthly income **figure which** shall be used to determine the household's eligibility in accordance with [(a)(3)ii](**d**)**1 or 2** below.

[i.]**1.** Step 1: Add the gross monthly income earned by all household members minus earned income exclusions (see N.J.A.C. 10:87-[5.8]**5.9**) to determine the household's total gross earned income. **Net losses from the self-employment income of a farmer shall be offset in accordance with N.J.A.C. 10:87-7.6.**

[ii.]**2.** Step 2: Multiply the total gross **monthly** earned income by [82]**80** percent to determine the net monthly earned income.

[iii.]**3.** Step 3: Add to net monthly earned income, the total monthly unearned income of all household members, minus income exclusions (see N.J.A.C. 10:87-[5.8]**5.9**).

[iv.]**4.** Step 4: Subtract the standard deduction (see [Appendix A, Table 1] **N.J.A.C. 10:87-12.1**.

[v.]**5.** Step 5: If the household is entitled to an excess medical deduction as provided in N.J.A.C. 10:87-5.10(a)3, determine if total medical expenses exceed $35.00. If so, subtract [that portion which] **the amount that** exceeds $35.00.

[vi.]**6.** Step 6: Subtract monthly dependent care expenses, if any, up to the maximum (see N.J.A.C. 10:87-12.1). [If dependent care costs equal or exceed the maximum, the household's net monthly income has been determined unless the household is entitled to the full amount of its excess shelter deduction (see N.J.A.C. 10:87-5.10(a)5). If the dependent care expenses are less than the maximum or i] If **the household is not entitled** to an excess **shelter deduction, the net monthly income has been determined. If** the household is entitled to [the full amount of its] **an** excess shelter **deduction** [expenses (that portion over 50 percent of its monthly net income pursuant to N.J.A.C. 10:87-5.10(a)5)] compute the household's excess shelter expenses in accordance with Step 7.

[vii.]**7.** Step 7: Total the allowable shelter expenses to determine shelter costs. Subtract 50 percent of the household's monthly **net** income (after all the above deductions have been subtracted) from the total shelter costs. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction in Step 8.

[viii.]**8.** Step 8: Subtract the excess shelter cost up to the maximum (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly **net** income after all other applicable deductions. The maximum amount allowed for shelter (for those households subject to a shelter maximum) is the maximum [used in Step 6 minus the amount of dependent care expenses, if any] **in N.J.A.C. 10:87-12.1**. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income **now** has been determined.

[2.](**c**) Rounding: The CWA shall, when calculating food stamp [net] **gross** income and benefit levels, round **down** those income and deduction amounts ending in $.01 through $.49 [down], and **round-up** those ending in $.50 through $.99 [up,] to the [next] **nearest** dollar. The CWA shall use the rounding procedure for **both** the work allowance and shelter cost deductions.

[i.]**1.** When to round: The CWA shall round the following, **up or down**:

[(1)]**i.** Self-employment income;

[(2)]**ii.** Earned income;

[(3)]**iii.** Public Assistance benefits;

[(4)]**iv.** Supplemental Security Income benefits;

[(5)]**v.** Retirement Survivors Disability Insurance benefits;

[(6)]**vi.** Unemployment/workers compensation;

[(7)]**vii.** General Assistance benefits;

[(8)]**viii.** Other unearned income;

[(9)]**ix.** Dependent care payments;

[(10)]**x.** Medical expenses; and

[(11)]**xi.** Total shelter costs.

[3.](**d**) Eligibility and benefits: Except for migrant, [and] seasonal farmworker, **and homeless** households considered destitute in N.J.A.C. 10:87-6.16, the following eligibility and benefit determinations shall apply:

[i.]**1.** Households having an elderly or disabled member: Households which contain an elderly or disabled member (as defined in N.J.A.C. 10:87-2.38) shall have the household's net income, as calculated in [N.J.A.C. 10:87-6.15(a)1i-vii] (**b**) **above,** compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.3 [(Appendix A, Table III)] to determine eligibility for the month.

[ii.]**2.** Households subject to gross and net monthly tests: Households [which] **that** do not contain an elderly or disabled member shall have their gross monthly income compared to the monthly income eligibility standards in N.J.A.C. 10:87-12.4 [(Appendix A, Table IV)] for the appropriate household size and shall have their net monthly income, as calculated in [(a)1i through viii] (**b**) above, compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.3 [(Appendix A, Table III)] to determine eligibility for the month.

[iii.]**3.** Benefits: After eligibility has been determined in accordance with [(a)3i or ii] (**d**)**1 or 2** above, the CWA shall use the household's net monthly food stamp income to determine the amount of the household's benefits in accordance with N.J.A.C. 10:87-12.6 [(Appendix A, Table VI)].

[(1)]**i.** If the allotment for an initial month is less than $10.00, or prorated to less than $10.00 in accordance with N.J.A.C. 10:87-6.2[(b)](**c**), no benefits shall be issued to the household for the initial month.

[(2)]**ii.** Except during an initial month, all eligible one- and two-person households shall receive a minimum monthly allotment of $10.00 and all eligible households with three or more members entitled to $1.00, $3.00 and $5.00 allotments shall have their allotments rounded to $2.00, $4.00 and $6.00, respectively.

10:87-6.18 Destitute households with income from a new source

(a) Migrant or seasonal farmworker households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service **only** if income of more than $25.**00** from [the] **a** new source will not be received by the 10th calendar day after the date of application.

(b) Income received monthly or more frequently: Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source **only** if [income of] more than $25.**00** has not been received from that new source within 30 days prior to the date the application was filed.

(c) Income received less often than monthly: If income is normally received less often than monthly, it shall be considered to be from a new source **only** if [income of] more than $25.**00** was not received within the last normal interval between payments.

1. Example: If a household applies in early January and is expecting to be paid every three months starting in late January, the income shall be considered to be from a new source **only** if no [income of] more than $25.**00** was received from the source during October or since that time.

(d) Income from both a terminated and a new source: Households may receive both income from a terminated source **prior to** and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and [income of] more than $25.**00** from the new source will not be received by the 10th day after the date of application.

(e) Consideration of income: Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income [which] **that** is received between the first of the month and the date of application. Any income from a new

source that is anticipated after the day of application shall be disregarded.

(f) Travel advances: Some employers provide travel advances to cover travel costs of new employees who must [journey] **travel** to the location of their new employment. To the extent that these payments are excluded as reimbursements (see N.J.A.C. 10:87-5.9(a)6[.]), receipt of travel advances will not affect the determination of when a household is destitute.

1. Advance on wages: If the travel advance is, by written contract, an advance on wages which will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. Nevertheless the receipt of a wage advance for [the] travel costs of a new employee shall [not] **neither** affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute.

i. Example: If a household [which] **that** applies on May 10, has received a $50.**00** advance for travel from its new employer on May 1 [which] **that,** by written contract, is an advance on wages, but will not start receiving any other wages from the employer until May 30, [the household] shall be considered destitute. The May 30 payment shall be disregarded, but the wage received prior to the date of application shall be counted as income.

(g) Source of income: A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, rather than the crew chief. A migrant who travels with the same crew chief but moves from one grower to another is considered to have moved from a terminated **income source** to a new source.

(h) When expedited procedures apply: The above procedures apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source is disregarded in the first month of the certification period if income of more than $25.**00** will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

10:87-6.19 Certification periods

(a) (No change.)

(b) Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility.

10:87-6.20 [No continuation] **(Reserved)**

[Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility.]

10:87-6.22 PA households

(a) PA households (see N.J.A.C. 10:87-2.12(a)1) shall have their food stamp recertifications, to the extent possible, completed at the same time they are redetermined for AFDC. The CWA shall assign such households definite certification periods [which] **that** will expire the month following the month **that** the household's AFDC redetermination is due, unless the circumstances of the household [members] would otherwise require a shorter certification period.

[1.]**(b)** For households which do have their food stamp recertification scheduled for the same time as their AFDC redetermination, the CWA shall ensure that the food stamp recertification is completed timely, regardless of whether or not the AFDC redetermination is completed timely **(see N.J.A.C. 10:87-2.36(d)).**

[i.]**1.** If the AFDC redetermination is not completed timely, the household shall be sent a Notice of Expiration and recertified in accordance with N.J.A.C. 10:87-[9.2]**9.1(b)**.

[ii.]**2.** (No change in text.)

[iii.]**3.** (No change in text.)

10:87-6.23 Other households

(a) Other households shall be assigned the longest certification periods possible based on the predictability of the household's circumstances. Households shall be certified for at least three months, except as follows:

1. Certification processed after the 15th of the month: Households eligible for a certification period of three months or less [shall,] at the time of certification, **shall** have their certification periods increased by one month if the certification process is completed after the 15th day of the month of application and the household's circumstances warrant [the longer certification period] **it**. For example, if a household [which is] eligible for a three-month certification period makes application in June and is not certified until late June or early July, the certification period would [include] **begin in** June **and go** through September.

2.-5. (No change.)

6. Self-employed: Households whose primary source of income is from self-employment (including self-employed farmers) or from regular farm employment with the same employer shall be certified for up to 12 months, provided income can be readily predicted and household circumstances are not likely to change. Annual certification periods may be assigned to farm workers who are provided their annual salaries on a scheduled monthly basis [which] **that** does not change as the amount of work changes.

7. Households required to submit monthly reports, in accordance with N.J.A.C. 10:87-9.5(a) shall be certified for not less than six months and not more than 12 months. The limit of 12 months and the six-month minimum for households subject to less frequent than monthly reporting may be waived if the CWA can demonstrate that such a waiver would result in improved administration of the program.

8. Households that are granted separate household status, in accordance with N.J.A.C. 10:87-2.2 because the household consists of an individual and that indivdual's minor child(ren) living with the individual's parent or sibling and purchasing and preparing meals separate from the parent/sibling, shall be assigned a certification period of not more than six months.

10:87-7.1 Applicability

The procedures in this subchapter are to be used in conjunction with the certification procedures in [subchapter 6] **N.J.A.C. 10:87-6** to determine eligibility and benefit levels for households with special income circumstances.

10:87-7.2 Self-employment income

The procedures below shall be used to determine income for all households receiving self-employment income, including those households which own and operate a commercial boarding house. (The procedures for handling income received from boarders by a household that does not own and operate a commercial boarding home are described in [section 10 of this subchapter] **N.J.A.C. 10:87-7.10.**)

10:87-7.3 Annualizing self-employment income

(a) (No change.)

(b) However, if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the CWA shall calculate the self-employment income on anticipated earnings. The CWA shall not calculate self-employment income on the basis of prior income (for example, income tax returns) when the household has experienced a substantial increase or decrease in business.

[(b)]**(c)** (No change in text.)

10:87-7.6 Determining monthly income from self-employment

(a) For the period of time over which self-employment income is determined, the CWA shall add all gross self-employment income (including capital gains as described in [section 7 of this subchapter] **N.J.A.C. 10:87-7.7**), exclude the cost of producing the self-employment income (see [section 8 of this subchapter] **N.J.A.C. 10:87-7.8**) and divide the self-employment income by the number of months over which the income will be averaged.

(b) Anticipated self-employment income: For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis (see N.J.A.C. 10:87-7.3[(b)]**(c)**, the CWA shall add any capital gain (see N.J.A.C. 10:87-[7.7]**7**) the household anticipates it will receive in the next 12 months (starting with the date the application is filed) and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall

be calculated over this 12-month period if the anticipated amount of capital gains changes. The CWA shall then add the anticipated capital gains to the anticipated monthly self-employment income and subtract the cost of producing the self-employment income. The cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income.

(c) Determination of adjusted net monthly income: The monthly net self-employment income shall be added to any other earned income received by the household. [The total monthly earned income less the 18 percent earned income deduction shall then be added to all other monthly income received by the household. The standard deduction, dependent care, and shelter costs shall be computed as for any other household and subtracted to determine the adjusted monthly net income of the household. (See N.J.A.C. 10:87-6.15.)]

1. The total monthly earned income, less a 20 percent earned income deduction shall then be added to all monthly unearned income received by the household.

2. If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. Losses from farm self-employment income shall be offset first against non-farm self-employment income and second offset against the total of earned and unearned income.

3. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000.00 or more from the farming enterprise.

4. The standard deduction, dependent care, and shelter costs shall be computed in accordance with N.J.A.C. 10:87-6.15 and subtracted (from the amount computed in (c)1 above), to determine the monthly net income of the household. Net losses from the self-employment income of a farmer shall be prorated over the year in accordance with N.J.A.C. 10:87-7.3.

10:87-7.9 Assigning certification periods

(a) Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months.

[1.](**b**) (No change in text.)

[2.](**c**) Annual income received in a short period of time: For those self-employed households that receive their annual income in a short period of time (see [section 3 of this subchapter] **N.J.A.C. 10:87-7.3**), the initial certification period shall be assigned to bring the household into the annual cycle. The annual cycle shall coincide with filing of the household's income tax.

10:87-7.10 Households with boarders

Persons paying a reasonable amount for room and board as specified in N.J.A.C. 10:87-2.3[(a)2](**b**) shall be excluded from the household when determining the household's eligibility and benefit level. The income of households owning and operating a commercial boarding home shall be handled as described in [section 2 of this subchapter] **N.J.A.C. 10:87-7.2**. (Commercial boarding home is defined in N.J.A.C. 10:87-2.5). For all other households, payments from the boarder(s) shall be treated as self-employment income and the household's eligibility determined in accordance with the procedures below.

10:87-7.13 Deductible expenses

(a) The net income from [boarders] **self-employment** shall be **added to** [included with] other earned income and the [18]**20** percent **earned** income deduction shall be applied to the total.

(b) Shelter expenses: Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, shall be computed to determine if the household will receive a shelter deduction (see N.J.A.C. 10:87-5.10[(a)5](**e**)). However, shelter costs shall not include any shelter expenses paid by the boarder to a third party, such as to the landlord or utility company.

10:87-7.14 Treatment of income and resources of [excluded household] **certain nonhousehold** members

[(a) Individual household members may be excluded for being ineligible aliens, having questionable citizenship status, because of disqualification for failure or refusal to obtain or provide a Social Security number, or for intentional program violation. During the period of time that such household members are ineligible, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in (b) or (c) below, as appropriate.]

(a) During the period of time that a household member cannot participate because he or she is an ineligible alien, disqualified due to intentional program violation; or failed/refused to obtain and provide a social security number, the eligibility and benefit level of the remaining household member(s) shall be determined in accordance with this section.

(b) Excluded for intentional program violation disqualification: The eligibility and benefit level of any remaining household members of a household containing individuals [excluded] **determined ineligible** because of disqualification for intentional program violation shall be determined as follows:

1. Resources: The resources of the [excluded] **ineligible** household member(s) shall continue to **be** counted in their entirety to the remaining household members.

2. Income and deductions: The income of the [excluded] **ineligible** household member(s) shall continue to be counted in its entirety and the entire household's allowable [18]**20** percent earned income, standards, medical, dependent care, and excess shelter deductions shall continue to apply to the remaining household members.

3. Eligibility and benefit level: The [excluded] **ineligible** member(s) shall not be included when determining the household's size for the purpose of:

i.-iii.(No change.)

(c) Excluded for other causes: The eligibility and benefit level of any remaining household members of a household containing individuals [excluded] **determined ineligible** for being an ineligible alien[, having questionable citizenship status,] or because of disqualification for refusal to obtain or provide a Social Security number shall be determined as follows:

1. Resources: The resources of such [excluded] **ineligible** member(s) shall continue to count in their entirety to the remaining household members.

2. Income: A pro rata share of the income of such [excluded] **ineligible** member(s) shall be counted as income to the remaining member(s). This pro rata share is calculated by first subtracting the allowable exclusions (see N.J.A.C. 10:87-5.9) from the [excluded] **ineligible** members' income and then dividing the income evenly among the household members, including the [excluded] **ineligible** member(s). All but the [excluded] **ineligible** members' share is counted as income to the remaining household members.

3. Deductible expenses: The [18] **20** percent earned income deduction shall only apply to that portion of the [excluded] **ineligible** members' earned income which is attributed to the household in N.J.A.C. 10:87-7.14(c)2. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the [excluded] **ineligible** member(s) shall be divided evenly among the household members, including the [excluded] **ineligible** member(s). All but the [excluded] **ineligible** members' share is counted as a deductible shelter expense for the remaining household members.

4. Eligibility and benefit level: The [excluded] **ineligible** member(s) shall not be included when determining the household's size for purposes of:

i.-iii. (No change.)

(d) Reduction or termination of benefits within certification period: Whenever an individual is [excluded] **ineligible** within the household's certification period, the CWA shall determine the eligibility or ineligibility of the remaining household members based, insofar as possible, on information in the case record and shall take the following action:

1. (No change.)

[2. Excluded for other causes: If a household's benefits are reduced or terminated within the certification period because one of its members is an ineligible alien, has questionable citizenship status, or was disqualified for refusal to obtain or provide a Social Security number, the CWA shall issue a notice of adverse action which informs the household of the exclusion, the reason for the exclusion, the eligibility

and benefit level of the remaining household members, and the action the household must take to end the exclusion.]

2. SSN disqualification, or ineligible alien noncompliance with employment and training. If a household's benefits are reduced or terminated within the certification period because one or more of its members is an ineligible alien or is ineligible because he or she was disqualified for refusal to obtain or provide an SSN, the CWA shall issue a notice of adverse action, informing the household of the ineligibility, the benefit level of remaining members and action required by the household to end the ineligibility.

10:87-7.15 Treatment of income and resources of other nonhousehold members

(a) For those nonhousehold members who are ineligible for reasons other than those set forth in N.J.A.C. 10:87-2.3(c), such as ineligible students (see N.J.A.C. 10:87-2.3(a)2), the income and resources of the nonhousehold members shall not be considered available to the household.

1.-4. (No change.)

(b) Nonhousehold members shall not be included when determining household size for the purpose of:

1. Assigning a benefit level;

2. Comparing the household's monthly income with the income eligibility standards; or

3. Comparing household resources with the eligibility limits.

10:87-7.16 Residents of drug/alcoholic treatment and rehabilitation programs and group living arrangements

(a) Narcotic addicts or alcoholics, who regularly participate in **publicly operated or private nonprofit** drug or alcoholic treatment and rehabilitation programs on a resident basis, and disabled or blind residents of **a** group living arrangement who receive benefits under Title II or Title XVI of the Social Security Act may [elect] **voluntarily** [to] apply for the Food Stamp Program.

1. Narcotic addicts or alcoholics: Resident addicts and alcoholics shall have their eligibility determined as a one-person household. The CWA shall certify residents of drug/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative[. (See](**see** also N.J.A.C. 10:87-2.7[(a)4.](**e**)).

2. Residents of group living arrangements: Residents of group living arrangements shall have their eligibility determined as one-person households when applying on their own behalf. The CWA shall certify residents of group living arrangements by using the same provisions that apply to all other applicant households except that certification may also be accomplished through an authorized representative of the group living arrangement or another representative chosen by the applicant[. (See](**see** also N.J.A.C. 10:87-2.7 [(a)5.](**f**)).

(b) (No change.)

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

(f) Fraud and misrepresentation: The organization, institution, treatment center or group living facility is responsible for any misrepresentation or [fraud] **IPV** which it knowingly commits in the certification of center or facility residents. As an authorized representative, the organization, institution, treatment center, or group living facility must be knowledgeable about the household's circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization, institution, treatment center or group living facility acting in the capacity of an authorized representative is strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center or group living facility. A resident or a group of residents of a facility who applied and were certified on their own behalf, are liable for any overissuance.

(g)-(i) (No change.)

10:87-7.17 Residents of shelters for battered women and their children

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

(d) Any shelter residents eligible for expedited service shall be handled in accordance with the provisions of N.J.A.C. 10:87-2.32-**2.35**.

(e) CWA responsibilities: The CWA shall take prompt action to ensure that the shelter resident's former household's eligibility or allotment reflects the change in the former household's composition. Such action shall include either shortening the certification period by issuing a notice of expiration to the shelter resident's former household or acting on the reported change by issuing a notice of adverse action. (See N.J.A.C. 10:87-9.[7]**5**.)

10:87-7.18 Deeming of income and resources of alien sponsors

(a) Portions of the gross income and resources of an alien's sponsor (and the sponsor's spouse if living together regardless of whether or not they were married at the time the affidavit of support was signed) shall be deemed available to the alien for a period of three years following the date established by the Immigration and Naturalization Service as the date the alien was admitted for permanent residence.

1. (No change.)

2. Deeming rules inapplicable: Deeming does not apply to the following aliens:

i. Any alien participating in the Food Stamp Program as a member of the sponsor's household **or whose sponsor is participating in the Food Stamp Program separate and apart from the alien**;

ii.-iii. (No change.)

(b) Deeming of income computation: To determine the amount of income deemed available to the alien:

1. Compute the total gross monthly earned income of the sponsor (and sponsor's spouse if applicable) at the time the household containing the sponsored alien applies or is recertifed for food stamp participation and multiply by [82]**80** percent.

2. (No change.)

3. Subtract the monthly gross income eligibility limit (N.J.A.C. 10:87-12.4 [Appendix A Table II]) for a household equal in size to the sponsor, the sponsor's spouse and any other person who is claimed or could be claimed by the sponsor or sponsor's spouse as a dependent for Federal income tax purposes.

4.-6. (No change.)

(c) Deeming of resources: To determine the amount of resources deemed available to the alien:

1. (No change.)

2. [If an alien who is eligible for AFDC has already reported information regarding his or her sponsor's resources for AFDC purposes, the amount attributed to the alien for AFDC purposes shall be used for Food Stamp purposes.] **The amount of income and resources deemed to the sponsored alien in accordance with N.J.A.C. 10:87-7.18(b) shall be considered in determining the eligibility and benefit level of the household in which the alien is a member.**

(d) (No change.)

(e) Change in sponsor: If the alien changes sponsors within a certification period, the deemed income and resources shall be recalculated based on information on the new sponsor as soon as possible. **In the event that an alien loses his or her sponsor during the three-year limit on the sponsored alien provisions and does not obtain another, the deemed income and resources of the previous sponsor shall continue to be attributed to the alien until such time as the alien obtains another sponsor or until the three-year period for applying the sponsored alien provisions expires. However, should the alien's sponsor become deceased, the deemed income and resources of the sponsor shall no longer be attributed to the alien.**

(f) Verification: The sponsored alien and his or her spouse are responsible for providing the CWA with any information necessary to determine the income and resources of the alien's sponsor and the sponsor's spouse. The alien and his or her spouse shall also be responsible for demonstrating to the CWA that the sponsor also sponsors other aliens, how many, and for obtaining any necessary cooperation from the sponsor.

1. The alien and his or her spouse shall be responsible for obtaining the cooperation of the sponsor for a period of three years from the alien's date of entry or admission as a lawful permanent resident and for providing information and/or required documentation necessary to

calculate deemed income and resources at the time of application or recertification for participation in the Food Stamp Program. Reporting changes in sponsor income, employment, and for providing the names or other identifying factors of other sponsored aliens by the sponsor or the sponsor becoming deceased shall be the responsibility of the sponsored alien and shall be handled in accordance with the timeliness standards of N.J.A.C. 10:87-9.1 through 9.5.

[1.]**2.** The CWA shall obtain from the alien or alien's spouse the following information:

i. (No change.)

ii. The **names and alien registration** number of other aliens for whom the sponsor has signed an affidavit of support or similar agreement;

iii.-v. (No change.)

vi. The number of dependents **who are claimed or could be claimed** for Federal income tax purposes of the sponsor and the sponsor's spouse;

vii. (No change.)

[2.]**3.** The CWA shall verify the information obtained pursuant to [(f)1i and ii](**f**) above. The CWA shall verify the information which the CWA determines is questionable and which affects household eligibility and benefit level in accordance with procedures established at N.J.A.C. 10:87-2.21[(a)8](**h**) for verifying questionable information.

[3.]**4.** If information necessary to carry out these deeming provisions is not received or verified on a timely basis, the sponsored alien and his or her spouse shall be ineligible until such time as all necessary facts are obtained. The eligibility of any remaining household members shall be determined.

i. The income and resources of the ineligible alien and his or her spouse (excluding the [attributed] **deemed** income and resources of the alien's sponsor and the sponsor's spouse) shall be [treated in the same manner as a disqualified member and] considered available in determining the eligibility and benefit level of remaining household members.

ii. If a sponsored alien refuses to cooperate in providing or verifying needed information, other adult members of the alien household shall be responsible for providing/verifying the required documentation. If the same sponsor is responsible for the entire alien household, they shall remain ineligible until such time that the needed sponsor information is provided and/or verified.

[ii.]**iii.** If information or verification is subsequently received, the CWA shall act on the information as a reported change in household membership in accordance with the timeliness standards in N.J.A.C. 10:87-[9.7(a)2ii]**9.5(b)2**.

(g) Claims for overissuance:

1.-2. (No change.)

3. Claims against sponsors: The CWA shall initiate collection against a sponsor by sending a written demand letter which informs the sponsor of the amount owed, the reason for the claim, how the claim may be repaid, and that the sponsor will not be held liable if he or she can demonstrate that he or she was not at fault or had good cause for providing incorrect information. The CWA shall follow the demand letter with a personal contact if possible. **The sponsor is entitled to a fair hearing, either to contest a determination that the sponsor was at fault where it was determined that incorrect information has been provided or as to contest the amount of the claim.**

i.-ii. (No change.)

iii. If the sponsor responds to the demand letter and is financially able to pay the claim at one time, the CWA shall collect a lump sum cash payment. If the sponsor is not financially able to repay the claim at one time, a repayment schedule may be negotiated as long as the payments are provided in regular installments. Funds collected shall be forwarded to DPW in accordance with N.J.A.C. 10:87-[11.28(a)4] **11.31(d)**.

4. Claims against alien households: Prior to initiating collection action against the household of a sponsored alien for repayment of an overissuance caused by incorrect information having been supplied concerning the alien's sponsor or sponsor's spouse, the CWA shall determine whether such incorrect information was supplied due to inadvertent **household** error, **or an act of** intentional **program violations** [misrepresentation or fraud] on the part of the alien. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

i. If sufficient documentary evidence exists to substantiate that the incorrect information concerning the alien's sponsor or sponsor's spouse was provided due to intentional **program violation** [misrepresentation or fraud] on the part of the alien, the [State agency] **CWA** shall pursue the case in accordance with the procedures specified in N.J.A.C. 10:87-11.2[6]**9** for [misrepresentation and fraud disqualifications] **intentional program violations**. The claim against the alien's household shall be handled as an inadvertent household error claim prior to the determination of intentional **program violation** [misrepresentation or fraud] by an administrative law judge or a court of appropriate jurisdiction.

ii. If the CWA determines that the incorrect information was supplied due to misunderstanding or unintended error on the part of the sponsored alien, the claim shall be handled as an inadvertent household error claim in accordance with the procedures specified in N.J.A.C. 10:87-11.2[3]**6**. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

10:87-7.19 Homeless Food Stamp households and homeless meal providers

(a) Homeless Food Stamp households shall be permitted to use their food stamp benefits to purchase prepared meals from approved homeless meal providers (see N.J.A.C. 10:87-2.7 and 2.10).

(b) Homeless meal providers are public or private nonprofit organizations as defined by the IRS, that apply for and qualify as retail food stores to accept food stamps from homeless food stamp recipients. The homeless meal provider shall be responsible for obtaining written approval from the New Jersey Division of Public Welfare, for submission to the Food and Nutrition Service (FNS) prior to obtaining final authorization to accept food stamps. Homeless meal providers serving meals which consist solely of donated foods shall not be eligible for food stamp coupon redemption authorization. The Food and Nutrition Service reserves the right to limit participation of homeless meal providers when evidence obtained indicates that participation of the provider indicates possible damage to the integrity of the Food Stamp Program.

10:87-8.1 General provisions

(a) The conduct of fair hearings shall be governed by the Uniform Administrative Procedure Rules contained in N.J.A.C. 1:1 and Public Welfare Hearings contained in N.J.A.C. 1:10. If any rule in this subchapter is inconsistent with those rules, N.J.A.C. 1:1 and 1:10 shall take precedence.

(b) Any household which is dissatisfied with any CWA action or inaction, affecting the household's participation in the Program shall be advised of its fair hearing rights and be given an opportunity to receive a fair hearing. The household shall also be advised of available legal services.

10:87-8.2A Fair hearing based on Federal changes

Fair hearings will be denied those households which are merely disputing the fact that a federally mandated reduction, suspension, or cancellation was ordered. If the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly or that regulations were misapplied or misinterpreted, the household shall be given an opportunity to receive a fair hearing (see N.J.A.C. 10:87-8.9(b)). **Since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. The household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the CWA was directed to reduce benefits.** CWAs will only refer those requests which qualify for a fair hearing to the Bureau of Administrative Review and Appeals (BARA).

10:87-8.4 Right to request a fair hearing

(a) The right to request a fair hearing shall not be limited or interfered with in any way.

1.-2. (No change.)

(b) CWAs shall conduct pre-hearing settlement conferences concerning Food Stamp Program appeals, except for IPV issues in accordance with the following procedures:

1. The CWA shall contact the appellant to schedule a Pre-Hearing Settlement Conference (PHSC) within five working days as soon as the CWA receives and forwards the fair hearing request to the Division of Public Welfare (DPW). If the Fair Hearing request is made directly to DPW, the CWA will initiate the procedure upon notification of the request by DPW but not later than one day from receipt of the request.

2. The CWA Fair Hearing Liaison shall preside over the pre-hearing settlement conference and act as a mediator between the appellant and other appropriate CWA staff.

3. The CWA shall report the disposition of each food stamp hearing request to the Division of Public Welfare, Bureau of Administrative Review and Appeals (BARA) with an information copy to the Office of Administrative Law. The report shall contain at a minimum, but not be limited to, the following information:

i. The contested issues;

ii. The scheduled time, date and location of a pre-hearing settlement conference;

iii. The verbal or written acceptance or declination by the appellant to attend a pre-hearing settlement conference;

iv. Whether or not a settlement was reached; and

v. Terms of the settlement or basis for the appellant's decision to withdraw. The report must be co-signed by the appellant and the mediator or other CWA official.

10:87-8.6 Processing fair hearing requests

(a) To assure orderly and expeditious processing of complaints and fair hearing requests, the CWA and Division of Public Welfare (DPW) shall proceed in the following manner:

1.-6. (No change.)

7. DPW responsibilities regarding the household: A request for a fair hearing shall not be denied or dismissed except under the following circumstances:

i. Untimely request: The request for a hearing is not received within the time interval specified in [section 5 of this subchapter] **N.J.A.C. 10:87-8.5**.

ii. (No change.)

iii. Abandonment: The household abandons its request for a fair hearing.

(1) Abandonment defined: A request for a hearing shall be considered abandoned if neither the household nor its representative appears at the time and place established for the hearing, unless the DPW or CWA received notice not later than the scheduled date of hearing that the household would be unable to attend for reasonable good cause; in such case, the hearing shall be adjourned and rescheduled. (Good cause is defined in N.J.A.C. 10:87-[3.20(d)] **10.23**.) No hearing shall be delayed for a period of more than 30 [working] **calendar** days under any circumstances except as provided in item (2) below.

(2) Notice of assumption of abandonment: If the household or its representative, fails to appear for a scheduled hearing without having given proper notice, a notice of assumption of abandonment shall be sent to the household. If there is no answer within 10 calendar days, the hearing shall be deemed abandoned. The household shall have the right to present in writing to the DPW directly or through the CWA, such facts or reasons for the failure to appear. The DPW may, determine whether or not the facts so presented by the household or its representative, constitute reasonable good cause, as defined in N.J.A.C. 10:87-[3.20(d)]**10.23** [of this Manual,] to warrant reinstatement of the hearing.

8. Expedited hearing process: Hearing requests from households, such as migrant farm workers, which plan to move from the county before the hearing decision would normally be reached shall be [expected] **expedited** thus enabling them to receive a decision before they leave the area.

10:87-8.13 General hearing procedures

(a) A fair hearing shall be conducted in the following manner:

1.-6. (No change.)

7. Household request for postponement: The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days.

i. Extension of limit on final action: The time limit on implementation of the hearing decision [(see section 18 of this subchapter)] shall be extended for as many days as the postponement **(see N.J.A.C. 10:87-8.25)**.

8. Adjournment of a hearing: At any time during the proceedings, the hearing official at [his/her] **his or her** discretion, may declare an adjournment at the request of the household or the CWA or on [his/her] **his or her** own initiative. The total of all such adjournments in one case shall in no event exceed 30 days.

i. Effect of adjournment on final action: Adjournments requested by the household will extend the time limit on final action as provided for in [paragraph 7 of this subsection] **(a)7 above**. Adjournments initiated by the CWA or the fair hearing officer shall not extend the time limit on final action.

10:87-8.26 CWA responsibilities; fair hearings

(a) Household improperly denied benefits: When the hearing decision is that a household has been improperly denied program benefits or has been issued a lesser allotment that was due, lost benefits shall be provided in accordance with N.J.A.C. 10:87-11.1[1]**3**.

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

SUBCHAPTER 9. [OTHER] CERTIFICATION RELATED PROCEDURES

10:87-9.1 Recertification

[The CWA shall complete the application process and approve or deny timely applications for recertification prior to the end of the household's current certification period. A federally mandated reduction, suspension, or cancellation of allotments in a given month shall have no effect on the recertification procedures. The CWA shall provide eligible households with an opportunity to participate by the household's normal issuance cycle in the month following receipt of a timely application. The CWA shall not continue benefits to households beyond the end of the certification period unless the household has been recertified. The joint processing requirements for PA cases apply to applications for recertification unless recertification does not coincide with redetermination (see N.J.A.C. 10:87-6.22).]

(a) Action on applications for recertification are as follows:

1. The CWA shall complete the application process, if the household meets all requirements, prior to the end of the certification period. Applications received timely shall be approved or denied prior to the end of the household's current certification period including those received during a federally mandated, reduction, suspension or cancellation allotment time frame.

2. An eligible household shall be provided the opportunity to participate by its normal issuance cycle in the month following the end of its current certification period. A household shall lose its right to uninterrupted benefits for failure to attend any interview scheduled on or after the deadline for timely filing of the application for recertification or for failure to submit all necessary verification within the timeframes established by the CWA as long as the timeframe elapse after the deadline for filing a timely application for recertification.

3. The CWA shall provide benefits within 30 days after the date an application is filed for households that lost the right to uninterrupted benefits due to refusal to cooperate or lapsed certification only after the household corrects such failures.

4. Denials including those for failing to complete the interview or provide missing verification timely shall be completed either by the end of the current certification period or within 30 days after the date the application was filed as long as the household has had adequate time for providing the missing verification. Program benefits to the household shall not continue beyond the end of the current certification period unless recertification has been completed or joint processing requirements of N.J.A.C. 10:87-2.36 or 2.37 apply.

(b) Procedures concerning the notice of expiration are as follows:

1. The CWA shall provide each household with a notice of expiration at the end of its certification prior to the start of the last month of the household's certification period. Households whose applications for food stamps and PA were jointly processed will not receive a notice

of expiration if the household is recertified for food stamps at the same time as their AFDC redeterminations.

2. A notice of expiration shall be sent to a household to arrive no earlier than one month prior to or later than one day before the household's last month of certification. Household's initially certified for one or two months shall be provided the notice of expiration at the time of certification.

3. Non-monthly reporting households provided a notice of expiration at the time of certification shall have 15 days from the date the notice is received to file a timely application for recertification. All other non-monthly reporting households that submit identifiable applications by the 15th day of the last month of certification shall be considered to have made a timely application for recertification.

4. The filing deadline for monthly reporting households shall be the normal date for filing a monthly report. SSI applicant/recipient households which apply for Food Stamp recertification at the SSA/DO shall be considered timely filed for normal processing when the SSA/DO receives the signed application.

5. The CWA shall use the postmark on the notice of expiration plus two days mailing time in determining if adequate time has been afforded the household for filing a timely application for recertification. Households disputing receipt of the notice of expiration may demonstrate that the notice was in fact, not received in a timely manner.

10:87-9.2 [Notice of expiration]**CWA Action on timely application for recertification**

[(a) The CWA shall provide each household with a Notice of Expiration (Form FSP-907A) at the start of the last month of the household's certification period with the exception of those PA households which were assigned certification periods which coincide with the redetermination of PA eligibility and the redetermination was completed timely. (See N.J.A.C. 10:87-6.19 et seq.)

(b) Receipt by household: Households that must receive a notice of expiration shall receive it not earlier than 15 days prior to, nor later than the first day of the household's last month of certification. If it is impossible for the CWA to provide the notice of expiration by the first day of the last month of the household's certification period because the household is certified for one month or because the household was initially certified for two months in the month following the month of application, the notice of expiration shall be provided at the time of certification.

(c) Timely application for recertification: Households provided a notice of expiration at the time of certification (see subsection (b) of this section) shall have 15 days from the date the notice is received to file a timely application for recertification. All other households which submit identifiable applications by the 15th day of the last month of the certification period shall be considered to have made timely application for recertification. To aid the CWA in determining if adequate time has been permitted, the CWA shall use the postmark on the notice of expiration, plus two days for mailing time. In cases of dispute, the household may demonstrate that the notice of expiration was not, in fact, received in a timely manner.

(d) CWA action on timely reapplication: The CWA shall act on timely reapplications to provide uninterrupted benefits to households determined eligible.]

[1.](**a**) Scheduling interviews: The CWA shall not require households receiving notices of expiration to appear for an interview before the last month of their current certification period. However, the CWA may schedule an interview prior to the last month of certification period or prior to the date the application is timely filed, provided the household is not denied for failing or refusing to appear for the interview.

[2.]**1.** (No change in text.)

[3.]**2.** (No change in text.)

[(e)](**b**) Timeliness standards: The CWA shall act on timely reapplications to provide uninterrupted benefits to households determined eligible. The CWA shall take action on timely reapplications within the following time standards even if the CWA must issue a manual ATP:

1.-3. (No change in text.)

[(f)](**c**) CWA failure to act: Failure by the CWA to provide eligible households which filed a timely application for recertification with an opportunity to participate in accordance with the above provisions shall be considered an administrative error. These households shall be entitled to restoration of lost benefits if, as a result of such error, the household was unable to participate for the month following the expiration of the certification period.

[(g) Household failure to submit a timely reapplication: A household which fails without good cause to submit a timely application for recertification, or to appear for an interview scheduled after the household timely filed its application for recertification, shall lose its right to uninterrupted benefits. Households which refuse to cooperate in providing information shall be denied. Any application not submitted in a timely manner shall be treated as an application for initial certification, except that for applications received within 30 days after the certification period expires, previously verified income or actual utility expenses need not be verified if the source has not changed and the amount has changed by $25 or less.

1. Good cause: If the CWA determines that the household's failure to make timely application, or to otherwise complete the certification process in a timely manner, was for good cause, the household shall be entitled to restoration of lost benefits, if as a result of its failure, the household was unable to participate in the month following the expiration of its certification period. The determination of good cause shall be made on a case-by-case basis, and shall include, but not be limited to, failure to receive timely notice of expiration or personal illness.]

(d) The following procedures apply when a household fails to act:

1. A household which submits a timely application for recertification and meets all other processing steps in a timely manner shall have the right to receive uninterrupted benefits. However, a household which fails to appear for an interview in accordance with the requirements in this section or to submit any missing verification within the CWA timeframes shall lose its right to uninterrupted benefits as long as such failures occur after the deadline for filing a timely application for recertification. Households which refuse to cooperate in providing required information shall be denied.

2. Any application not submitted in a timely manner shall be treated as an application for initial certification, except that for applications received within 30 days after the certification period expires, previously verified income or actual utility expenses of non-monthly reporting households need not be verified if the source has not changed and the amount has not changed by more than $25.00. The CWA shall ensure that any eligible household which did not submit a timely application for recertification is provided an opportunity to participate within 30 calendar days after the application is filed. If the household's application for recertification is received after the household's certification period has expired, the household's benefits shall be prorated in accordance with N.J.A.C. 10:87-6.3(c). However, households which receive a notice of expiration at the time of certification and which are otherwise eligible shall not have benefits for the first month of the new certification period prorated if they file their applications for recertification by the filing deadline in the notice of expiration.

3. A household which submits a timely application for recertification but is either interviewed and/or submits all verification in an untimely manner (but before the end of its current certification period) need not be provided uninterrupted benefits. For eligible households under these circumstances, the CWA shall, at a minimum, provide the household an opportunity to participate within 30 calendar days after the date the application was filed.

4. If the CWA is unable to provide an eligible household with an opportunity to participate within 30 calendar days after the date the application was filed due to the time period allowed for submitting any missing verification, the CWA shall provide the household an opportunity to participate within 5 working days after the date the household supplies the missing verification.

10:87-9.3 Notices of eligibility

(a) (No change.)

[1.](**b**) Expedited applications: In cases where a household's application is approved on an expedited basis without verification, as provided in N.J.A.C. 10:87-2.32 through 2.35, the notice shall explain that the household must provide the verification that was waived. The notice shall also explain the special conditions of the longer

certification period, as discussed in N.J.A.C. 10:87-[2.35(a)]**2.34(a)3** and the consequences of failure to provide the postponed verification.

[2.](c) PA households: For those PA households assigned definite certification periods in accordance with N.J.A.C. 10:87-6.22, the notice shall state that the certification will expire the month following the month the household's AFDC redetermination is due.

10:87-9.4 Recertification/**denial/pending**[;] notice

(a) The CWA shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period. The CWA shall provide households that have received a notice of expiration at the time of certification and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date the household had an opportunity to obtain its last allotment.

[10:87-9.5 Notice of denial]

(b) If an application is denied, the CWA shall provide the household with written notice explaining the basis for the denial. This requirement shall be accomplished by use of the "Adverse Action Notice". The notice shall be sent as soon as possible, but not later than 30 days following the date the application was filed.

[10:87-9.6 Notice of pending status]

(c) If the household's application is placed in pending status, the CWA shall send an "Adverse Action Notice" informing the household what action is necessary to complete the application process and that the application will be denied if the household fails to take the required action within 60 days of the date the application was filed.

10:87-9.[7]**5** Changes

(a) When changes occur within the certification period which affect a household's eligibility or coupon allotment, action must be taken to adjust the household's eligibility. [Household and CWA responsibilities are outlined below:]

[1.](b) Household responsibilities:

[i.]**1.** Changes to be reported: Certified households are required to report the following changes within 10 days of the date the change becomes known to the household:

[(1)]**i.** Income: Changes in **the** sources of income or in the amount of gross monthly income of more than $25.**00**, except changes in the AFDC grant: **NOTE: The Social Security Administration (SSA) does not provide the recipient of SSI with written notification as to whether the overpayment was due to unintentional or intentional causes. Also for most SSI overpayment recoveries, the nature of the recovery cannot be ascertained and would therefore not be available to the CWA. The CWA shall not count the amount of the SSI overpayment recovery in computing the Food Stamp benefit unless readily available reliable information verifies that an SSI overpayment recovery was due to recipient fraud or intentional failure to comply with program regulations.**

[(2)]**ii.** Household composition: All changes in household composition, such as the addition or loss of a household member **(see N.J.A.C. 10:87-2.2 and 2.3);**

[(3)]**iii.** (No change in text.)

[(4)]**iv.** (No change in text.)

[(5)]**v.** Liquid resources: When cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed a total of [$1,500] **$2,000, or $3,000 for households with members 60 years of age and older.**

[(6)]**vi.** (No change in text.)

[ii.]**2.** Method of reporting: The change may be reported in person, by telephone or by mail. The CWA shall document the date a change is reported, which shall be the date the CWA receives a report form or is advised of the change over the telephone or by a personal visit. PA households which report a change in circumstances shall be considered to have reported the change for food stamp purposes.

[iii.]**3.** Failure to report: If the CWA discovers that the household failed to report a change as required by [subparagraph i of this paragraph] **(b)1 above** and as a result, received benefits to which it was not entitled, the CWA shall file a claim against the household in accordance with N.J.A.C. 10:87-11.2[0]**3 et seq.** If the discovery is made within the certification period, the household is entitled to a notice of adverse action if the household's benefits are reduced. A household shall not be held liable for a claim because of a change in household which it is not required to report [in subparagraph i of this paragraph] **per (b) above.** Individuals shall not be terminated for failing to report a change, unless the individual is disqualified in accordance with the [fraud] **intentional program** disqualification procedure specified in N.J.A.C. 10:87-11.1 **and 2.**

[2.](c) CWA responsibilities: The CWA shall not impose any food stamp reporting requirement on a household except as noted above. Neither shall the CWA treat the submission of the report of change as a waiver of the household's right to a notice of an adverse action.

[i.]**1.** Change report form: A change report form **and FCAL Explanation Sheet FSP-933** shall be provided to newly certified households at the time of certification, at recertification if the household needs a new form; and a new form shall be sent to the household whenever a change report form is returned by the household. The CWA shall provide a stamped self-addressed envelope with the form. Although households should be encouraged to complete and return the change form when a change is being reported, changes reported over the telephone or in person by the household shall be acted on in the same manner as those reported on the change report form.

[ii.]**2.** Action on reported change: The CWA shall advise the household of its responsibilities to report changes within the required time period. The CWA is required to take prompt action on all changes reported by the household to determine if the change affects the household's eligibility or allotment. Even if there is no change in allotment, the CWA shall document the change in the case record, provide another change report form to the household, and notify the household of the receipt of the change report and effect of the change, if any, on its benefits. Restoration of lost benefits shall be provided to any household if the CWA fails to take action on a change which increases benefits within the time limits specified below.

[(1)]**i.** Changes which increase benefits: For changes which result in an increase in a household's benefits, other than changes described in [(2)] **ii** below, the CWA shall make the change effective not later than the first allotment following the 10th day after the date the change was reported to the CWA. For example, a $30.**00** decrease in income reported on the 15th day of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

[(2)]**ii.** Changes which increase benefits and require issuance of a supplementary ATP: For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50.00 or more in the household's gross monthly income, the CWA shall make the changes effective no[t] later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the CWA to adjust the following month's allotment, the CWA shall issue a supplementary ATP by the 10th day of the following month.

[(A)](**1**) (No change in text.)

[(B)](2) (No change in text.)

[(C)](**3**) Verification: Verification [which is] required by N.J.A.C. 10:87-2.2[0]**1 through 2.23,** must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original benefit level. In cases where the CWA has determined that a household has refused to cooperate, as defined in N.J.A.C. 10:87-2.14 **through 2.17**, the CWA shall terminate the household's eligibility.

[(3)]**iii.** Changes that reduce benefits: If the household's benefit level decreases or the household becomes ineligible as a result of the change, the CWA shall issue a notice of adverse action within 10 days of the date the change was reported**, unless one of the exemptions to the notice of adverse action in (g) and (h) below applies.** The decrease in the benefit level shall be made effective no[t] later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and con-

tinuation of benefits have not been requested. Verification [which is] required by N.J.A.C. 10:87-[2.14]**2.21 through 2.23,** must be obtained prior to recertification.

[iii.]**3.** Mass changes: Certain changes are intitiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include annual adjustments to the net income eligibility standards and the shelter/dependent care deduction; adjustments to the maximum coupon allotment and standard deduction; seasonal adjustments to the utility standard; periodic cost-of-living adjustments to [s]Social [s]Security, SSI and other Federal benefits; federally mandated reductions, suspensions, or cancellations of food stamp benefits; periodic adjustments to AFDC and other changes in the eligibility criteria based on legislative or regulatory actions.

[(1)]**(d)** Food stamp program changes: These include Federal adjustments to eligibility standards, allotments and deductions; federally mandated reductions, suspensions, or cancellations of food stamp benefits, and State adjustments to utility standards. These adjustments shall go into effect for all households at a specific point in time. Adjustments to the maximum coupon allotment, shelter/dependent care deduction and the standard deduction shall be effective for all issuances in [January] **October**. Annual adjustment to the income eligibility standards shall be effective for all [July] **October** issuances. Adverse [A]action [N]notices are not required for such changes. However, prior publicity of adjustments shall be made through news media, by placing posters in certification offices, issuance locations or sites frequented by certified households, or by issuing gneral notices mailed to households.

[(A)]**1.** (No change in text.)

[(2)](e) Mass changes in [AFDS]**AFDC**: When the State makes an overall adjustment to AFDC payments, corresponding adjustments in the household's food stamp benefits shall be handled as a mass change. When the CWA has at least 30 days advance knowledge of the amount of the AFDC adjustment, the CWA shall recompute food stamp benefits to be effective in the same month as the AFDC change. If the CWA does not have sufficient notice, the food stamp change shall be effective not later than the month following the month in which [he]**the** AFDC change was made.

[(A)]**1.** Notice not required: A notice of adverse action is not required when a household's food stamp benefits are reduced or terminated as a result of a mass change in the PA grant. However, th CWA shall send individual notices to households to inform them of the change. If a household requests a fair hearing, benefits shall be continued at the former level only if the issue being appealed is that food stamp eligibility or benefits were improperly computed.

(f) DPW shall establish procedures for making mass changes to reflect COLAs in benefits and any other mass changes under RSDI, SSI, and other programs where COLA information is readily available and applicable to a majority of those program's beneficiaries. Households on retrospective budgeting but not monthly reporting shall have the change reflected in accordance with current procedures. MR households shall report the change only on the appropriate monthly report. Non-MR households are not responsible for reporting these changes. The CWA shall be responsible for automatically adjusting the household's benefit level and the change shall be reflected no later than the second allotment issued after the month in which the change becomes effective for non-MR reporting households.

(g) Households shall be notified whenever their benefits are altered as a result of changes in the AFDC benefits or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. The household's certification period shall not end any earlier than the month following the month in which the CWA determines that the certification period should be shortened, allowing adequate time to send a notice of expiration and for the household to timely reapply. If the AFDC benefits are terminated but the houehold is still eligible for food stamp benefits, members of the household shall be advised of food stamp work registration requirements, if applicable, as their work requirement under Title IV of the Social Security Act exemption no longer applies.

(h) Whenever a change results in the reduction or termination of a household's AFDC benefits within its food stamp certification period, and the CWA has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the CWA shall:

1. Issue a single notice of adverse action for both the AFDC and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the hearing shall be conducted according to AFDC procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change shall be made effective in accordance with the procedures specified in (c) above.

2. If the household's food stamp benefits will be increased as a result of the reduction or termination of AFDC benefits, the CWA shall issue the PA notice of adverse action, but shall not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the adverse action. If the household decides to appeal and its AFDC benefits are continued, the household's food stamp benefits shall continue on the previous basis. If the household does not appeal, the CWA shall make the change effective in accordance with the procedures specified in (c) above, except that the time limits for the CWA to act on changes which increase a household's benefits shall be calculated from the date the PA notice of adverse action period expires.

(i) Whenever a change results in the termination of a household's AFDC benefits within its food stamp certification period, and the CWA does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for public assistance, and the CWA does not have any information on the income of the new household member), the CWA shall not terminate the household's food stamp benefits but take the following action:

1. Where a PA notice of adverse action has been sent, the CWA shall wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its AFDC benefits are continued pending the appeal, the household's food stamp benefits shall be continued on the same basis.

2. If a PA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its AFDC benefits, the CWA shall send the household a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration shall also explain to the household that its certification period is expiring because of changes in its circumstances which may affect its food stamp eligibility and benefit level.

[(b)]**(j)** Notice of adverse action: Prior to any action to reduce or terminate a household's benefits within the certification period, the CWA shall, [except as provided in subsection c of this section] provide the household timely and adequate advance notice before the adverse action is taken. (see N.J.A.C. 10:87-9.5(j))

1. Timing of the notice: The notice of adverse action will be considered timely provided it is mailed at least 10 days prior to the date upon which the action becomes effective.

[(c)]**k** Changes not requiring advance notice: Individual notices of adverse action are not required when:

1. Mass change: The [CWA] **State** initiates a mass change as described in [(a)2iii]**(f), (g) and (h) above.**

2.-9. (No change.)

10. Converting household from cash and/or food stamp coupon repayment to benefit reduction: The household's food stamp allotment is reduced to repay a claim as a result of failure to make agreed upon installment payments in cash and/or food stamp coupons (see N.J.A.C. 10:87-[11.29(a)2iii]**11.31(c)3**).

11. [The household is a migrant worker household entitled to expedited processing for which verification was postponed and verification, when received, results in a change in eligibility or benefit level.] **The household voluntarily requests in writing, or in the presence of a caseworker that its participation in the Food Stamp program be terminated. The CWA shall respond to all non-written requests by**

sending the household a letter confirming the voluntary withdrawal. Households provided written confirmation of voluntary withdrawal from the Food Stamp program may request a fair hearing.

12. The CWA determines, based on reliable information that the household is departing from the county of current residence prior to the next issuance and therefore will not be able to obtain and negotiate its next allotment. While the CWA may inform the household before its next issuance date, they shall not delay terminating the household's participation in order to provide advance notice.

[10:87-9.8 Reporting of illegal aliens

Whenever it is determined that any applicant/recipient is ineligible for program participation because he or she is present in the United States in violation of the Immigration and Nationality Act, that individual shall be reported to the local INS office.]

[10:87-9.9 (Reserved)]

[10:87-9.10 (Reserved)]

10:87-9.[15]**6** Identification (ID) cards

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

(f) All program coupon issuers in CWAs having more than 100,000 persons participating are required to record the I.D. card serial number on the back of the ATP card at the time the ATP is negotiated. If the issuer fails to do so and an excessive issuance results, the issuer will be held liable for the amount issued. An excessive issuance may occur either due to a CWA error or when an original and replacement ATP are both cashed during the same transaction month. The liability for excessive issuances is determined as follows:

1. If none of the ATP cards issued to a household reflects the household's correct I.D. card number, (that is, if they are blank or have an incorrect number recorded on the back), the issuer will be liable to the CWA for all of the ATP cards transacted for that household.

2. If one of the transacted ATP cards reflects the household's correct I.D. card number, and the others are either blank or have an incorrect number recorded on the back, the issuer will be liable to the CWA for those ATP cards which are either blank or have an incorrect number.

10:87-9.[16]**7** Replacement of lost, stolen, nondelivered or destroyed ATPs or food stamp coupons

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

(c) Food coupons mutilated after receipt: The CWA shall replace coupons which are mutilated after receipt, i.e., shredded by a pet, gone through the laundry, etc. The amount of coupons to be replaced shall be equal to the value of the mutilated coupons and shall be replaced in accordance with N.J.A.C. 10:87-[10.6] **Appendix A Section A(3).**

1.-2. (No change.)

(d) (No change.)

(e) ATPs stolen or destroyed after receipt: The CWA shall issue a replacement of ATPs stolen or destroyed in a household disaster such as fire or flood.

1. To qualify for such a replacement, the household must report the theft or destruction to the food stamp office within 10 days of the incident or within the ATP's period of intended use, whichever is earlier. The household shall sign a statement [(]which may be mailed to the CWA [for the reasons stated in (d)1 above] and [must] be retained in the case record[)];

i.-iii. (No change in text.)

2. [Additionally ,t] The CWA shall also adhere to the following procedures:

i.-vii. (No change.)

(f) Replacement of replacement ATPs: Replacement of replacement ATPs shall be treated as replacement of normal issuances and thus subject to the same limitations in accordance with the provisions of [(e) above] this section.

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

(i) Replacement of an ATP lost or stolen in the mail prior to receipt:

1.-2. (No change.)

3. When a household reports the nondelivery of an ATP the CWA shall:

i.-iv. (No change.)

v. Deny or delay replacement of the ATP in cases which documentation indicates that the request for replacement is fraudulent. The household shall be informed of its right to a fair hearing to contest the delay or denial of the ATP issuance. The denial or delay of the replacement ATP shall remain in effect pending a hearing decision. The CWA must have valid documentation indicating the likelihood of fraud to deny or delay a replacement ATP. Unless the household reports that its identification card (ID) was stolen, the signature match on the original and replacement transacted ATPs or, notation by the issuing agent of the recipient's correct food stamp ID number, will be considered sufficient evidence for delaying or denying further ATP issuance.

vi. The CWA shall report all ATPs reported as stolen or lost in the mail to the appropriate office of the Postal Inspection Service on at least a monthly basis. The CWA shall assist the Postal Service during subsequent investigation and shall, upon request provide the Postal Service with facsimiles of the original ATP, if transacted, replacement ATP, and a copy of the nonreceipt statement.

[v.]**vii.** Comply with existing [regulations] **procedures** found in N.J.A.C. 10:87-[10.5(a)1] **Appendix A** including the reporting of all lost or stolen ATPs to the appropriate office of the Postal Inspection Service. [Copies of the original and replacement ATPs are to be sent to the local Postal Inspection Service only in those cases where the signature on the original ATP and the replacement ATP do not appear to match.] In cases where the signatures do appear to match, referral to the Fraud Investigation Unit is to be made for referral to the county prosecutor or for administrative fraud hearing, as appropriate;

[vi.]**viii.** (No change in text.)

[vii.]**ix.** (No change in text.)

[viii.]**x.** (No change in text.)

[ix.]**xi.** In cases where an indication of fraud exists, the procedure in [(e)2vii] **(i)vii** above shall be followed.

(j) Coupons lost in the mail prior to receipt (direct mail issuance only):

1. (No change in text.)

2. Review the mail issuance log for return of undelivered coupons. **Record the date of the reported nondelivery of mailed coupons in the issuance log.**

[3. Record the date of the reported nondelivery of mailed coupons in the issuance log.]

[4.]**3.** (No change in text.)

[5.]**4.** (No change in text.)

[6.]**5.** When a household reports the nondelivery of coupons, the CWA shall follow the procedures for ATPs lost or stolen prior to receipt, in accordance with [(i)3iii through ix] **(i)** above.

[7]**6.** (No change in text.)

[8.]**7.** (No change in text.)

(k) Improperly manufactured coupons: The CWA shall provide a replacement for coupons that were received by a household but were subsequently found to be improperly manufactured. The amount to be replaced shall be equal to the value of improperly manufactured coupons and shall be replaced in accordance with [N.J.A.C. 10:87-10.6] **Appendix A Section A.**

10:87-9.[17]**8** Miscellaneous administrative procedures

(a) Personnel [requirements] **staffing**: The CWA shall provide qualified employees as necessary to insure prompt and correct action on all applications. If necessary, bilingual staff shall be employed as required by DPW pursuant to FNS bilingual staffing requirements. Only such qualified employees shall interview applicants and determine the household's eligibility or ineligibility and basis of issuance. Additionally, unless prior approval is obtained from [DPN] **DPW**, certification offices with more than two eligibility workers shall schedule food stamp certification services so that there is no break in service during the lunch period. Furthermore, only authorized employees of the CWA shall have access to food coupons, ATPs, or other issuance documents.

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

[(d) Certification and issuance sites:

1. CWAs must maintain certification and issuance sites so that no participant or applicant is required to travel more than 30 miles one way to receive certification or issuance services. Without prior ap-

proval from FNS through DPW, CWAs are not to reduce the number of hours of operation of certification and issuance sites or the number of certification sites below the number in operation as of January 1980.

i. Service Plans: The requirements cited above are only the minimum standards set forth in Federal regulations. Since there may be situations in which a CWA is in compliance with these regulations, but is not providing an adequate level of service to meet the needs of potentially eligible and current food stamp recipients, FNS requires that each CWA conduct a needs assessment and prepare a service plan to ensure that the particular needs of the county are being met. Therefore, all CWAs must conduct needs assessments and prepare a service plan which at a minimum shall include the following:

(1) The CWA must undertake an examination of factors such as size and geographic location of potentially eligible and current participant populations, transportation costs incurred in traveling to and from certification and issuance sites, the availability of public transportation, and cyclical changes in participation due to the existence of seasonal employment in the county. In counties which experience periodic influxes of migrant farm workers, special assessment efforts must be undertaken such as an examination of any available migrant labor studies and contacts with groups dealing with migrants.

(2) The CWA must solicit public comment about the adequacy of certification and issuance services and publicly announce that comments will be accepted and considered. A minimum of 30 days for the submission or collection of comments must be allowed. Counties shall solicit comments through public meetings; written comments; consultation with professional, client, and advocacy groups; consultation with groups participating in the county's Outreach effort; or through other means that would afford the public ample opportunity to comment before service plans are finalized. The county's needs assessment/service plan must also provide a summary of the comments received.

(3) If, as a result of the needs assessment and solicitation of public comment, it is determined that the level of certification and/or issuance service must be expanded or improved upon, the CWA must include in the service plan not only the findings of the needs assessment, but also the planned corrective action.

(4) Service plans shall be submitted to DPW on July 1, 1984 and on July 1 of every fourth year thereafter.

2. During a period of federally mandated suspension or cancellation: The requirements in (d) of this section shall not be applicable in months in which the issuance of benefits have been suspended or cancelled. In such months, CWAs shall determine what type of issuance services to make available, where they should be located and when they should be available. CWAs must have issuance services available to serve households receiving restored or retroactive benefits for a prior month.]

(d) Each CWA is responsible for the timely and accurate issuance of benefits to certified households. Households comprised of elderly or disabled members who have difficulty reaching an issuance office to obtain their coupon allotments, and households which do not reside in a permanent dwelling or at a fixed mailing address, shall be given assistance in obtaining their coupons. The CWA shall assist these households by arranging for mail issuance or direct delivery of coupons, by assisting the household in finding authorized representatives who can act on their behalf or by using other appropriate means to assure delivery of benefits. The Division of Public Welfare shall establish a standardized issuance and accountability system applicable to all counties which will ensure compliance with Food Stamp Program procedures as follows:

1. That only certified households receive benefits;

2. All certified households have access to their benefits;

3. The benefits are timely distributed in correct amounts;

4. Coupons are accepted and stored with adequate security after delivery to receiving points within the county; and

5. Coupon issuance and reconciliations activities are conducted timely and accurately.

10:87-9.[18]**9 Case** [R]records

(a) The CWA shall keep such records and other information as may be required by FNS and the DPW.

(b) Retention of case records: Case records shall be available for review or audit by FNS and the Division of Public Welfare for a period of three years from the month of origin of each record.

(c) Content of case records: The case record shall include applications for certification or recertification; worksheets used in the computation of income for eligibility and basis of issuance; documentation, including verification techniques employed by the certification worker; copies of forms sent to data processing authorizing or changing participation or basis of issuance; copies of notices of adverse action and other notices sent to the household and replies thereto; actions related to the fair hearing process; fiscal adjustments including claims, refunds, and credits for lost benefits; and any other data which affects a household's eligibility or basis of issuance, including Form FNS-286.

[10:87-9.19 Quality Control (QC)

(a) In compliance with Federal regulations, the State office shall maintain an administrative system for measuring the extent, and cause, of eligibility and basis of issuance errors in the Food Stamp Program.

(b) Responsibility of county welfare agency: The CWA shall be responsible for the initiation and implementation of action designed to bring the incidence of error, as established by QC findings, within certain pre-established tolerance limits.]

10:87-9.[20]**10** (No change in text.)

10:87-[3.13]**10.1** State Plan for Food Stamp Employment and Training Programs

(a) The Department of Human Services, Division of Public Welfare is responsible for designing and operating food stamp employment and training (E&T) programs effective April 1, 1987, which may consist of one or more of a combination of employment, training, education, and/or job search components. **For purposes of retaining eligibility for the Food Stamp Program, a work registrant shall be required to comply with the provisions of this subchapter and the requirements of the State Plan for Food Stamp Employment and Training Programs.**

[1.]**(b)** Employment and training component defined: Employment and training component is defined as a work experience, work training or job search program designed to help food stamp recipients move promptly into unsubsidized employment.

[2.]**(c)** The State shall receive an employment and training program grant for each fiscal year [or portion of the fiscal year] in which the State operates an approved employment and training program. The grant is 100 percent federally funded. The E&T grant shall require no State or county matching.

[i.]**1.** E&T program grants shall be used to fund the administrative costs of planning, implementing and operating employment and training programs in accordance with the approved State Plan. E&T grants shall not be used for the process of determining whether or not a participant shall be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity which takes place after the operator of an E&T component has reported noncompliance without good cause. For purposes of this paragraph, the certification process shall be considered to have ended when an individual is referred to an E&T component for assessment or participation.

[ii.]**2.** E&T grants shall not be used to subsidize the wages of participants, or to reimburse participants under the provisions of N.J.A.C. 10:87-[3.19(c)6]**10.9(c)5**.

[iii.]**3.** E&T funds shall not supplant State or local funds devoted to basic education programs. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an employment and training program.

[3.]**(d)** If the State fails, without good cause, to comply with Federal work requirements, including an approved State [p]Plan and specific performance standards established for the State by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), USDA/FNS may withhold funding for the employment and training programs. Non-receipt of an E&T grant does not release the State from performance requirements or sanctions for insufficient performance.

10:87-10.2 State Plan general requirements

[(b)](a) The State Plan for Food Stamp Employment and Training Programs must be approved by USDA/FNS. The State Plan shall detail the following:

1. The nature of the employment and training components the State plans to offer and reasons for such components, including cost information and an estimated operating budget;

2. The categories and types of mandatory work registrants exempted from E&T participation;

3. The characteristics of the work registrant population that the State intends to place;

4. The geographic areas covered **and not covered** by the plan and why, and the type and location of services to be offered;

5. The method the State will use to count all work registrants the first month of each Federal fiscal year;

6. The organizational relationship between the units responsible for certification and the units operating E&T components and between the State agency and other agencies it plans to coordinate with for the provision of services.

[(c)](b) The **current** State Plan for Food Stamp Employment and Training Programs [shall be] **is** available for public inspection [after April 1, 1987,] at the Division of Public Welfare, 6 Quakerbridge Plaza, Trenton, New Jersey.

[(d)](c) Quarterly reporting requirements: The Division of Public Welfare shall submit **a** quarterly report [s to FNS] (**FNS-583**) no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

1. Participants newly work registered;

2. Work registrants exempted by the State Plan from participation in an E&T program, separated by the reason for exemption;

3. Participants who volunteer for and commence participation in an approved E&T component;

4. E&T mandatory participants, including Food Stamp Program applicants, who commence an approved E&T component;

5. Work registrants sent a notice of adverse action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component;

6. The number of persons disqualified from the Food Stamp Program for failure to comply with an E&T requirement; and

7. The number of E&T participants who became employed.

[(e)](d) Annual reporting requirements: The Division of Public Welfare (DPW) shall submit annually, on their first quarterly report, the number of work registered persons in the State as [in] **of** October [of] **in** the new Federal fiscal year. DPW shall submit annually, on their final quarterly report the following information:

1. The number of Food Stamp Program work registrants who were exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

2. The number of food stamp participants (E&T mandatory and volunteers) placed in each E&T component offered by the State Plan.

10:87-[3.14]**10.3** Employment and training program performance standards

(a) Performance standards: USDA/FNS establishes annual performance standards for the minimum number of eligible persons that must be placed in E&T programs. Mandatory performance standards will begin with Federal fiscal year 1989.

[1.](b) Definition of placed: A person may be considered placed in an E&T program, for purposes of performance standards, if the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a notice of adverse action for the noncompliance. Notices of adverse actions sent for noncompliance with work registration or voluntary quit provisions shall not count as placements. Persons assigned to a component who have good cause for noncompliance shall not be counted as placed.

[2.](c) Performance formula: To determine the level of performance at the end of each fiscal year, FNS will divide the number of E&T mandatory participants plus volunteers the State has "placed" in [an] **its** E&T [component] **program** over the course of the year (the numerator) by the number of E&T mandatory participants who were eligible to have been placed in the program over the course of the year plus volunteers (the denominator). The denominator is herein referred to as the "base of eligibles".

[3.](d) Counting placements in an E&T program: DPW shall count a person as placed in an E&T program, for purposes of performance standards, in accordance with the following:

[i.]**1.** If the person commences an employment and training component, or fails to comply with [an] E&T requirements and is denied certification or is sent a notice of adverse action for the noncompliance, that person may be counted as placed.

[(1)]**i.** If an E&T mandatory participant does not comply with E&T requirements, and a notice of adverse action is sent, the person is counted as placed in the month the notice of adverse action is mailed.

[(2)]**ii.** Notices of adverse action sent for noncompliance with work registration or voluntary quit shall not count as placements.

[(3)]**iii.** Persons assigned to a component who have good cause for noncompliance shall not be counted as placed. If good cause for noncompliance is temporary (less than 60 days) the person shall be referred again to a component as soon as practicable. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt.

[ii.]**2.** If a participant reports to a component which involves several months, that individual would be counted as placed in the initial month only.

[iii.]**3.** Each time a participant is placed in a different component after having completed a prior component, that individual may be counted as placed.

[iv.]**4.** If participation in one type of E&T component is not continuous, the participant may be counted as having been placed [more than once in the same component] **only at the time of his or her initial commencement of the component.**

[4.](e) Counting the "base of eligibles": The base of persons eligible to participate in an E&T program (the denominator) consists of all work registrants in the month of October plus newly work-registered food stamp recipients who have not been exempted by the State Plan from participation in an E&T program. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. The State (DPW) need not count any individual in the base of eligibles (mandatory work registrants and volunteers) more than once in a fiscal year.

[5.](f) Accounting for short-term participants: **There are a** [A] number of work registrants considered E&T mandatory participants who are counted in the base of eligibles (denominator) but who remain on the Food Stamp Program for such a short period of time that it is not possible to place them in an E&T component. These short term recipients inflate the base of eligibles. To counteract the effects of short-term participants, DPW shall decrease the base of eligibles in accordance with the approved State Plan procedures.

[6.](g) Performance data collection: To determine the annual total in the base of eligible (denominator) DPW shall count the actual number of work registered individuals in the first month of the Federal fiscal year. Each subsequent month the DPW shall add to that figure the number of E&T mandatory participants, and volunteers who were placed in an E&T component that month. The method of measuring the number of persons "placed" (the numerator) shall be the same.

[i.]**1.** Separate counts shall be maintained for the mandatory participants, including applicants, and volunteers.

[ii.]**2.** A count of persons placed each month of the fiscal year shall be added cumulatively.

[iii.]**3.** A cumulative total shall be kept monthly for the base of eligibles and the number of persons placed, and the monthly totals shall be reported to FNS no later than 45 days after the end of each quarter.

[7.](h) Percentage of persons to be placed: USDA/FNS shall establish an annual performance standard for the minimum number of eligible persons that must be placed in E&T programs.

[8.](i) Variations in performance standards: USDA/FNS may adjust the performance standard for an individual state, if the state can show prospectively that the components it plans to offer, or the type

of participant it plans to serve, will require a significantly higher level of effort.

[i.]**1.** In determining whether an adjustment of the performance standard is warranted, and the level of the adjustment, FNS will consider the number of persons who will be placed, the intensity and effectiveness of the components and the cost.

[ii.]**2.** Only in extraordinary circumstances will USDA/FNS approve a performance standard which is lower than 40 percent of the nationwide standard.

10:87-[3.15]**10.4** Work registration

(a) Each household member who is not exempt in accordance with the provisions of N.J.A.C. 10:87-[3.18]**10.7** shall be registered for employment by the CWA at time of application, and at least once every 12 months after initial registration, as a condition of eligibility for participation in the Food Stamp Program.

(b) Registrants who move out of the area shall reregister at their new location.

(c) The registration form need not be completed by the member required to register.

(d) The CWA shall provide work registration forms to the applicant or the household's authorized representative for each household member required to register for employment and permit the applicant or authorized representative to complete the form. Household members are considered to have registered when a completed work registration form is submitted to the CWA.

(e) The employment and training components to which participants will be referred may be limited by the availability of administrative funds provided by USDA.

10:87-[3.16]**10.5** Appropriate Food Stamp Employment and Training Program Office (FSETP) defined

For the purposes of Food Stamp Program work registration and work and training requirements, the "appropriate" Food Stamp Employment and Training Program Office (FSETP) shall be defined as that FSETP or its designee having jurisdiction in the area in which a registrant resides.

10:87-[3.17]**10.6** Registration procedure

(a) The CWA shall register for work each household member not exempted by the provisions of N.J.A.C. 10:87-[3.18,]**10.7** regardless of whether or not the geographic area where the member resides [will be] **is** covered by an employment and/or training component. In addition, exempt food stamp participants who voluntarily elect to participate in E&T programs shall be work registered as a volunteer.

(b) Upon reaching a determination that an applicant or a household member of the applicant's household is required to register, the CWA shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply.

1. The CWA shall also provide, either by mail or in person, to each work registrant in the household, a written statement of the pertinent work requirements, rights and responsibilities of work registered household members, and consequences of failure to comply. A notice shall also be provided when a previously exempt member or new household member becomes subject to a work requirement, and at time of recertification.

(c) The CWA shall permit the applicant or the household's authorized representative to complete a work registration form for each household member required to register for employment in accordance with (a) above.

(d) Household members are considered to have registered when an identifiable work registration form is submitted to the CWA.

(e) Registration shall be accomplished through the execution of a work registration form. The certification worker shall review the registration form for completeness, retain a copy in the case record, and forward the original to the appropriate FSETP office in accordance with DPW instructions. If the certification worker is aware that any registrant is exempt from the E&T requirements, including migrant or seasonal farm workers away from their usual place of residence, and following the work stream, it shall be reflected on the work registration form. The CWA shall forward work registration forms to the FSETP office not later than five days after the date of certification.

(f) Frequency of registration: Each nonexempt person shall be required to register at the time of application and at least once every 12 months thereafter. Reregistration shall be accomplished by a return of a completed work registration form to the CWA which shall retain a copy in the case record and forward the original to the FSETP in accordance with (e) above.

(g) Changes to be reported to FSETP: The CWA shall be responsible for notifying the appropriate FSETP office via an information report form of those work registrants who become exempt from the work registration requirements subsequent to registration, are no longer certified for participation in the program, or move from the area. Such notification shall be provided to the appropriate FSETP office within a reasonable time period but not to exceed 30 days from the date the change becomes known to the CWA.

(h) Determination of work registration in case of FSETP/CWA disagreement: In the event that FSETP disagrees with the CWA determination that the individual is required to register for work, FSETP may request a reconsideration of the individual's nonexempt status. The CWA must respond to the reconsideration request within 30 days and FSETP must accept the response as final. If, however, the CWA fails to respond within 30 days, FSETP shall deregister the household member.

10:87-[3.18]**10.7** Exemptions from the work registration requirement

(a) Exemptions to the work registration requirement shall be determined when the household applies or reapplies for benefits, when there is a change in the employment status of any member of the household, and/or when the 12 month registration period is initiated or renewed. The applicant shall cooperate fully with regard to the establishment of his or her exemption from the work registration requirement. If an applicant fails to cooperate in the determination of his or her exempt status, the county welfare agency shall require the applicant to complete a work registration form.

(b) The following persons shall be exempt from the work registration requirement:

1. Persons under 16 and over 60: Program participants or applicants who are under 16 years of age or aged 60 years or over shall be exempt. If a child has its 16th birthday within a certification period, the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption. A person age 16 or 17 who is not the head of household [or] **and** who is attending school, or enrolled in an employment training program on at least a half-time basis, is exempt.

2. Essential persons: The following shall be exempt from work registration as essential persons:

i. Responsible for care of child under six or incapacitated person: One parent or other household member who has responsibility for the care of a dependent child under six years of age, or who cares for an incapacitated person, shall be exempt. If the child has its sixth birthday within a certification period, the individual responsible for the care of the child shall fulfill the work requirement as part of the next scheduled redetermination process, unless the individual qualifies for another exemption.

3. Students: Persons enrolled at least half-time (as defined by the institution or programs in which they are enrolled) in any school or training program or institution of higher education which is recognized by any Federal, State, or local government agency shall be exempt.

i. Semester breaks and vacations: Once a student enrolls in an institution of higher education, such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term, excluding summer school.

ii. Correspondence courses: Persons enrolled in correspondence courses, where physical attendance is not regularly required, shall not be considered students for the purposes of (b)3 above.

4. Incapacitated adults: Adults who are physically or mentally unfit for employment shall be exempt. If a mental or physical disability is claimed and the disability is not evident, verification shall be required.

i. Evidence of incapacity: The following shall be considered evidence of incapacity:

(1) Certain SSI benefits: Current eligibility for SSI benefits for the blind or disabled, with the exception of "essential persons" (as defined by SSA);

(2) Disability benefits: Current receipt of temporary or permanent disability benefits issued by governmental or private sources;

(3) Medical verification: A statement from a physician or licensed or certified psychologist which substantiates the applicant's claim of disability; (the certification worker may obtain such medical verification in writing or by telephone);

(4) Report by the medical review team (MRT): In the case of applicants who are receiving public assistance, a report by the MRT substantiating the applicant's claim of disability.

ii. Documentation of incapacity: The certification worker shall document all facts relevant to, and verification methods utilized, in the determination of incapacity.

5. Employed persons: Persons who are employed or self-employed at least 30 hours per week or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be exempt. This shall include migrant and seasonal farm workers who are under contract or similar written agreement with an employer or crew chief to begin employment within 30 days, although this shall not prevent individuals from seeking additional services from FSETP.

i. Non-gainful employment: Persons engaged in hobbies or volunteer work or any other activity which cannot, because of the minimal amount of monies received from such activity, be considered gainful employment, shall not be exempt from work registration, regardless of the amount of time spent in such activity.

6. Certain addicts and alcoholics: A narcotics addict or alcoholic who regularly participates, as a resident or nonresident, in a drug or alcoholic treatment and rehabilitation program, which has been certified as such by the New Jersey Department of Health, shall be exempt.

i. Verification of program participation: Prior to certification, the regular participation of an addict or alcoholic in such a program shall be verified with the appropriate organization or center.

ii. Verification of center certification: An approved center shall be in possession of a letter from the New Jersey Department of Health, verifying certification by that agency.

7. Persons subject to registration under other programs: Persons registered for work in accordance with program requirements of General Assistance are exempt.

i. Persons exempt from registration under other programs: Persons exempt from work registration in accordance with program requirements of AFDC and General Assistance are not necessarily exempt from registration in the Food Stamp Program. Such individuals shall be exempt only if they meet the exemption criteria in this section.

ii. Persons failing to comply with AFDC or GA work registration requirements: Persons who fail to comply with an AFDC or GA work registration requirement that is equivalent to a food stamp work registration requirement shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-[3.10]**10.20**.

(1) Notification procedures for GA recipients who fail to comply with work registration requirements: Municipal welfare departments shall advise the CWA of each GA recipient who fails to comply with any work registration requirement and of the actual requirement with which the recipient failed to comply. If the GA recipient is participating in the food stamp program, the CWA shall determine if the failure to comply with the GA work requirement is equivalent to a food stamp work registration requirement.

(2) Persons registered for, but not actively participating in, a GA work program requirement through the General Assistance Employability Program (GAEP), may be subject to the work registration and employment and training requirements of the food stamp program.

8. Recipients of unemployment compensation: Persons in receipt of unemployment compensation and persons who have applied for, but have not yet begun receiving unemployment compensation shall be exempt.

i. Failure to comply: Persons failing to comply with an unemployment compensation requirement comparable to a food stamp work registration or employment and training requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement. If the CWA determines that the unemployment compensation requirement is comparable, the individual, or household (if the individual who committed the violation is head of household) shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-[3.20(c)]**10.21**. The CWA shall provide a notice of adverse action within 10 days after learning of the noncompliance with the unemployment compensation requirement.

ii. An individual or household shall not be disqualified if the noncomplying member meets one of the exemption criteria at N.J.A.C. 10:87-[3.18]**10.7** other than the exemptions at [3.18(b)8] **(b)8** (exemption due to receipt of UIB) or [3.18(b)10] **(b)10 below** (exemption due to compliance with a Title IV (AFDC) work or training requirement).

iii. Household members who fail to comply with a noncomparable unemployment compensation requirement shall lose their exemption under this section and must register for work if otherwise required to register in accordance with (a) above.

9. Jointly processed households: Household members who are entitled to joint processing shall be exempt from work registration until they are determined eligible for SSI and therefore exempt from work registration in accordance with N.J.A.C. 10:87-[3.18(a)4]**(b)4 above**. If ineligible for SSI and where applicable, a determination of such an individual's work registration status will then be made through recertification procedures.

10. Title IV (AFDC) work registrant: A household member subject to and complying with any work or training requirement under Title IV (AFDC) of the Social Security Act, including WIN **or REACH** registration and participation, shall be exempt.

i. Failure to comply: Persons failing to comply with a Title IV requirement comparable to a food stamp work registration or employment and training requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement. If the CWA determines that the Title IV requirement is comparable, the individual, or household (if the individual who committed the violation is head of household) shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-[3.20(c)]**10.21**. The CWA shall provide a notice of adverse action within 10 days after learning of the noncompliance with the Title IV requirement.

ii. An individual or household shall not be disqualified if the noncomplying member meets one of the exemption criteria at N.J.A.C. 10:87-[3.18]**10.7** other than the exemptions at [3.18(b)8]**(b)8 above** (exemption due to receipt of UIB) or [3.18(b)10]**(b)10** (exemption due to compliance with a Title IV (AFDC) work or training requirement).

iii. Household members who fail to comply with a noncomparable Title IV requirement shall lose their exemption under this section and must register for work if otherwise required to register in accordance with (a) above.

10:87-10.8 Persons losing exempt status

[(c)]**(a)** [Persons losing exempt status:] Persons losing exempt status due to any change in circumstances that is subject to the reporting requirements of N.J.A.C. 10:87-9.[7(a)1i]**5(a)** (such as loss of employment that also results in a loss of income of more than $25.00 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported according to the following procedures:

1. The CWA shall be responsible for providing the participant with the work registration form when the change is reported.

2. Participants shall be responsible for returning the work registration form to the CWA within 10 calendar days from the date the work registration form was handed to the household member reporting the change in person, or the date the CWA mailed the work registration form.

3. If the household fails to return the work registration form, the CWA shall issue a notice of adverse action stating that the participant, or if the individual is head of household, the household is being terminated and why, but that the termination can be avoided by returning the work registration form.

(b) Persons who lose their exempt status due to a change in circumstances that is not subject to the reporting requirements of N.J.A.C.

10:87-9.5(a) shall register for employment at the time of the household's next recertification.

10:87-[3.19]**10.9** Work registrant requirements

[(a) Work registrant requirements: For the purposes of retaining eligibility for the Food Stamp Program, a work registrant shall be required to comply with the provisions of this subchapter and the requirements of the State Plan for Employment and Training Programs.]

[1.]**(a)** If a person is not exempt from employment and training requirements, the FSETP worker shall be responsible for screening (assessing) that person and, if appropriate, referring him or her to an employment and training component within 10 days of the initial assessment. Upon entry into each component, the registrant participant or volunteer shall be told, either orally or in writing, the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The CWA food stamp office shall take appropriate sanction action within 10 working days after learning of noncompliance.

[i.]**1.** Assessment defined: Assessment is defined as an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, employment search or training, an assessment of this nature could constitute part of an employment and training component.

(b) Work registrants shall:

1. Report, at the direction of the Food Stamp Employment and Training Program Office (FSETP), to an assessment interview and/or to an employment and training program component under the approved State Plan for Food Stamp Employment and Training Programs;

2. Participate in an employment and training program **activity**, if assigned;

3. Respond to a request from the FSETP or its designee for supplemental information regarding employment status or availability for work;

4. Report to an employer to whom referred by the FSETP or designee if the potential employment meets the suitability requirements described in [(e) below] **N.J.A.C. 10:87-10.15**.

5. Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage.

(c) Employment and training programs are as follows:

1. Persons required to register for work and not exempted by the State Plan for Employment and Training Programs from placement in a [job] component shall be subject to the employment and training requirements imposed by the State Plan for that individual. Such individuals are referred to as E&T mandatory participants.

2. Employment and training programs may include, but are not limited to, approved:

i. Job search activity (see [(g) and (h) below] **N.J.A.C. 10:87-10.17 and 18**);

ii. Training activity (see [(i) below)] **N.J.A.C. 10:87-10.19**);

iii. Employment activity; **or**

iv. On-the-job training **when approved under JTPA**;

[v. On-site work experience; or]

[vi.]**v.** Other activity that will lead to gainful employment.

[3. Requirements may vary among participants.]

[4.]**3.** Failure to comply without good cause with the employment and training requirements shall result in disqualification of the individual, or in the case of noncompliance of the head of household, the entire household shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-[3.20]**10.20**.

[5.]**4.** Time spent in an employment and training program: The number of months a participant spends in an employment and training component shall be determined by the FSETP. The FSETP shall also determine the number of successive components in which a participant may be placed.

i. The minimum level of effort of any work or training component shall provide that compliance by the work registrant shall entail an average of 12 hours of activity per month per participant for two months (or less in a work experience component if the household's benefit divided by the minimum wage is less than this amount).

ii. The time spent by the members of a household collectively each month in an employment and training program work experience component shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage.

iii. The total hours of participation in an E&T non-work component for any household member individually in any month, together with any hours worked for compensation, shall not exceed 120.

[6.]**5.** [Participant reimbursement:] Participants in an employment and training program, including volunteers, shall [be reimbursed by] **receive a participant allowance provided through** the CWA for [the actual] costs of transportation, or other [actual] costs that are reasonably necessary and directly related to participation in the employment and training programs [up to] **at the flat rate of** $25.00 per month for [any] **all** participants. [Such reimbursement shall be provided in the form of a participant allowance.]

i. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining benefits.

[7.]**6.** Voluntary participation: Individuals may elect to voluntarily participate in available work and training programs.

i. The FSETP office shall permit, to the extent practicable, persons exempt from work registration or employment and training requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program offered.

ii. Voluntary participants in an employment and training component shall not be disqualified for failure to comply with work and training requirements.

iii. The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants as specified in (c)[5]**4** above.

10:87-10.10 Voluntary quit

[(d)]**(a)** [Voluntary quit:] No household whose head of household voluntarily quits his or her most recent job without good cause shall be eligible for participation in the Food Stamp Program except as provided in [3]**(c)** below. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer shall not be considered as a voluntary quit. An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike shall be considered to have voluntarily quit his or her job without good cause (see [(f) below] **N.J.A.C. 10:87-10.16** concerning strikers).

[1.]**(b)** Determining whether a voluntary quit occurred: When a household files an application for participation, or when a participating household reports the loss of a source of income, the CWA shall determine if any currently unemployed (that is, employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for full-time work has voluntarily quit his or her most recent job (that is, employment involving 20 hours or more per week or having received weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) without good cause. For applicant households, the CWA shall determine if a voluntary quit occurred within the last 60 days. If the CWA learns that a household has lost a source of income after the date of application but before the household is certified, the CWA shall determine whether a voluntary quit occurred. For participating households, the CWA shall determine whether any household member voluntarily quit his or her job while participating in the program.

[i.]**1.** Head of household: If a determination of voluntary quit is established, the CWA shall then determine if the member who quit is the head of household in accordance with N.J.A.C. 10:87-2.6.

[2.]**(c)** CWA Action: The CWA shall take the appropriate action, as outlined in [(d)2i through iv] **(c)1 through 3** below, upon a determination that the head of household voluntarily quit employment.

[i.]**1.** Denial of application: Upon a determination that the head of household voluntarily quit employment, the CWA shall determine

if the voluntary quit was with good cause as defined in **N.J.A.C. 10:87-10.11** [below]. If the voluntary quit was not for good cause, the household's application for participation shall be denied for a period of 90 days beginning with the date of quit. The household shall be advised of the reason for the denial and of its rights to reapply at the end of the 90 day period, the circumstances under which a voluntary quit disqualification may be ended, and of its right to request a fair hearing.

[ii.]**2.** Disqualification of participating households: If the CWA determines that the head of household of a participating household voluntarily quit his or her job while participating in the Food Stamp Program, the CWA shall provide the household with a notice of adverse action within 10 days of the date the determination of voluntary quit was made. The notice shall specify the period of the disqualification, the circumstances under which a voluntary quit disqualification may be ended, the household's right to a fair hearing and that the household may reapply at the end of the disqualification period. The household shall be disqualified for three months beginning with the first month after normal adverse action procedures have been taken. If the household leaves the program before the sanction can be levied, the sanction shall not be imposed until the household returns to the program. If a household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of the next month after the hearing decision is rendered.

[(1)]**i.** Fair hearings: Each household has a right to a fair hearing to appeal a reduction, termination, or denial of benefits due to a determination that the household's head of household voluntarily quit his or her job without good cause. If the participating household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered.

[iii.]**3.** Application in third month of disqualification period: If an application for participation in the Food Stamp Program is filed in the third month of disqualification, the CWA shall (in accordance with N.J.A.C. 10:87-6.[5]**4 and 6.5**) use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent months if all other eligibility criteria are met.

[3.](**d**) Exemptions from voluntary quit provisions: Persons exempt from the work registration provisions as stated in N.J.A.C. 10:87-[3.18]**10.7** are exempt from the voluntary quit provisions.

10:87-10.11 Good cause

[4.](**a**) [Good cause:] Good cause for leaving employment includes the good cause provisions found in N.J.A.C. 10:87-[3.20(d) and (e)] **10.23** and resigning from a job that does not meet the suitability criteria specified **in N.J.A.C. 10:87-10.15**. Good cause for leaving employment shall also include:

[i.](**b**) Discrimination: Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;

[ii.](**c**) Working conditions: Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

[iii.](**d**) Employment or education: Acceptance by the primary wage earner of employment or enrollment of at least half-time in any recognized school, training program or institution of higher education, that requires the primary wage earner to leave employment;

[iv.](**e**) Employment or education of other household member: Acceptance by any other household member of employment or enrollment of at least half-time in any recognized school, training program or institution of higher education in another county which requires the household to move and thereby requires the primary wage earner to leave employment;

[v.](**f**) Retirement: A resignation which is recognized by the employer as retirement;

[vi.](**g**) Employment becomes unsuitable: Employment which becomes unsuitable (see [paragraph 8 of this subsection] **N.J.A.C. 10:87-10.15**) after acceptance of such employment;

[vii.](**h**) Employment does not materialize: Acceptance of a bona fide offer of employment more than 20 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 20 hours which, because of circumstances beyond the control of the primary wage earner, subsequently does not materialize or results in employment of less than 20 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 20 hours; and

[viii.](**i**) Patterns of employment: Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs, particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment shall be considered to be with good cause if such movement from employer to employer is part of the pattern of that type of employment;

[ix.](**j**) Lack of adequate child care: Lack of adequate care of children who have reached age six but are under age 12.

10:87-10.12 Verification of voluntary quit and good cause

[5.](**a**) [Verification:] To the extent that the information given by the household is questionable as defined in N.J.A.C. 10:87-2.21[(a)8i] (**i**), the CWA shall request verification of the household's statements.

[i.](**b**) Primary responsibility: The primary responsibility for providing verification rests with the household.

[ii.](**c**) CWA assistance: If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, the CWA shall offer assistance to obtain the needed verification.

[iii.](**d**) Acceptable sources: Acceptable sources of verification include but are not limited to the previous employer, employee associations, union representatives and grievance committees or organizations.

[iv.](**e**) Collateral contact: Whenever documentary evidence cannot be obtained from the household member, the CWA shall substitute a collateral contact. The CWA is responsible for obtaining verification from acceptable collateral contacts provided by the household.

[v.](**f**) Unable to verify: If the household and the CWA are unable to obtain requested verification from the above or other sources because the cause for the quit resulted from circumstances which for good reason cannot be verified, such as a resignation from employment due to discriminatory practices, unreasonable demands by an employer, or because the employer cannot be located, the household shall not be denied access to the Food Stamp Program.

10:87-10.13 Rules on ending a voluntary quit disqualification

[6. Rules on ending a voluntary quit disqualification are as follows:]

[i.](**a**) Following the end of the **voluntary quit** disqualification period a household may begin participation in the program if it applies again and is determined eligible.

[ii.](**b**) Eligibility may be reestablished during a **voluntary quit** disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit.

[iii.](**c**) Eligibility may also be reestablished **during a voluntary quit disqualification** if the violator becomes exempt from work registration requirements in accordance with N.J.A.C. 10:87-[3.18(b)]**10.7(b)**, other than the exemptions at N.J.A.C. 10:87-[3.18(b)8,]**10.7(b)8** (exemption due to receipt of UIB) and [3.18(b)10]**10.7(b)10** (exemption due to Title IV (AFDC) work or training participation requirements).

[7.](**d**) Persons who have been disqualified for quitting a job as head of household of one household shall carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it in accordance with [(d)6 above] **this section**.

10:87-10.14 (Reserved)

10:87-10.15 Unsuitable employment

[(e) Unsuitable employment: Employment shall be considered unsuitable if:]

[1.](a) [Unsuitable employment:] Employment offered to a registrant shall not be considered suitable when any of the following conditions exist:

[i.]1. Earnings: The wages offered are less than the highest of: the applicable Federal minimum wage, the applicable State minimum wage, or, if neither the State or Federal minimum wage is applicable, 80 percent of the Federal minimum wage. If the employment offered is on a piece-rate basis, and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified above.

[ii.]2. The registrant, as a condition of employment, is required to join, resign from, or refrain from joining, any legitimate labor organization.

[iii.]3. The work offered is at a site subject to a strike or a lockout at the time of the offer unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act (Taft-Hartley) or unless an injunction has been issued under Section 10 of the Railway Labor Act.

[iv.]4. The registrant lacks adequate child care for children who have reached age 6 but are under age 12.

[2.](b) Registrant proof of unsuitability: Any employment offered a registrant shall be considered suitable unless [he/she] **he or she** can demonstrate or the [county welfare agency] **CWA** becomes aware that:

[i.]1. The degree of risk to health and safety is unreasonable;

[ii.]2. [He/she] **He or she** is physically or mentally unfit to perform the employment, as established by documentary medical evidence or reliable information obtained from other sources; or

[iii.]3. The employment offered within the first 30 days of registration is not in [his/her] **his or her** major field of experience;

[iv.]4. The distance of the employment from [his/her] **his or her** residence is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transportation of a child to and from a child care facility. Nor shall employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site;

[v.]5. The working hours or nature of the employment interferes with the individual's religious observances, convictions or beliefs; or

[vi.]6. For students, the employment is offered during class hours or is more than 20 hours per week.

10:87-10.16 Strikers

[(f)](a) [Strikers:] Households with striking member(s) shall be ineligible to participate in the Food Stamp Program unless the household was (or would have been) eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur. Such households shall retain their eligibility but shall not receive an increased allotment as a result of a decrease in the income of the striking member(s) of the household.

[1.](b) The CWA shall determine eligibility by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two figures to the current income of non-striking members during the month of application.

[2.](c) To determine benefits (and eligibility for those household subject to the net income eligibility standard) deductions shall be calculated for the month of application as for any other household. Whether the striker's pre-strike earnings or current income is used, the earnings deduction shall be allowed, if appropriate.

[3.](d) If other changes occur, such as but not limited to, a change in household size or non-strike related employment, the CWA shall take appropriate action and adjust the benefit level.

[4.](e) Strikers shall be subject to work registration criteria.

[5.](f) Striker defined: For the purpose of the Food Stamp Program the term "striker" shall be defined as anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Additionally, any individual exempt from the work registration requirement, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker. Examples of non-strikers who are eligible to participate in the program include, but are not limited to:

[i.]1. Employees whose workplace is closed by an employer in order to resist demands of employees (for example, lockout);

[ii.]2. Employees unable to work as a result of striking employees (for example, truck drivers who are not working because striking pressmen prevent newspapers from being printed); or

[iii.]3. Employees who are not part of the bargaining unit on strike who do not want to cross the picket line due to fear of personal injury [or death].

10:87-10.17 Job search components

[(g)](a) [Job search activity:] Persons required to register for work shall also be subject to an independent job search or other appropriate employment and training (E&T) activity.

[1.](b) Job search assignment: During the initial assessment interview, the FSETP worker shall determine the job search requirements of each work registrant and shall provide each registrant with written notification regarding his or her job search requirements, procedures to be followed and the consequences of failure to comply. Based on the capabilities and characteristics of the registrant, the FSETP worker shall determine the extent of appropriate E&T activity for each work registrant.

[i. Job Ready:]

[(1)]1. **Job Ready:** Those registrants that have no apparent substantial barriers to employment shall be considered [J]job [R]ready.

[ii. Non-Job Ready:]

[(1)]2. **Non-Job Ready:** Persons on temporary layoff or expecting to return to work within 60 days, shall be considered non-job ready for 60 days from the date of initial registration. At the end of the 60 day period, such persons shall be contacted to redetermine appropriateness for participation in job search.

[iii.](c) Exempt:

[(1)]1. The FSETP determination of exempt status shall be made at the time the work registration form is received from the CWA to preclude the need of such registrants to travel to the FSETP office for an interview, unless it is impossible for the FSETP office to determine exempt status from the information on the work registration form.

[(2)]2. Those work registrants for whom a job search is determined to be impractical, specifically including registrants residing an unreasonable distance from the E&T location or considered to be unsuitable for participation in any efforts toward employment due to a permanent condition of unemployability shall be considered exempt. Such exemption shall be subject to reevaluation at the time of the individual's next recertification.

[(A)]i. A distance shall be considered unreasonable if the round trip exceeds two hours by reasonably available public or private transportation.

[(3)]3. Migrant and seasonal farmworkers away from their usual place of residence and following the work stream shall also be considered exempt.

[(4)]4. Those registrants with substantial barriers to employment such as, but not limited to, medical or social problems documented in writing, language or other serious problems, that alone or in conjunction with adverse labor market conditions would make them difficult to place shall be considered exempt. Such exemption shall be subject to reevaluation at the time of the individual's next recertification.

[2.](d) Job search requirements: Persons determined to be job ready or persons losing exempt status or reentering the [Food Stamp P]program after a period of absence shall be subject to and must comply with a job search for a minimum of eight weeks each 12 months. The FSETP office may require that the eight week period be one continuous period, or that it be divided into two separate job search periods which total eight weeks.

[i.]1. Job Contact: Registrants shall contact, as required by FSETP, up to a minimum of 24 prospective employers during the eight week period. If the job search period is shortened, the number

of required job contacts shall be reduced on a pro rata basis, to the maximum extent practicable.

[(1)]**i.** A referral to an employer shall be considered a job contact provided the registrant presents himself or herself to the employer as available for employment.

[(2)]**ii.** To be considered a job contact initiated by the registrant, the registrant must present himself or herself to the employer as available for work and the employer must ordinarily employ persons in areas of work that the registrant is reasonably qualified for by means of experience, training or ability and is not considered unsuitable employment in accordance with N.J.A.C. 10:87-[3.19(d)8] **10.15**.

[(3)]**iii.** Depending upon the position being sought, the job contact requirements may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the FSETP office to be generally accepted practice.

[(4)]**iv.** The work registrant cannot contact the same employer in subsequent weeks unless the initial contact indicated that vacancies in suitable job positions may soon exist.

[ii.]**2.** Reporting job contacts to the FSETP office.

[(1)]**i.** Twice during the eight week job search period the work registrant shall report at a prescheduled time to the FSETP worker, the result of all job search contacts. If the eight week job search activity is divided into two separate periods, the FSETP worker may require the registrant to report once during each period of job search activity.

[(2)]**ii.** Job contacts shall be reported in writing in a manner prescribed by FSETP. At the time of the initial interview with the FSETP worker, the work registrant shall be informed about the manner of reporting. While such reporting will not require the employer's written confirmation of the job contact, the registrant shall be required to sign written documentation to attest to its validity. The written report shall be submitted to the FSETP worker at the work registrant's follow-up interview. The registrant shall be responsible for providing FSETP, upon reasonable request, any additional information regarding job contacts.

[3.](**e**) FSETP review of job contacts: The FSETP worker shall determine if the work registrant has completed the assigned number of job contacts.

[i.]**1.** If the registrant was assigned a continuous job search period of less than eight weeks, the registrant shall have two additional weeks to complete any missed contacts.

[ii.]**2.** If the registrant was assigned a single continuous eight week job search period, no additional time shall be allowed unless the FSETP worker fails to accept, for reasons such as suitability or manner of contact, a job contact(s) reported by the registrant. In such instances, the work registrant shall be allowed an additional two weeks to make up the disallowed contact(s).

[iii.]**3.** Persons failing to complete the required number of job contacts, with good cause, shall be excused from completion of the job search requirements.

[iv.]**4.** If a registrant believes that a FSETP determination is improper, review of the determination may be obtained from a designated FSETP official not involved in the original determination. For example, if the registrant believes he or she has been improperly assigned to a job search category or assigned an improper number of job search contacts, or that an action which should have been counted as a contact was not, a review may be obtained. This also applies to an FSETP determination that noncompliance was not for good cause.

[4.](**f**) FSETP case records: A complete file on each work registrant shall be maintained by the FSETP office.

10:87-10.18 Job search training component

[(h)](**a**) Job search training: Job search training consists of two segments, classroom group job search training techniques and motivation, followed by a period of supervised job club or job search.

[1.](**b**) The duration of the classroom training segment may vary dependent upon the approved program component available in a particular county.

[i.]**1.** The curriculum in the group training segment will include confidence-building, self-evaluation, goal assessment and training in job search skills. Participants will be taught to locate potential employers and to develop an individual job search profile.

[ii.]**2.** Participants will be expected to attend all classroom sessions. Failure to adhere to attendance and participation requirements without good cause may result in disqualification from the Food Stamp Program for failure to comply.

[2.](**c**) Following the job search training, participants will be required to undertake a supervised job search similar to independent job search, or participate in a supervised job club.

[i.]**1.** Job club participants may be required to report daily to a specific location (site) to make telephone contacts to obtain job interviews.

[ii.]**2.** Participants will be expected to attend all assigned site sessions. Failure to adhere to attendance and participation requirements without good cause may result in disqualification from the Food Stamp Program for failure to comply.

10:87-10.19 Vocational/educational training component

[(i)](**a**) [Vocational/Educational training:] After initial screening and assessment by the FSETP worker, an individualized plan will be developed with the participant. Work registrants who have complied with other job search and/or job search training requirements may be referred on a voluntary basis for educational development, skill training or vocational training through the Job Training Partnership Act (JTPA) Program in any of the 21 counties.

[1.](**b**) Vocational training may be offered through classroom training arranged by JTPA, and designed to train workers in occupations for which demand exceeds supply.

(c) Participants enrolled half time or more in an institution of higher education will continue to be eligible for Food Stamps if they:

1. Are employed 20 hours per week or the equivalent thereof;

2. Participate in a federally financed work study program;

3. Are responsible for the care of a dependent under the age of six, or 12 if no child care is available;

4. Are receiving AFDC benefits; or

5. Are assigned to an institution of higher learning through a program authorized/approved under the Job Training Partnership Act (JTPA).

(d) Unless a client is exempt from student ineligibility provisions based on the criteria in (b) above, he or she may only be referred to higher educational components that are less than half time. Action taken other than that specified in this section could render the participant ineligible for the Food Stamp Program.

10:87-[3.20]**10.20** Failure to comply

(a) If the registrant fails to comply with any of the work registration or work and training requirement provisions in this subchapter, without good cause, the appropriate FSETP office shall notify the [county welfare agency] **CWA** in writing within five working days of the date such information becomes known to the FSETP, citing specific facts and circumstances, by means of an information report form.

(b) CWA responsibilities: Within 10 days after the FSETP provides notification of failure to comply, the CWA shall provide the individual, or if the individual is head of household, the household with notice of adverse action and begin the disqualification period in accordance with the provisions of [(c) below] **N.J.A.C. 10:87-10.21**.

1. Fair hearing: Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of non-exempt status or a CWA/FSETP determination of failure to comply with the work registration and/or work and training requirements of this subchapter (see [(c)6 below] **N.J.A.C. 10:87-10.22**).

10:87-10.21 Penalty for noncompliance with employment and training requirements

[(c)](**a**) [Penalty for noncompliance:] If the CWA determines that an individual other than the head of household, as defined in N.J.A.C. 10:87-2.6[(b)], has refused or failed to comply with the requirements imposed by this subchapter and the State Plan for Employment and Training, that individual shall be ineligible to participate in the Food Stamp Program for two months and is treated

as an ineligible household member in accordance with N.J.A.C. 10:87-7.14. If the head of household fails to comply, the entire household is ineligible to participate. The CWA shall take appropriate action as follows:

[1.](b) The period of ineligibility shall continue in both cases either until the member who caused the violation complies with the requirement as specified in N.J.A.C. 10:87-[3.21,]**10.24**, leaves the household, becomes exempt from work registration through the provisions of N.J.A.C. 10:87-[3.18]**10.7** other than the exemptions at [3.18(b)8] **N.J.A.C. 10:87-10.7(b)** (exemption due to receipt of UIB) or [3.18(b)10] **N.J.A.C. 10:87-10.7(b)10** (exemption due to compliance with a Title IV (AFDC) work or training requirement), or for two months, whichever occurs earlier.

[2.](c) Change in household composition: Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he or she is not head of household, the individual shall be **ineligible for two months and** considered an ineligible household member in accordance with N.J.A.C. 10:87-7.15.

[3.](d) The CWA shall determine whether good cause for noncompliance exists in accordance with [(d) below] **N.J.A.C. 10:87-10.23**.

[4.](e) The CWA shall provide the individual or household with a notice of adverse action within 10 days of determining that the noncompliance was without good cause. Such notification shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included with the notice on the action which can be taken to end or avoid the sanction and procedures and requirements for reestablishment of eligibility.

[5.](f) The disqualification period shall begin with the first month following the expiration of the adverse action notice period, unless a fair hearing is requested.

10:87-10.22 Fair hearings

[6.](a) Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a determination of failure to comply with the work registration or work and training requirements of this subchapter. A fair hearing shall be scheduled in accordance with N.J.A.C. 10:87-8.6(a)4.

[i.](b) Individuals or households may appeal CWA or FSETP actions such as exemption status, [a] **the** type of requirement imposed, or CWA or FSETP refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decision on these matters.

[ii.](c) The CWA/FSETP agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means.

[iii.](d) A household shall be allowed to examine its employment and training component case file at a reasonable time before the hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing.

(e) The results of the fair hearing shall be binding on the CWA and the FSETP.

10:87-10.23 Good cause for noncompliance

[(d)](a) [Good Cause for noncompliance:] The CWA shall be responsible for determining good cause in those instances where the work registrant fails to comply with the work registration, work and training requirements or voluntary quit requirements of this subchapter. The [county welfare agency] **CWA** shall take into consideration all of the facts and circumstances which existed at the time of the registrant's alleged failure to comply including information submitted by the employer and the household member involved. Good cause shall include circumstances beyond the control of the registrant.

1. If the good cause for noncompliance is temporary (less than 60 days) the person shall be referred again to a component as soon as practicable.

2. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt.

3. If the good cause for noncompliance no longer exists, the person shall be referred to a component as soon as practicable.

[(e)](b) Good cause circumstances: Good cause for noncompliance shall include circumstances such as, but not limited to, the illness of the registrant[,] or another household member, unavailability of transportation, an unanticipated emergency, and/or the lack of adequate care for children who have reached age six but are under age 12. Problems caused by inability of the registrant to speak or write English may constitute good cause. For example, a registrant who cannot read English would have good cause for not appearing for an FSETP interview if the appointment notice was written only in English.

1. Illness of another household member: In the case of a registrant's failure to comply due to the illness of another household member, such illness shall be sufficiently serious as to require the presence of the registrant.

10:87-[3.21] **10.24** Ending disqualification

(a) Following the end of the two month disqualification period for noncompliance with the work registration or employment and training requirements and, upon reapplication participation may resume if a disqualified individual or household applies again and is determined eligible.

1. New two month period: If the two month period should elapse, upon reapplication, the household member again refuses to comply with the work registration and/or work and training requirements, the member is subject to disqualification pursuant to provisions of this subchapter.

(b) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement, is no longer a member of the household, or the member complies as follows:

1. Refusal to register: Registration by the household member who refused to register;

2. Refusal to respond to request for additional information: Compliance with the request from the CWA, or the FSETP office or its designee, to provide supplemental information regarding employment status or availability for work;

3. Refusal to report to an employer: Reporting to that employer to whom referred by the FSETP office or its designee if work is still available or to another employer to whom referred.

4. Refusal to accept suitable employment: Acceptance of a bona fide offer of suitable employment to which referred by the FSETP office or its designee, if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing employment of at least 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

5. Refusal to comply with a CWA/FSETP (or its designee) employment and training component assignment or requirement: Compliance with the CWA/FSETP (or its designee) employment and training component assignment or requirement or an alternate CWA/FSETP (or its designee) assignment or requirement.

10:87-11.1 Intentional program violation disqualification

(a) Individuals found to have committed intentional program violation either through an administrative disqualification hearing or by a court of appropriate jurisdiction or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the program for six months for the first violation, 12 months for the second violation and permanently for the third violation.

[1.](b) One or more intentional program violation disqualifications which occurred prior to April 1, 1983 shall be counted as one disqualification in determining the appropriate penalty.

[i.]**1.** If the act of intentional program violation occurred prior to notification of the disqualification penalties specified in this section, the individual shall be disqualified in accordance with the disqualification period in effect at the time of the offense.

[2.](c) If a court fails to impose a disqualification period for an intentional program violation, the CWA shall impose the appropriate disqualification penalty unless it is contrary to the court order.

[3.](d) The CWA shall disqualify the individual determined to have committed intentional program violation or who signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement and not the entire household.

10:87-11.2 Imposing disqualification periods

[4.](a) [Imposing disqualification periods:] If the individual is not eligible at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits. However, once a disqualification period is imposed, the period of disqualification shall continue uninterrupted regardless of the eligibility of the individual.

[i.](b) For individuals who sign a waiver of the right to an administrative disqualification hearing, the disqualification period shall begin with the first month which follows the date the household member received written notification of the disqualification.

[ii.](c) For individuals who sign a disqualification consent agreement, the disqualification period shall begin within 45 days of the date the individual signed the agreement.

[iii.](d) For individuals found guilty of intentional program violation by an administrative disqualification hearing, the disqualification period shall begin with the first month following the date the household member receives written notification of the hearing decision.

[iv.](e) For individuals found guilty of intentional program violation by a court of appropriate jurisdiction, the disqualification period shall begin within 45 days of the date the disqualification was ordered or if no disqualification period is specified by the court within 45 days of the date the court found the individual guilty of civil or criminal misrepresentation or fraud.

[5.](f) Notification of disqualification: Whenever a household member is disqualified for intentional program violation, the CWA shall provide written notice of the disqualification, in advance of the disqualification if possible. The notice shall inform the household member of the disqualification and when it will take effect. The CWA shall also provide written notice to the remaining household members of the allotment they will receive during the period of disqualification.

10:87-11.3 Waiver of right to administrative disqualification hearing

[(b)](a) [Waiver of right to administrative disqualification hearing:] The accused individual shall have the option of waiving his or her right to an administrative disqualification hearing. The CWA shall provide written notification of this option to the client only after ensuring that the evidence against the client has been reviewed by someone other than the eligibility worker assigned to that case and that such evidence warrants the scheduling of a disqualification hearing. The written notification which informs the individual of the option of waiving his or her right to a disqualification hearing shall include:

[1.](b) The date that the signed waiver must be received by the CWA to avoid the holding of a hearing and a signature block for the accused individual, along with the statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

[2.](c) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him or her in a court of law;

[3.](d) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the CWA;

[4.](e) An opportunity for the accused individual to specify whether or not he or she admits to the facts as presented by the CWA;

[5.](f) The telephone number and, if possible, the name of the person to contact for additional information; and

[6.](g) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

10:87-11.4 Disqualification consent agreement

[(c)](a) Disqualification consent agreement: Individuals accused of intentional program violation which are referred to a court of appropriate jurisdiction but for which no determination of guilt is obtained due to the accused individual having met the terms of a court order or which were not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor, shall be allowed to sign a disqualification consent agreement. The CWA shall make arrangements with the county prosecutors to provide advance written notification to the household member of the consequences of consenting to disqualification as a result of deferred adjudication and to include the disqualification consent agreement in agreements between the prosecutors and the accused individuals or in the court orders.

[1.](b) The advance notice and agreement shall include, at a minimum:

[i.]**1.** A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block;

[ii.]**2.** A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud;

[iii.]**3.** A warning that the disqualification penalties for intentional [P]program violation under the Food Stamp Program which could be imposed are a six-month disqualification for the first violation, 12-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification;

[iv.]**4.** A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

[2.](c) If the individual signs the disqualification consent agreement, he or she shall be disqualified in accordance with this section unless contrary to the court order. The period of disqualification shall begin within 45 days of the date the household member signed the consent agreement. If the court specifies a disqualification period or specifies a date for initiating disqualification, the CWA shall adhere to the court order.

10:87-11.[2]**5** Definition of intentional program violation

(No change in text.)

10:87-11.[3]**6** Administrative disqualification

(a) A referral for an administrative disqualification hearing or referral to a court of appropriate jurisdiction shall be initiated by the CWA whenever the CWA has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional program violation as defined in N.J.A.C. 10:87-11.[2]**5** regardless of the current eligibility of the individual.

1. Referral for an administrative disqualification hearing shall be made:

i. When the facts of the case do not warrant prosecution through the court system;

ii. When a case previously referred for prosecution is declined by the appropriate legal authority;

iii. When no action has been taken in a reasonable length of time on a case which has been referred for prosecution and the referral has been formally withdrawn.

(b) A referral for an administrative disqualification hearing shall not be made against an individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by a court of appropriate jurisdiction.

10:87-11.[4]**7** Administrative disqualification hearing procedures

(a)-(i) (No change.)

(j) Advance notice of hearing: The CWA shall provide written notice to the household member suspected of intentional program violation at least 30 days in advance of the date an administrative disqualification hearing has been scheduled. The notice shall be mailed by certified mail—Return Receipt Requested.

1. The advance notice shall contain at a minimum:

i.-vi. (No change.)

vii. A listing of the household member's rights as contained in N.J.A.C. 10:87-[11.4(g)]**11.7(g)**;

viii.-ix. (No change.)

2. (No change.)

(k) Scheduling of hearing: The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of [fraud] **intentional program violation**.

(l) (No change.)

(m) Good cause for failure to appear: If the household member is found to have committed intentional program violation but a determination is subsequently made by OAL that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid. A new hearing shall be conducted. The hearing official who originally ruled on the case may conduct a new hearing. A hearing official must enter the good cause decision into the hearing record. Good cause is defined in N.J.A.C. 10:87-[3.20(d)]**10.23**.

1. (No change.)

10:87-11.[5]**8** Participation while awaiting a hearing

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

[10:87-11.6 (Reserved)]

10:87-11.[7]**9** Decision format

(No change in text.)

10:87-11.[8]**10** No further administrative appeal

(No change in text.)

10:87-11.[9]**11** Court imposed disqualifications

(a) Referral for prosecution: CWAs are encouraged to refer for prosecution under State statutes those individuals suspected of committing intentional program violation, particularly if large amounts of food stamps are suspected of being obtained by acts of intentional program violation or if the individual is suspected of committing more than one act of intentional program violation.

[1.](**b**) (No change in text.)

[2.](**c**) Recommendations of penalty: The CWA shall also encourage prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal penalties for such violations.

[i.]**1.** (No change in text.)

10:87-11.[10]**12** Reversed intentional program violation disqualifications

(a) (No change.)

(b) Restoration of lost benefits: The CWA shall restore any benefits that were lost as a result of the disqualification in accordance with the procedures specified in N.J.A.C. 10:87-[11.11]**11.13 through 11.21**.

10:87-11.[11]**13** Restoration of lost benefits

The CWA shall restore to the household benefits which were lost whenever the loss was caused by an error by the CWA. Additionally, the CWA shall restore lost benefits when this Manual specifically states that the household is entitled to restoration of lost benefits or an intentional program violation disqualification was subsequently reversed as specified by N.J.A.C. 10:87-11.[10]**12**. In SSI jointly processed cases the CWA shall restore to the household benefits which were lost whenever the loss was caused by an error by the CWA or by the SSA/DO. Such an error shall include, but not be limited to, the loss of an applicant's food stamp application after it has been filed with the SSA/DO. Benefits shall be restored even if the household is currently ineligible. The CWA shall maintain an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. The CWA shall, at a minimum, document how the amount to be restored was calculated and the reason for restoration. The accounting system shall be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

10:87-11.[12]**14** Period of restoration

(a) Benefits shall be restored for a period of not more than 12 months prior to whichever of the following occurred first:

1. Date the CWA was notified: The date the CWA was notified by the [H]**h**ousehold or by another person or agency in writing or orally of the possible loss to that specific household;

2.-3. (No change.)

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

10:87-11.[13]**15** Errors discovered by the CWA

(a) If the CWA determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the CWA shall automatically take action to restore any benefits that were lost. No action by the household is necessary.

[1.](**b**) (No change in text.)

[2.](**c**) (No change in text.)

10:87-11.[14]**16** Disputed benefits

(No change in text.)

10:87-11.[15]**17** Computing amount to be restored

(a) After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12 month time limits described in N.J.A.C. 10:87-11.[12,]**14,** the CWA shall calculate the amount to be restored as follows:

1.-2. (No change.)

[3.](**b**) (No change in text.)

[4.](**c**) (No change in text.)

[5.](**d**) Offsetting claims: If a claim against a household is unpaid or held in suspense as provided in N.J.A.C. 10:87-[11.27(a)3] **11.29(d)**, the amount to be restored shall be offset against the amount due on the claim before any restoration is made to the household. At the point in time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset the claims, even if the initial allotment is paid retroactively. Similarly, initial allotments given at recertification shall not be reduced to offset claims.

10:87-11.[16]**18** Individuals disqualified for intentional program violation

(No change in text.)

10:87-11.[17]**19** Method of restoration

(No change in text.)

10:87-11.[18]**20** Change in household composition

(No change in text.)

10:87-11.[19]**21** Benefits lost prior to EPR

(No change in text.)

10:87-11.[20]**22** Federally mandated reduction or cancellation of benefits

(No change in text.)

10:87-11.[21]**23** Claims against households

(No change in text.)

10:87-11.[22]**24** Inadvertent household error and administrative error claims

(No change in text.)

10:87-11.[23]**25** Instances requiring a claim determination for inadvertent household errors or administrative errors

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

(f) Claim offset by benefits not yet restored: After calculating the amount of the inadvertent household error or administrative error claim, the CWA shall offset the amount of the claim by any amounts which have not yet been restored to the household in accordance with N.J.A.C. 10:87-11.[11]**13**. The CWA shall then initiate collection action for the remaining balance, if any.

10:87-11.[24]**26** Collecting inadvertent household error and administrative error claims

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

(c) The following procedures are to be followed when a household fails to respond to a demand letter:

1. When a household fails to respond to a written demand letter for repayment of an inadvertent household error claim within 30 days, the CWA shall reduce the household's monthly coupon allotment (see N.J.A.C. 10:87-[11.29(a)3]**11.31(d)**).

2. (No change.)

(d) (No change.)

(e) Terminating collecting of an inadvertent household error or administrative error claim: A claim shall be determined uncollectible after it is held in suspense for three years. A CWA may use an uncollectible claim to offset benefits in accordance with N.J.A.C. 10:87-[11.15(a)5]**11.17(d)**.

(f) (No change.)

10:87-11.[25]**27** Intentional program violation claims

A claim shall be handled as an intentional program violation claim only if an administrative disqualification hearing or a court of appropriate jurisdiction has found a household member guilty of intentional program violation as defined in N.J.A.C. 10:87-[**11.1 through 11.2**] **11.5** or if the individual [signed] **signs** a waiver of [a] rights to an administrative disqualification hearing or a disqualification consent agreement. Prior to the determination of intentional program violation, the claim against the household shall be handled as an inadvertent household error or administrative error claim, in accordance with N.J.A.C. 10:87-[11.23 through 11.24]**11.25 and 11.26**.

10:87-11.[26]**28** Establishing an intentional program violation claim

(a) For each month that a household [member participated while committing] **received an overissuance due to** an act of intentional program violation, the CWA shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional program violation claim shall be calculated back to the month the act of intentional program violation occurred, regardless of the length of time that elapsed [since] **until** the determination of intentional program violation was made. However, the CWA shall not include in its calculation any amount of overissuance which occurred in a month more than six years [prior to] **from** the date the overissuance was discovered.

(b) Failure to report a change: If the household member is determined to have committed intentional program violation by [knowingly, willfully and with deceitful intent] **intentionally** failing to report a change in its household's circumstances, the first month [benefits were overissued,] **affected by the household's failure to report** shall be the first month in which the change would have been effective had it been reported. However, in no event shall the CWA determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(c) If the household received a larger allotment than it was entitled to receive, the CWA shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(d) When determining the amount of benefits the household should have received, the CWA shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report.

[(c)](**e**) Offset against unrestored benefits: Once the amount of the intentional program violation claim is established, the CWA shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with N.J.A.C. 10:87-11.[11]**13**.

10:87-11.[27]**29** Collecting intentional program violation claims

(a) If the household member is found to have committed intentional program violation at either an administrative disqualification hearing or a court of appropriate jurisdiction, or has signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, the CWA shall initiate collection action unless the household has repaid the overissuance as a result of inadvertent client error or administrative error demand letters or the CWA has documentation which shows the household cannot be located or the CWA determines that such collection action may prejudice a case which has been referred for prosecution. In cases where the household was found guilty of intentional program violation by a court, the CWA shall request the matter of restitution be brought before the court.

[1.](**b**) No change in text.)

[2.](**c**) Household fails to respond to first demand letter: If the household fails to respond to the first demand letter the following shall apply:

[i.]**1.** (No change in text.)

[ii.]**2.** If the household is currently not participating in the program and does not respond to the first demand letter, additional demand letters shall be sent at 30 day intervals until the household agrees to pay the claim, or the criteria for suspending or terminating collection action as specified in [(a)3 and 4] (**d**) **and** (**e**) below have been met.

[3.](**d**) (No change in text.)

[4.](**e**) Criteria for terminating collection action: A claim shall be determined uncollectible after it is held in suspense for three years. A CWA may use a suspended or terminated claim to offset benefits in accordance with N.J.A.C. 10:87-[11.15(a)5] **11.17(d)**.

10:87-11.[28]**30** Changes in household composition

[(a)] (No change in text.)

10:87-11.[29]**31** Methods of collection

(a) The CWA shall collect intentional program violation, inadvertent household error and administrative error claims [as provided below:] **in accordance with N.J.A.C. 10:87-11.31 and 11.32.**

[1.](**b**) Lump sum repayment: The CWA shall collect payments from households in one lump sum if the household is financially able to pay the claim in one lump sum. However, the household shall not be required to liquidate all of its assets to make a lump sum payment.

Renumber i-ii as **1.-2.** (No change in text.)

[2.](**c**) Installments: If the household has insufficient liquid resources or is otherwise financially unable to pay the claim in one lump sum, the CWA shall negotiate a payment schedule. Payments shall be accepted by the CWA in regular installments. The household may use food coupons as full or partial payment of any installment.

[i.]**1.** In the case of inadvertent household error and intentional program violation claims, the CWA shall ensure that the negotiated amount to be repaid each month through installments is not less than the amount which could be recovered through allotment reduction (see [(a)3] (**d**) below). Once negotiated, the amount to be repaid each month shall remain the same regardless of changes in the household's monthly coupon allotment. However, the CWA and the client have the option to initiate renegotiation of the payment schedule if they believe the household's economic circumstances have changed enough to warrant such action.

[ii.]**2.** Compromise of claim: If the full amount of the claim cannot be liquidated in three years without creating a financial hardship on the household, the CWA shall compromise the claim by reducing it to an amount that will allow the household to pay the claim in three years. The CWA may use the amount of such reduction of the claim to offset benefits in N.J.A.C. 10:87-[11.11]**11.13**.

[iii.]**3.** If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the CWA shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the CWA to discuss renegotiation of the payment schedule. The notice shall also inform the household that unless the overdue payments are made or the CWA is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which

an inadvertent household error or intentional program violation claim has been established may be reduced without a notice of adverse action.

[(1)]**i.** If the household responds to the notice, the CWA shall take one of the following actions as appropriate:

Renumber (A)-(B) as **(1)-(2)** (No change in text.)

[(2)]**ii.** (No change in text.)

[3.]**(d)** Allotment reduction: The CWA shall collect payments for inadvertent household error and intentional program violation claims from households currently participating in the program by reducing the household's food stamp allotment.

[i.]**1.** (No change in text.)

[ii.]**2.** Prior to reducing the household's monthly allotment, the CWA shall advise the household of the appropriate formula to be used to determine the amount of food stamps to be recovered each month, the effect on the coupon allotment and the availability of other methods of repayment. If the household does not select another method of repayment, the CWA shall determine the amount to be recovered each month as follows:

Renumber (1)-(2) as **i-ii** (No change in text.)

[(3)]**iii.** Intentional program violation claims: The household's food stamp allotment shall be reduced by the greater of 20 percent of the household's entitlement or $10.00. The allotment may be reduced by a greater amount if the household so chooses.

[(A)][**(1)** (No change in text.)

Renumber (4)-(5) as **iv-v** (No change in text.)

[4.]**(e)** Receipt and transmittal of collections: The CWA shall instruct the household to submit checks or money orders payable to the respective [county welfare agency] **CWA**.

[i.]**1.** (No change in text.)

[ii.]**2.** Transmittal of payments to the DPW: At the end of each calendar month a check shall be drawn, payable to "Treasurer, State of New Jersey", for the total amount of such funds received during that month and transmitted to the DPW.

[(1)]**i.** (No change in text.)

[5.]**(f)** Accounting procedures: Each CWA shall be responsible for maintaining an accounting system for monitoring claims against households. The accounting system shall be designed to accomplish the following:

Renumber i-iv as **1.-4.** (No change in text.)

[6.]**(g)** Claims discharged through bankruptcy: The CWA shall act on behalf of, and as, FNS in any bankruptcy proceeding against any bankrupt households owing food stamp claims. The CWA shall possess rights, priorities, interests, liens or privileges, and shall participate in any distributions of assets, to the same extent as FNS. Acting as FNS, the CWA shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be transmitted to the DPW as provided in [paragraph 4 of this subsection] **(d)** above.

[7.]**(h)** (No change in text.)

10:87-11.32 Interstate claims collection

(a) A household which relocates from another State into an area under the jurisdiction of New Jersey shall be subject to claims collection for any overissuance the household incurred while receiving food stamp benefits.

(b) Prior to initiating action to collect an over issuance which occurred in another State, the CWA shall contact the State agency which overissued the benefits to ascertain their intention to pursue prompt collection. The State agency which overissued the benefits shall have the first opportunity to collect an overissuance.

(c) The CWA should initiate action to collect the overissuance if the State agency which overissued benefits fails or is unwilling to take prompt collection action. Claims collected shall be retained by DPW in accordance with current fiscal procedures.

10:87-11.33 CWA reporting requirements for incorrect issuances

(a) Each CWA shall report information concerning individuals disqualified for, IPV, administrative disqualification hearing, court of appropriate jurisdiction, and, those who signed a waiver of right to a disqualification hearing or consent agreement no later than 30 calendar days after the action was executed. The data submitted will be made available for use by other county and State welfare agencies.

(b) The CWA may determine the eligibility of program applicants to those cases where the agency believes that a household member is subject to disqualification in another jurisdiction. This procedure does not restrict CWAs from screening all program applicants prior to certification or periodically matching the entire list of disqualified individuals against current caseloads.

(c) The CWA shall submit a report to purge the data file of information relating to a disqualification in cases where the IPV is reversed by a court of appropriate jurisdiction.

APPENDIX A
STATE FISCAL MANAGEMENT
Table of Contents

Section A—Technical requirements and specifications
1. Fiscal terms
2. Fiscal records retention
3. Processing returned coupon books
4. Filing and locating negotiated ATPs
5. Reimbursement for transactions processed
6. Billing for coupon shortages, agency errors and expired ATPs
7. Validation of monthly Food Stamp Program documents

Section B—Postal inspection service

Section C—Data processing services

APPENDIX A—FISCAL MANAGEMENT
SECTION A

Technical requirements and specifications

The Division of Public Welfare is responsible for designing, implementing and monitoring fiscal management procedures which ensure the security and control of Authorizations to Participate (ATPs) and Food Coupons.

The Bureau of Business Services/Food Stamp Program Fiscal Office (BBS/FSPFO) operating requirements in Appendix A are unique to the State of New Jersey Food Stamp Program fiscal administration. CWAs are encouraged to submit suggestions to improve this Appendix to:

Supervisor
Food Stamp Program Fiscal Office
Bureau of Business Services
Division of Public Welfare—CN 716
Trenton, N.J. 08625

1. Terms applicable to fiscal operations and their definitions are as follows:

(A) Coupon Issuers (CIs): FSP agents (Bank & Non-bank) that participate in the issuance of food coupons in return for ATP cards.

(B) Current month ATP: Negotiated ATP cards bearing an issuance period that coincide with the current transaction period being reconciled.

(C) Current series coupons and books: March 1975 to the present time. Coupon denominations: $1.00, $5.00 and $10.00. Book Denominations: $2.00, $7.00, $10.00, $40.00, $50.00, $65.00.

(D) Cutoff dates: The dates by which all Family Assistance Management Information System (FAMIS) A and B forms must be submitted to the Office of Telecommunications and Information Services (OTIS) Data Center to be included in the current updating operation.

(E) Expired: A negotiated ATP card that has been redeemed after the expiration date.

(F) Improperly manufactured: Food coupon books that contain printing, cutting or assembling errors.

(G) Locator number: A computer generated number, consisting of 10 digits sequentially assigned to an ATP card, preliminary to the FSP reconciliation operation.

(H) Machine issue: An ATP card printed by computer during a monthly or daily machine issuance cycle.

(I) Manual issue: An ATP prepared manually by the CWA when expedited machine issuance cannot be completed within the prescribed time frame.

(J) Master file: The file maintained at the OTIS Data Center which contains information relating to all NPA/PA cases which are in active status in the computer system. This file forms the basis for machine issuance of ATP cards.

(K) Matched: An ATP card bearing a number which coincides with corresponding data in the Work Record Card File or the Outstanding ATP Card File.

(L) Mutilated: Food coupon books that were properly manufactured but, for a variety of reasons, have become unusable.

(M) O/S File: The information file maintained at the OTIS Data Center that contains all data relating to ATP Cards that have not been negotiated for up to six months.

(N) Replacement: An ATP card issued in place of one previously issued (machine or manual) and bearing the same validity period as the original.

(O) Sort: Sequencing of information on computer printouts by the computer program.

(P) Unmatched: An ATP card bearing a number which does not coincide with the corresponding data in the Work Record Card File or the Outstanding ATP Card File.

(Q) Unmatched cancelled: An ATP card bearing a number which was previously cancelled through replacement issue. (for example, lost, stolen, mutilated, and so forth).

(R) Work record: The record maintained at the OTIS Data Center which contains information relating to the current month issuance. The updated information contained in the FAMIS A and B forms is used during the reconciliation of ATPs returned by CIs. All data that clears the various edit programs will become integrated into the FAMIS Master File, with the exception of replacement data.

2. Retention of fiscal records: Retention regulations for FSP fiscal records at the CWA are divided into two categories:

(A) Category I: Computer operations source documents: FAMIS A and B source documents used for terminal input are to be retained for a period of three months after terminal entry. Copies of both are to be filed in the case record and must be retained in accordance with the case record retention schedule.

(B) Category II: Computer printouts and ATP cards: All originals of printout documents shall be retained for three years. Authorization to Participate (ATP) cards returned following the reconciliation cycle shall be retained by the CWA for six years from the origination month of each record.

(C) Approval and destruction: Approval for destruction of documents must be received from the Bureau of Archives and History by completing Form ED-6. Actual destruction through incineration or shredding is mandatory.

NOTE: Category II documents listed above shall not be destroyed if the CWA has been instructed in writing by DPW (or the USDA/FNS) to retain them.

3. Processing of returned books: Upon receipt of an improperly manufactured (see 1(F) above) or mutilated (see 1(L) above) coupon book(s) from a participant, the CWA Fiscal Supervisor, with the authorization of the CWA Director, shall:

(A) Examine returned books containing printing errors. Ascertain that the proper number of coupons are in the book and there is an actual printing error.

(B) Books with alleged missing coupons should be examined as follows:

(1) Count the stubs at the top, bottom, and middle of the book. Ensure that no portion of the stub of the alleged missing coupon(s) is still in the book. Replacements are not to be issued if the stubs are still in the book, unless authorized by the FSPFO.

(2) Examine the staples and their position on the book to determine if there are loose or bent staples, indications that the book has been taken apart and restapled, or other indications that might reveal that the book contained the correct number of coupons at the time of issuance.

(3) Do not bend or remove the staples while examining the books. The condition and presence or absence of the staples are factors which must be considered by the FSPFO when making a determination.

(C) If the request for replacement is determined to be valid:

(1) Determine the total value of the coupons to be replaced. Provide written authority to the appropriate CI to issue new coupon books to the recipient, specifying the number of each denomination to be issued. Cash refunds are prohibited. Replacements may be made with books of any denomination.

(a) Example: A recipient returns a $50.00 book containing $20.00 in damaged coupons, or two loose $10.00 damaged coupons from a $50.00 book. The other $30.00 worth of coupons had been expended for eligible foods. A replacement with two $10.00 coupon books is considered appropriate.

(2) Write or stamp "CANCELLED" across the coupons being replaced.

(3) Forward the cancelled coupons with an FNS-471 (Coupon Account and Destruction Report) by certified mail to the address on page one of this Appendix.

(4) Instruct the CI to record the total number of replacement books issued on the current FNS-250 (Food Coupon Accountability Report), Line 13, entitled "Credits". The total will be deducted from stock in computing the value of inventory change.

(5) In those isolated instances in which a participant returns a mutilated $1.00 coupon, three $1.00 coupons or a $5.00 coupon for replacement, it is not possible to issue full coupon books as replacements. The CI must be instructed to remove a $1.00 coupon from a $2.00 book and write or stamp "CANCELLED" on the removed coupon. That coupon is forwarded together with the FNS-250 Report by certified mail to the address on page one of this Appendix.

(D) Procedures concerning the validity of issuing replacement coupon books shall be directed to the FSPFO for resolution as follows:

(1) Submit Form FNS-471 and the cancelled book(s) by certified mail to the address on page one of this Appendix.

(2) Responsibility of CWA when authorizing replacement: In the event that the USDA/FNS fails to concur with the claim as submitted, the responsibility for reimbursement to the CI authorized to make the replacement rests with the CWA.

4. Filing, storing and locating negotiated ATP cards: ATP cards are negotiated at the CIs and are returned to the FSPFO each month for analysis, verification and reconciliation.

(A) The initial step in the reconciliation phase of the FSP computer operation is the imprint of a locator number on each ATP.

(B) The locator number consists of 10 digits. The first five digits will represent a Julian Date (year/day) and the last five digits will contain the numerical sequence of each card in a given batch.

For example: Several batches containing a total of 25,000 ATP cards were submitted to the OTIS Data Center on the first working day in January, 1989 (January 3, 1989). The ATP cards were assigned locator numbers as follows:

Julian Date	Sequence No.
89003	00001
89003	00002
89003	24998
89003	24999
89003	25000
	etc.

(C) Upon completion of the reconciliation cycle, the ATP cards are maintained in numerical sequence until they are returned to the CWAs for storage.

(D) Reference to specific ATP cards may be required when unusual or problem situations are identified during the reconciliation operation. Computer printouts which include detailed line items for the various problem areas will be provided to the CWA each month following completion of the reconciliation cycle. The locator number will be included in the detail line of those printouts.

(E) Description of the various printouts referred to are included in Appendix A, Section C.

5. Altered ATP cards:

(A) Purpose: The alteration of any ATP (FORM-FSP906) card, including those prepared manually, is expressly prohibited by specific USDA/FNS regulations.

(B) UNDER NO CIRCUMSTANCES SHALL FORM FSP-906 (ATP) BE ALTERED FOR CORRECTION OF AN ERROR. IN EACH INSTANCE A NEW FORM SHALL BE PREPARED.

6. Reimbursement for processed transactions: Each month following completion of the reconciliation, the CWA will be provided with a statement of the number of transactions completed by each CI. This report provides a basis for the fee computation for transactions payable to the CI (as appropriate). The CWA then charges the proper administrative account.

7. Billings for coupon shortages, errors and expired ATPs: In accordance with USDA/FNS regulations, DPW is required to make semi-annual settlements for liabilities which have occurred as a result of food coupon shortages as reported on the monthly Food Coupon Accountability Report (FNS-250) from CI locations and for ATPs which were erroneously issued or transacted. The sources of the information concerning these erroneously issued ATPs are included in the details contained in program documents CI-634-01 (Excessive Issuances—Current), CI-634-02 (Excessive Issuances—Supplemental), FS-07003 (Coupon Amount Discrepancy Report) and FC-071-2 (Unmatched). (See #9 below.) Separate semi-annual billings will be sent to each CWA for coupon shortages and erroneously issued ATPs.

(A) The amounts listed for coupon shortages and expired ATPs represent CI liability and should be deducted from all current transaction fees remitted to each CI. Any balance remaining for any CI, after applying the deficiency to the current fee for transactions, should be carried forward and deducted from the fee for transactions for the subsequent month(s) as necessary.

(B) Any CI which has cumulative expired ATP amounts in excess of three months' transaction fees should be requested to make a direct reimbursement rather than to effect recovery in the manner described above. When making the request for direct payment, instruct the CI to issue a check payable to the CWA. The check should be reported as a refund for transaction fees. (Account number 71.1.)

(C) At the time payments to the CIs are adjusted to offset the expired charges, a letter should be prepared for each CI explaining the reason for the reduction. The following is a suggested text:

(D) In accordance with USDA/FNS regulations, we have reduced the fee for the number of transactions applicable to _____ _____ (Month(s), Year) by the semi-annual accounting period _____(Oct-Mar/Apr-Sep) in the amount of $ _____. These amounts will be applied against the Federal share of FSP administrative costs. This will be accomplished by adjustments made to the quarterly cost allocation plan. Please call us if you have any questions, and so forth.

8. Validation of monthly Food Stamp Program documents: Financial losses involved in the issuance of food stamps are to be assumed by the CWA. Liabilities for which the CWA may be held accountable include transacted ATPs that are:

1. Blank when lost or stolen from the CWA and subsequently transacted,
2. Expired,
3. Out-of-state,
4. Excessive issuances caused by CWA error,
5. Unmatched, or
6. Coupon amount discrepancies.

It is necessary for CWAs to validate all requested printouts monthly and return them to DPW 30 days from the date of receipt. For any ATP found to be erroneously issued due to CWA error, the CWA shall circle the respective coupon value and enter the code "AE" next to the circled amount. If the issuance of the ATP in question resulted from a replacement of a valid ATP, the CWA should circle the respective coupon value and enter the code "REPL" next to the circled amount. Although the "REPL" ATPs must be reported, they are not considered CWA liabilities. The CWA shall indicate on the appropriate transmittal letter the number of ATPs and the coupon value for the following categories:

Excessive ATPs—Both Excessive—Current (CI 634-01) and Excessive—Supplemental (CI 634-02) reports are to be validated by the CWA.

Unmatched ATPs—Any ATP that cannot be substantiated with documentation contained in the case file shall also be reported to DPW via document FC 071-2.

9. Coupon amount discrepancies—Document FS 07003 requires a comparison in each listed case of the amount shown on the ATP with the amount reported on the respective valid Form A or B. It is necessary to identify as invalid the excess portion of those ATPs in which the amount reflected in the "Coupon Amount on ATP File" column is greater than indicated in the "Coupon Amount on Issued File" column. Additionally, all replacement ATPs which are issued and cashed (and where the original ATPs were not returned by the recipient or the U.S. Postal Service) must be reported to DPW. CWAs are to use the following criteria when reporting the number and value of replacement ATPs:

(A) Replacements must be separated into the appropriate transaction months to ensure that they are reported for the month in which they are negotiated.

(B) CWAs must identify not only ATPs replacing those lost or stolen from the mail (code L), but also those issued to replace ATPs which were stolen (code S), mutilated or improperly manufactured (code M), or destroyed in a disaster (code D).

(C) If the original ATP was cashed, the replacements coded L, S, M and D should be counted both as replacements and duplicates.

APPENDIX A—FISCAL MANAGEMENT SECTION B

1. The CWA is required to notify the appropriate Postal Inspection Service Center listed below when ATPs or food stamp coupons are reported lost or stolen in the mail.

U.S. Postal Service geographic jurisdiction is as follows:

Postal Inspection Service, Newark Division
Postal Inspector in Charge
P.O. Box 509
Newark, N.J. 07101
Att: External Crimes Section

COUNTIES: Bergen, Burlington (only ZIP Codes beginning with 085), Essex, Hudson, Hunterdon, Mercer, Middlesex, Morris, Ocean (only ZIP Codes beginning with 087), Passaic, Somerset, Sussex, Union and Warren

Postal Inspection Service, Philadelphia Division
Postal Inspector in Charge
P.O. Box 7500
Philadelphia, PA 19101
Att: External Crimes Section

COUNTIES: Atlantic, Burlington (only ZIP Codes beginning with 080), Camden, Cape May, Cumberland, Gloucester, Ocean (only ZIP Codes beginning with 080), and Salem

APPENDIX A—FISCAL MANAGEMENT
SECTION C

Data Processing Services

1. The computer generated documents provided for CWA management of fiscal operations of the Food Stamp Program are as follows:

CWA ACTION

Document Number	Title	Required	Source	Produced
CI 909-01	Food Stamp Replacements Issued	Yes	Form A	The 10th of the month after transaction month
FC 072-01	Food Stamp Authorizations Issued (Monthly)	No	Form A	The 4th working day prior to month end
CI 940-01 CI 940-02 FC 072-03	Food Stamp Authorizations Issued (Daily)	No	Form A	Daily
FC 0072-04	Food Stamp Authorizations Issued (Cumulative Daily)	No	Form A	The 10th of the month following transaction month
FS 07003	Coupon Amount Discrepancy Report	Yes	Form AI/ Negot'd ATPs	The 20th of the month following transaction month
FC 071-2	Authorizations Cashed Totally Unmatched	Yes	Negot'd ATPS	The 20th of the month following transaction month
FC 085-02	Food Stamp Authorizations Cashed	No	Negot'd ATPS	The 20th of the month following transaction month
CI 634-01 (Current) CI 634-02 (Supplemental)	Statement of Excessive Authorizations Cashed	Yes	Negot'd ATPs	The 20th of the month following transaction month
FC 071-1	Statement of Post-Dated Food Stamp Authorizations Cashed	No	Negot'd ATPs	The 20th of the month following transaction month
CI 900-01	List of Transaction Errors	No	Form A	Daily

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Administration

Proposed New Rules: N.J.A.C. 10:120

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-9 et seq.

Proposal Number: PRN 1988-538.

Submit comments by December 7, 1988 to:
Jesse L. Moskowitz, Assistant Director
Intergovernmental Affairs
Division of Youth and Family Services
CN 717
One South Montgomery Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:120 expired on September 26, 1988. The Department has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The rules have been revised to eliminate references which are out of date and to delete misleading information. However, since there is no longer a need for two sets of Division of Youth and Family Services (DYFS) rules regarding hearings, the DYFS Administrative Hearings Unit will revise and consolidate these rules within the next two years. Consequently, the new expiration date, once these rules are adopted, will be two years from the effective date.

Social Impact

The proposed new rules will continue the hearing rights of DYFS and Social Services Block Grants clients, until the adoption of consolidated hearing rules.

Economic Impact

By continuing the hearing eligibility of DYFS and Social Services Block Grant clients, the rules will have a positive economic impact on those clients who prevail at their hearings.

Regulatory Flexibility Statement

These proposed new rules do not affect small businesses because they do not impose reporting, recordkeeping or other requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows.

CHAPTER 120
ADMINISTRATION

SUBCHAPTER 1. AGENCY PURPOSE AND SCOPE

10:120-1.1 Purpose

(a) The Division of Youth and Family Services was created in May, 1972, as part of the Department of Human Services. It assumed the responsibilities of the former Bureau of Children's Services as well as various day care, juvenile justice, licensing, and early childhood development programs then housed in other state government agencies. The Division also assumed responsibility for supervision of the social service units of the county welfare agencies.

(b) The Division of Youth and Family Services (DYFS) serves as the State's comprehensive social services agency for children and families in New Jersey. Its primary goal is to preserve and strengthen the family unit by providing a wide range of supportive and reinforcing services designed to encourage and maintain family stability and self-sufficiency.

10:120-1.2 Scope

(a) The entire service delivery function of the Division is vested in three regional offices. Each regional office is headed by an administrator responsible for local district offices as well as for adoption and foster care units, direct and purchased day care, purchase of service contracts, and supervision of county welfare agency social service units in the counties comprising that region.

(b) The three regional offices are: Northern, which includes Bergen, Hudson, Morris, Passaic, Sussex, and Warren Counties; Central, which includes Essex, Union, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, and Somerset Counties; and Southern, which includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties.

(c) The Central Office in Trenton provides support functions to the regional and local offices. Some of these functions are policy and procedure development and publication, management and fiscal services, monitoring residential placement facilities, and staff training.

(d) Services provided directly to children and their families by the Division include protective services for abused and neglected children, adoption services, foster and institutional placement, day care services, casework and counseling. The Division is responsible for licensing or regulating certain privately operated child care centers, private adoption agencies placing children for adoption in New Jersey, shelters for dependent and neglected children, and children's residential treatment centers and group homes accommodating DYFS children.

(e) The Division supervises the social service units of the County Welfare Agencies. These units provide a wide range of services through the Federal Social Service Block Grant program of the Social Security Act, including home health aid, homemaker, medical transportation, housing related services, counseling and information and referral. Their service population includes public assistance recipients requesting services and other adults and families requesting services who have limited income. The CWA social service units are also designated to be responsible for the provision of adult protective services and services to those in boarding homes or in need of boarding home services.

(f) The Division is the State agency responsible for the administration of both direct and purchased service programs under the Social Service Block Grant program of the Federal Social Security Act. Among the programs provided by such contracts are: day care for children, protective services for battered spouses, adult day care, home delivered meals and transportation for the elderly, homemaker/home health aide services, family planning, personal counseling of all kinds, housing-related services, and legal services in non-criminal matters.

(g) The policies and procedures of the Division of Youth and Family Services are formalized in DYFS Field Operations and Provider Manuals. The DYFS Field Operations and Provider Manuals are available in the DYFS central, regional and district offices for examination or review during regular office hours on regular work days. DYFS issues these manuals and revises them as necessary.

SUBCHAPTER 2. ADMINISTRATIVE HEARINGS

10:120-2.1 Scope of Rules

(a) These rules shall govern the filing of complaints by the Division and the procedure for requests for contested case hearings.

(b) All hearings pursuant to the section shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.

(c) These rules shall not govern fair hearings concerning the Social Security Act which shall be conducted pursuant to N.J.A.C. 10:120-3.1, or employee personnel matters.

10:120-2.2 Subject Matter Jurisdiction

The jurisdiction of the Division shall extend to all complaints arising under any statute, rule or regulation affecting the Division.

10:120-2.3 Construction

These rules shall be liberally construed to allow the Division to discharge its statutory functions. The Director or his or her representative may, upon notice to all parties, relax the application of these rules where the interest of justice and considerations of due process will be furthered thereby.

10:120-2.4 Definitions

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

"Business days" means the five working days of a week other than Saturday, Sunday and State declared holidays.

"Director" means the Director of Division of Youth and Family Services within the Department of Human Services.

"Division" means the Division of Youth and Family Services within the Department of Human Services.

10:120-2.5 Notice of complaint

(a) Whenever it shall appear that a violation of any statute, rule or regulation affecting the Division has occurred or is occurring, the Division may issue a notice of complaint.

(b) The notice of complaint shall contain:

1. A reference to the particular sections of the statute, regulation or rule alleged to have been violated;

2. A concise statement of the facts giving rise to the alleged statutory, regulatory or rule violation. Should the complainant not have details sufficient to state the facts at the time notice is served, a statement of issues involved is sufficient until details are available but a statement of facts must be served upon respondent a minimum of five business days prior to the date of hearing as provided in N.J.A.C. 10:120-1.6;

3. A statement of the relief sought by the complainant; and

4. A statement that the respondent may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1.

10:120-2.6 Service of notice of complaint

(a) Where a party, other than the Division, is an individual, service is effective either:

1. Upon mailing a copy of the notice of complaint by certified mail, return receipt requested, to the last known place of business, residence or abode, within or without this State of such party from whom said receipt is requested, except that no default shall be entered for failure to appear unless service is effected under another provision of this subsection, or unless a return of receipt requested is received with the appropriate signature;

2. Upon personal delivery of the notice;

3. By leaving a copy thereof at such person's dwelling house or usual place of abode with a competent member of his or her household of the age of 14 years or over residing therein; or

4. By delivering a copy thereof to a person authorized by appointment or by law to receive service of process on his behalf.

(b) Where a party, other than the Division, is a corporation, service is effective either:

1. Upon mailing a copy of the notice of complaint by certified mail, return receipt requested, to any person authorized by appointment or by law to receive service of process on behalf of the corporation at the registered office or principal place of business of the corporation, except that no default shall be entered for failure to appear unless service is effected under another provision of this subsection, or unless a return receipt requested is received with the appropriate signature;

2. Upon personal delivery of the notice on either an officer, director, trustee or managing or general agent;

3. Upon personal delivery thereof on any person authorized by appointment or by law to receive service of process on behalf of the corporation;

4. Upon personal delivery of the notice on the person at the registered office of the corporation; or

5. Upon personal delivery of the notice on any servant of the corporation within this State acting in the discharge of his or her duties.

(c) If personal service cannot be effectuated after due diligence and an addressee refuses to claim or accept delivery of certified mail, service may be made by ordinary mail addressed to him or her, after the Director or his or her representative is convinced through investigation that the refusing addressee is the addressee intended to be served and submits an affidavit indicating the facts supporting the averment that personal service or service by certified mail has been attempted with due diligence but has failed.

10:120-2.7 Conduct of hearings

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:120-2.8 Director's review and final decision

(a) Upon receipt of the initial decision and any exceptions submitted by any party, the Director shall review the record and issue the final decision.

(b) The Director's final decision shall be rendered not later than 15 business days after the deadline for filing objections. Service shall be either by personal service or by sending a copy of the decision by certified mail, return receipt requested, to the last known address of the party and, where applicable, to counsel no later than five business days following the rendering of such decision. Service shall be effective upon personal service, or upon receipt of the decision by the parties as evidenced by the return receipt.

(c) If an addressee refuses to claim or accept delivery of certified mail, service may be made by ordinary mail addressed to him or her, after the Director or his or her representative is convinced through investigation that the refusing addressee is the addressee intended to be served.

10:120-2.9 Appeal of final decision

The Director's decision shall be the final determination concerning the subject matter of the hearing. Any appeal of such decision shall be solely to the Appellate Division of the Superior Court within time limits allowed by New Jersey court rules.

SUBCHAPTER 3. FAIR HEARING GUIDELINES

10:120-3.1 Right to fair hearings

(a) It is the right of every applicant for or receipent of a Title XX funded social service to request and have a fair hearing in the manner established by this subchapter. The availability of a local administrative review shall be in addition to an independent of the right to a fair hearing.

(b) A copy of the pamphlet "How to Request a Fair Hearing" shall be furnished to every applicant for services at the time of application and to any client upon his or her request at the time of any adverse action.

(c) The pamphlet shall include an explanation of the client's right to a conference, right to a fair hearing, and the circumstances under which service is continued if a fair hearing is requested. Whenever possible, the client shall be advised verbally of his or her right to a fair hearing in addition to the receipt of the printed pamphlet.

(d) The fair hearing shall include consideration of the following:

1. Any agency action, or failure to act with reasonable promptness, on a request for services, which includes undue delay in reaching a decision on eligibility or in the provision of services;

2. Any agency decision regarding eligibility for services in both initial and subsequent determinations; and

3. Any agency action resulting in a suspension or reduction of services.

(e) The right to a fair hearing shall not extend to cases where there is:

1. A change in the placement of a child without constituting a reduction of social services.

2. An application by foster parents for placement of a child for adoption, pursuant to N.J.S.A. 30:4C-26.7, which gives foster parents, who have cared for a child continuously for a period of two years or more, preference and first consideration to their application over all other applications for adoption placements.

10:120-3.2 Notification of right to fair hearing

(a) All notifications of agency decisions shall state in clear, simple language the nature of the decision, the effective date of the decision, and the factual and legal basis for the decision. In adverse decisions, the notifications shall include, as a basis for agency action, one or more of the following references:

1. Statutory basis; and/or

2. Regulatory reference or citation.

(b) In addition to the basis for the agency action cited above, the notification may also include:

1. State plan (including budgetary provisions);

2. Social service transmittal; and/or

3. Policy memorandum.

(c) Proper notice to a client shall be timely and adequate.

1. Where the decision relates to any action which may entitle a client to a fair hearing, action may not be implemented until 10 days after the mailing of the notice of intent to suspend, reduce or terminate services.

2. Adequate means the notice must be written to include: a statement of the proposed agency action, the reason for the agency action and the specific regulations supporting the agency action; a statement explaining the individual's right to a fair hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Procedure Rules, N.J.A.C. 1:1; and an explanation of the conditions under which services will continue until the date of hearing.

(d) The agency may dispense with timely notice, but shall send adequate notice no later than the date of action when:

1. The agency has factual information confirming the death of the client;

2. The agency received an oral or clearly written statement signed by the client that he or she no longer wishes services or that he or she gives information which requires determination or reduction of services and the client has indicated in writing that he or she understands that this must be the consequence of supplying such information;

3. The client's whereabouts is unknown and agency mail directed to the client has been returned by the post office indicating no known forwarding address, or home visits made and documentation obtained that the client no longer resides there;

4. The client has been accepted for service in a new jurisdiction and that fact has been established by the jurisdiction previously providing services; or

5. A special service which is provided for a specific period of time is terminated and the client has been informed in writing at the time of service initiation that the service shall automatically terminate at the end of the specified period.

10:120-3.3 Complaint procedures

(a) Prompt and courteous attention shall be given to all complaints whether or not such complaints constitute requests for fair hearings. All complaints shall be acknowledged in writing promptly and, if it is not mentioned in the complaint, the acknowledgement shall inform the client of the right to a fair hearing.

(b) Informal efforts to resolve the problem may be made through field contacts, office interviews with supervisory personnel, and consultation with regional and central office staff. It should be made clear to the client that in no event are these informal efforts to be considered a prerequisite for a hearing and in no event can they delay, interfere with or impede the processing of a fair hearing request.

(c) Any clear expression, oral or written, by a client or a person acting as the client's representative to the effect that the client wants the opportunity to present his or her case to a higher authority constitutes a request for a fair hearing.

(d) Request made to the local agency shall be immediately transmitted to the Division of Youth and Family Services Administrative Hearings Unit no later than one work day after the receipt of the request. An acknowledgement of receipt of the request for a fair hearing shall be sent by the Administrative Hearings Unit to the client immediately.

10:120-3.4 Time limitation on entitlement to a fair hearing

If a request for a fair hearing relates to an agency action or lack of agency action that occurred more than 90 calendar days prior to the date of the request, there shall be no entitlement to a hearing on such action or lack of action unless there are extraordinary extenuating circumstances. The decision that extraordinary extenuating circumstances exist shall be made by the Director of the Division of Youth and Family Services.

10:120-3.5 Eligibility for continued services

(a) When there is a request for a fair hearing within 10 days from the date of mailing of a timely notice of termination, suspension or reduction, services will be reinstated or continued at an unreduced level until the fair hearing is held unless the client requests a postponement. Services will be continued unreduced pending a decision if the judge determines that the issue is one of a fact rather than law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action and the agency determines that the action resulted from other than the application of State or Federal law, assistance shall be reinstated and continued until a decision is rendered.

(b) The agency may terminate, reduce or suspend social services any time during the month, provided that the agency provides a 10 day advance notice to the client.

(c) Upon receipt of a request for a fair hearing, the Administrative Hearings Unit will make a record thereof and will promptly transmit the case to the Office of Administrative Law for a hearing. The Administrative Hearings Unit will send an acknowledgement of the request to the client, along with a copy of the statement entitled "How a Fair Hearing is Conducted". The local agency shall be kept informed of the arrangements for the hearing.

10:120-3.6 Withdrawal of hearing request

The filing of a request for a fair hearing shall not preclude continued effort to accomplish corrective action or interpretation by the Division of Youth and Family Services or by the local agency through informal adjustment procedures. If as a result of satisfactory adjustment or for any other reason, the client desires to cancel the hearing, he or she shall so notify the agency or the Division of Youth and Family Services. The client shall be requested to notify the agency in writing regarding the decision for discontinuance or cancellation of the fair hearing.

10:120-3.7 Local agency responsibility

The local agency is required to assist the client, if necessary, in arranging for attendance at the hearing either directly or through purchase.

10:120-3.8 Accessibility of records

(a) The client or his or her representative, with the client's authorization in writing, shall have adequate opportunity to examine the contents of the client's case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

(b) Information contained in child abuse/neglect records and reports shall not be disclosed except under circumstances expressly authorized by State and Federal law.

10:120-3.9 Hearing involving medical issues

When a hearing involves medical issues, such as those concerning a diagnosis or an examining physician's report, a medical assessment other than that of the person or persons involved in making the original decision may be ordered by the judge. The medical assessment will be obtained at a reasonable expense to the agency from a source satisfactory to the client and shall be made part of the record.

10:120-3.10 Conducting the fair hearing

The fair hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:120-3.11 Adjournments

(a) Adjournments will not affect the client's right to a continuation of the fair hearing. However, an adjournment of a hearing shall not prolong continuation of services at an unreduced level unless such adjournment is due to delay caused by the State or local agency, or unless adjournment is due to unavoidable causes such as an illness on the part of the client or his or her representative or to hear additional testimony. Services will also be continued if the local agency fails to provide requested assistance for transportation.

(b) The total of all adjournments shall not exceed 30 days, unless a greater extension of time is requested for good cause by the client or by the local agency and approved by the judge.

10:120-3.12 Group hearing

The Director of the Division of Youth and Family Services may respond to a series of individual requests by ordering a single group hearing when the sole issue involved is one of State or Federal law or policy changes in State or Federal law. All policies governing the conduct of individual fair hearings must be followed.

10:120-3.13 Decision on fair hearing

(a) The decision of the Director of the Division of Youth and Family Services shall be final and binding on all parties concerned and shall be rendered and implemented within 90 days of the date the request for the hearing was received, unless the hearing was postponed or delayed for good cause.

(b) The fair hearing decision shall be effective on the date of final decision unless another effective date is designated.

(c) An official and complete record of each fair hearing will be maintained in the files of the State Office, Division of Youth and Family Services for at least one year after the date the decision is rendered. During this one year period, the appellant or his or her legal representative may review, upon appointment, all or any part of the official and complete record of the fair hearing.

(d) A decision requiring action by the local agency may apply either prospectively with regard to future action by the agency or retroactively to the date an incorrect action was taken.

(e) The State Division of Youth and Family Services will take such steps as may be necessary to assure that the decision has been carried out. Any corrective action required by the decision must be completed by the agency within 15 days of the date of publication of the decision or within 90 days of the date of the request for hearing whichever comes first, unless otherwise directed by the Division.

10:120-3.14 Role of local agency personnel during the fair hearing

The agency representative is advocate of the agency, supporting the decision that the agency has made, putting aside personal feelings. The agency representative must be able to present the agency case, supplying the judge with that information needed to substantiate the agency action. The agency representative must be attentive to new

information coming to light which may impact on the original agency decision. If there is such new information, the agency representative may request a brief recess. If the recess is granted, the agency representative should then present this information to those individuals in the agency who determined the original agency action. If the agency representative feels that he or she must be an advocate of the client and if unable to represent the agency, then another agency staff person must appear at the hearing to fulfill the above identified role.

10:120-3.15 Agency liaison

(a) To assure orderly and expeditious processing of complaints and hearing requests, each agency office will designate a liaison between the agency and the Division of Youth and Family Services whose duties shall include, but not be limited to, the following:

1. Providing the Administrative Hearings Unit with the information prescribed by the form entitled "Request for a Fair Hearing" within one working day after an oral or written request for a hearing is received;

2. Establishing a system to assure that every written request for a hearing received in the local agency is stamped with the date of receipt and forwarded to the Division of Youth and Family Services within one work day after that date;

3. Reviewing incoming requests for possible corrective action prior to the hearing;

4. Identifying and arranging for participation of staff individuals who are essential to a hearing, assembling all records relevant to a hearing and arranging for an interpreter when the client is non-English speaking;

5. Contacting the client or his or her representative not less than two days prior to a hearing to confirm attendance and arrange for transportation of a client when necessary;

6. Submitting special reports on hearing requests prior to the hearing date when requested by the Administrative Hearings Unit;

7. Submitting reports on implementation of State fair hearing decision as soon as such action is taken; and

8. Serving as the single individual in the agency regarding matters relating to hearings.

CORRECTIONS

THE COMMISSIONER

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by December 7, 1988 to:

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

(a)

Administration, Organization and Management Personal Property of Inmates

Proposed Amendments: N.J.A.C. 10A:1-11.3 and 11.8

Authority: N.J.S.A. 30:1B-6, N.J.S.A. 30:1B-10.
Proposal Number: PRN 1988-540.

The agency proposal follows:

Summary

These proposed amendments modify N.J.A.C. 10A:1-11.3 so as to more clearly specify the circumstances under which correctional facilities may dispose of non-permissible personal property of inmates, and also changes N.J.A.C. 10A:1-11.3 and 11.8 so as to specify the options that correctional facilities may use to dispose of personal property of inmates.

Social Impact

The proposed amendments will have no significant social impact since they clarify the existing rules on the disposition of inmate personal property. Under the present rules, disposal of the specified property occurs within the time frame set forth in the amendments, which state how the facility may dispose of the property.

Economic Impact

The proposed amendments will have no significant economic impact because additional funding is not necessary to implement or maintain the amendments.

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined in 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]).

10A:1-11.3 Non-permissible personal property

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

(e) **If the inmate or his or her designee fails to respond to a second written notification within 30 days, the correctional facility may dispose of the non-permissible personal property by:**

1. Donating the non-permissible personal property to any recognized public charitable organization;

2. Retaining the non-permissible personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or

3. Completely destroying the non-permissible personal property within the correctional facility.

[(e)](**f**) Copies of written notices to the inmate about his or her **non-permissible** personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.9).

10A:1-11.8 Responsibility for personal property when inmate is released

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

(c) **If the inmate or his or her designee fails to respond to the written notification within 30 days, the correctional facility may dispose of the personal property by:**

1. Donating the personal property to any recognized public charitable organization;

2. Retaining the personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or

3. Completely destroying the personal property within the correctional facility.

[(c)](**d**) Copies of written notices to the inmate about his or her personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.9).

(b)

Close Custody Units Hearing Procedure for Involuntary Placement to Protective Custody

Proposed Amendment: N.J.A.C. 10A:5-5.2

Authority: N.J.S.A. 30:1B-10.
Proposal Number: PRN 1988-554.

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:5-5.2(l)1 to delete the words "of guilt" which, when used in this subsection, is interpreted to mean that the decision of the Disciplinary Hearing Officer or Adjustment Committee on the placement of an inmate in involuntary protective custody is based upon the adjudication of a disciplinary charge. The use of the words "of guilt" is inappropriate because the decision of the Disciplinary Hearing Officer or the Adjustment Committee is not based on the guilt or innocence of the inmate relative to a prohibited act, but on the appropriateness of the need for the inmate to be assigned to a Protective Custody Unit to ensure that he or she is protected from harm or injury.

Social Impact

The proposed amendment will result in the appropriate interpretation of N.J.A.C. 10A:5-5.2(l)1. No impact on the Department or the inmate population is contemplated, as Disciplinary Hearing Officers and Adjustment Committees have utilized the appropriateness standard set forth in the Summary, rather than a disciplinary adjudicative determination, to establish the need for protective custody.

Economic Impact

The proposed amendment will have no economic impact because no additional costs are necessary to implement or maintain the amendment.

Regulatory Flexibility Statement

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed amendment follows (deletions indicated in brackets [thus]).

10A:5-5.2 Hearing procedure for involuntary placement to Protective Custody

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

(l) When reviewing confidential informant information, the Disciplinary Hearing Officer/Adjustment Committee shall inquire into the reliability of the informant and the information, and shall utilize such information only after satisfied that it is reasonably reliable. Whenever informant information is used, the inmate shall be informed of the general character of the information, if practicable. The details of informant information shall be withheld on grounds of confidentiality.

1. In any case in which the Disciplinary Hearing Officer or Adjustment Committee's decision [of guilt] is based on evidence which includes confidential information, adjudication shall contain:

i.-ii. (No change.)

(m) (No change.)

(a)

Medical and Health Services
Placement of Infants
Proposed Amendment: N.J.A.C. 10A:16-6.6

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

Proposal Number: PRN 1988-539.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:16-6.6 specifies that the Department of Corrections will not assume responsibility for payment of medical costs related to the care of an infant born to a female inmate, after the infant has been placed with a relative or with the Division of Youth and Family Services (D.Y.F.S.).

Social Impact

The proposed amendment will ensure that the Department of Corrections will not have the responsibility of assuming the costs of the medical care of infants born to inmates, after the infants have been placed with a relative or the Division of Youth and Family Services (D.Y.F.S.). There should be no impact on the infants concerned since they will be in the care of other responsible parties.

Economic Impact

The proposed amendment will have no significant economic impact because additional funding is not necessary to implement or maintain the amendment.

Regulatory Flexibility Statement

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

10A:16-6.6 Placement of infants

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

(d) If the inmate chooses to retain custody of the child and in so doing grants temporary custody of the child to a family member, the Department shall not be responsible for any further infant medical costs.

(e) If the inmate chooses to place the child in a foster home or release the child for adoption, the Division of Youth and Family Services (DYFS) shall be granted custody of the child and the Department shall assume no responsibility for any further infant medical costs.

(b)

STATE PAROLE BOARD
Parole Board Rules
Tentative Parole Release Dates; Juvenile Inmates Parole Conditions
Proposed Amendments: N.J.A.C. 10A:71-3.21 and 6.4

Authorized By: New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

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

Proposal Number: PRN 1988-562.

Submit comments by December 7, 1988 to:
Louis Nickolopoulos, Chairman
New Jersey State Parole Board
CN 862
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:71-3.21 eliminates the requirement of prior notification to a juvenile inmate of the Juvenile Panel's intent to establish a tentative parole release date outside of the specified range. The amendment highlights that the decision to establish a tentative parole release date outside the specified range may be reconsidered pursuant to N.J.A.C. 10A:71-4.1 or appealed pursuant to N.J.A.C. 10A:71-4.2(h). The insertion of the word parole in paragraph (d)1 makes the phrase "tentative parole release date" consistent with the language used throughout the juvenile provisions.

The proposed amendment to N.J.A.C. 10A:71-6.4 identifies other individuals who are authorized to impose special conditions of parole which must be complied with by parolees under the supervision of the Bureau of Parole.

Social Impact

The proposed amendment to N.J.A.C. 10A:71-3.21 modifies the process by which the Juvenile Panel may establish a tentative parole release date outside the specified range in the cases of juvenile inmates. The Board has found from experience that the prior notification provision and the resulting delay in establishing a tentative parole release date create confusion and uncertainty with the juvenile inmates. The Juvenile Panel would be able to establish without delay, when deemed appropriate, a tentative parole release date outside the specified range and provide the basis for establishing said date. Notification of the decision is provided to the juvenile inmate and to the juvenile inmate's parent(s) or guardian(s). The juvenile inmate, a parent, a guardian or counsel may request the Juvenile Panel to reconsider its decision pursuant to N.J.A.C. 10A:71-4.1 or appeal the decision pursuant to N.J.A.C. 10A:71-4.2(h).

The proposed amendment to N.J.A.C. 10A:71-6.4 would impact on the Bureau of Parole of the Department of Corrections in that other specified personnel in a District Parole Office would be authorized to impose upon parolees additional special conditions of parole. The amendment is designed to insure that parole officers have access to experienced personnel capable of exercising sound judgment and to alleviate the burden on the District Parole Supervisors who are presently required to review the imposition of special conditions in all cases. The Board does not anticipate that the imposition of special conditions will increase as a result of this amendment.

Economic Impact

The proposed amendments will have no economic impact on the Board, the Bureau of Parole of the Department of Corrections, or inmates/parolees since the amendments are merely revisions to present procedures of the Board.

Regulatory Flexibility Statement

The proposed amendments will have no reporting, recording or compliance requirements for small businesses. A regulatory flexibility analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is, therefore, not required.

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

10A:71-3.21 Establishment of tentative parole release dates; juvenile inmates

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

(d) The juvenile Board panel may establish a tentative parole release date outside the range contained in the provisions of (a) above, if a tentative parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).

1. If, in the opinion of the hearing officer or juvenile Board panel member establishing the tentative **parole** release date, a date within the range contained in the provisions of (a) above is clearly inappropriate in view of the circumstances of the act of delinquency, the prior records of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4), the hearing officer or the juvenile Board panel member shall refer such a case to the juvenile Board panel.

[2. The hearing officer, juvenile Board panel member of the juvenile Board panel shall, at least 14 days prior to the Board panel's determination of the tentative release date, notify the juvenile inmate in writing that a tentative parole release date pursuant to (a) above has not been established and the reasons therefor.]

[3.]**2.** The juvenile Board panel shall, upon disposition of the case, state in writing to the juvenile inmate, the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee, the reasons for the establishment of any tentative parole release date which is outside the range contained in the provisions of (a) above.

3. The decision of the juvenile Board panel to establish a tentative parole release date which is outside the range contained in the provisions of (a) above may be reconsidered pursuant to N.J.A.C. 10A:71-4.1 or appealed pursuant to N.J.A.C. 10A:71-4.2(h).

(e)-(g) (No change.)

10A:71-6.4 Conditions of parole

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

(e) Additional special conditions may be imposed by the District Parole Supervisor, **an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor** when, in the opinion of the District Parole Supervisor, **an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor,** such conditions would reduce the likelihood of recurrence of criminal or delinquent behavior. The parolee and the Board shall be given written notice upon the imposition of such additional conditions.

(f) (No change.)

RULE ADOPTIONS

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

(a)

Uniform Administrative Procedure Rules
Conduct of Proceedings on the Papers
Adopted Amendment: N.J.A.C. 1:1-14.8

Proposed: August 15, 1988 at 20 N.J.R. 1979(c).
Adopted: October 4, 1988 by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: October 4, 1988 as R.1988 d.517, **without change.**

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Effective Date: November 7, 1988.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

1:1-14.8 Conduct of proceedings on the papers
(a)-(d) (No change.)
(e) If the party requesting the hearing does not appear at the scheduled in-person or telephone hearing and no certification is received, the matter shall be handled pursuant to N.J.A.C. 1:1-14.4.

(b)

Special Hearing Rules
Department of Education Budget Hearings
Adopted Amendment: N.J.A.C. 1:6-10.1

Proposed: August 15, 1988 at 20 N.J.R. 1980(a).
Adopted: October 4, 1988 by Ronald I. Parker, Acting Director, Office of Administrative Law.
Filed: October 4, 1988 as R.1988 d.516, **with a substantive change** not requiring additional public notice pursuant to N.J.A.C. 1:30-4.3.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Effective Date: November 7, 1988.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
COMMENT: The Department of Education commented that litigants unfamiliar with administrative law procedures might be confused by the reference to "filing" in the first sentence of the proposed rule amendment and suggested that the words "before the Office of Administrative Law" be added to clarify that the rule refers to filing before the OAL.
RESPONSE: The OAL agrees that the suggested change adds clarification and has made the change in the adopted amendment.
No other comments were received.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

1:6-10.1 Discovery; exchange of documents
(a) Within 10 days of receipt of the notice of filing of the contested case ***before the Office of Administrative Law***, the governing body shall forward to the Clerk of the Office of Administrative Law a copy of the information which was given to the district board of education when the reduction was made, including the following documents:
1.-2. (No change.)
(b) Within 20 days of receipt of the notice of filing of the contested case, the district board of education shall forward a copy to the governing body and two copies to the Clerk of the Office of Administrative Law of each of the following:
1.-9. (No change.)
(c) The governing body and the district board shall submit their statements of supporting reasons in the form of written testimony, verified by each and accompanied by a certified copy of each official document to the judge assigned to hear the case not less than 10 days before the hearing.
(d) (No change.)

AGRICULTURE

DIVISION OF REGULATORY SERVICES

(c)

Commercial Feeding Stuffs
Association Standards
Adopted New Rules: N.J.A.C. 2:68

Proposed: July 18, 1988 at 20 N.J.R. 1671(c).
Adopted: October 4, 1988 by the State Board of Agriculture, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: October 14, 1988 as R.1988 d.528, **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. 4:4-20.10.

Effective Date: November 7, 1988.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.
Since the proposed readoption with amendments of N.J.A.C. 2:68 was published in the July 18, 1988 New Jersey Register, the chapter has expired, pursuant to Executive Order No. 66(1978). Therefore, the rules proposed for readoption are now adopted as new rules.

Full text of the adopted new rules follows.

CHAPTER 68
COMMERCIAL FEEDING STUFFS

SUBCHAPTER 1. ASSOCIATION STANDARDS

2:68-1.1 General rules and regulations
(a) The Department of Agriculture adopts and incorporates by reference the general rules and regulations set forth in the current edition of the official publication of the Association of American Feed Control Officials, Inc.[1]
1. Definitions and Terms.
2. Label Format.
3. Brand and product names.
4. Expression of Guarantees.
5. Ingredients.
6. Directions for use and precautionary statements.
7. Non-Protein Nitrogen.
8. Drug *[a]* ***and*** Feed Additives.
9. Adulterants.
10. Good Manufacturing Practices.

2:68-1.2 Uniform interpretation and policy
The Department of Agriculture adopts and incorporates by reference the uniform interpretation and policy as set forth in the current edition of the official publication of the Association of American Feed Control Officials, Inc.[1]

2:68-1.3 Glossary: Official feed terms
The Department of Agriculture adopts and incorporates by reference the glossary of official feed term as set forth in the current

edition of the Official Publication of the Association of American Feed Control Officials, Inc.[1]

2:68-1.4 Medicated feeds

The Department of Agriculture adopts and incorporates by reference the standards for medicated feeds as set forth in the current edition of the official publication of the Association of American Feed Control Officials, Inc.[1]

2:68-1.5 Definitions of feed ingredients

The definitions of feed ingredients are as set forth in the current edition of the Association of American Feed Control Officials, Inc.[1]

2:68-1.6 Sampling and analysis

Sampling and analysis shall be conducted in accordance with methods published in current edition of the official methods of analysis of the Association of Official Analytical Chemist[2] or in accordance with other recognized official methods.

2:68-1.7 Other rules and regulations

In addition to the definitions of feed ingredients and feed terms previously adopted, the Department of Agriculture adopts the official pet food regulations, the statement of uniform interpretation and policy, and lists of new animal drugs, certifiable antibiotics and warning statements associated therewith, the permitted analytical variations and the pet food protocols and affidavits as contained in the current edition of the official publication of the Association of American Feed Control Officials.

[1]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be procured by writing to Donald James, Dept. of Agriculture, Room E-111, State Capital Bldg., Charleston, West Virginia 25305.

[2]Copy on file in Director's Office, Division of Regulatory Services, New Jersey Dept. of Agriculture; Health-Agriculture Bldg., John Fitch Plaza, Trenton, N.J. Copies may be obtained by writing to David MacLean, AOAC, 111 No. 19th St., Suite 210, Arlington, VA 22209.

(a)

Commercial Fertilizer and Soil Conditioner Commercial Values

Adopted New Rules: N.J.A.C. 2:69

Proposed: July 18, 1988 at 20 N.J.R. 1673(a).

Adopted: October 4, 1988 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: October 14, 1988 as R.1988 d.527, **without change.**

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

Effective Date: November 7, 1988.

Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Since the proposed readoption of N.J.A.C. 2:69 was published in the July 18, 1988 New Jersey Register, the chapter has expired, pursuant to Executive Order No. 66(1978). Therefore, the rules proposed for readoption are now adopted as new rules.

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:69.

BANKING

(b)

DIVISION OF CONSUMER COMPLAINTS LEGAL AND ECONOMIC RESEARCH

Advertising by Financial Institutions

Adopted Amendments: N.J.A.C. 3:2-1.1, 1.2, 1.3, and 1.4.

Proposed: May 16, 1988 at 20 N.J.R. 1025(a).

Adopted: September 30, 1988 by Mary Little Parell, Commissioner, Department of Banking.

Filed: October 11, 1988 as R.1988 d.524, **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. 17:16H-3.

Effective Date: November 7, 1988.

Expiration Date: April 15, 1990.

Summary of Public Comments and Agency Responses:

The Department of Banking received seven public comments in response to the proposed amendments. Three comments were received from or on behalf of commercial banking entities, one from a savings bank, two from licensed mortgage companies and one from a trade association representing savings and loan associations.

COMMENT: Three comments address the definition of "mortgage" in N.J.A.C. 3:2-1.2. One suggests that it should be limited to loans made to "natural persons"; another questions whether it includes second mortgage loans; and the third maintains that it should include only first mortgage loans made "for business purposes."

RESPONSE: As indicated in the Summary accompanying these proposed amendments, the amendments are intended to protect consumers seeking residential mortgage loans from deceptive or misleading advertising by financial institutions. They are not intended to protect commercial entities, which are presumed capable of protecting themselves, nor to protect individuals involved in non-consumer transactions. Modifying the definition of "mortgage loan" in line with the suggestions in this regard merely carries out the rule's stated intent, as already expressed in the proposed definition's exclusion of loans to corporations as mortgage loans.

This modification, which constitutes a non-substantive change to the proposed amendments, is being adopted without further opportunity for public comment inasmuch as the requirement found in N.J.A.C. 1:30-4.3 that substantive changes require reproposal is inapplicable. The modification neither substantially changes what is being prescribed, proscribed or mandated; or enlarges the scope of the proposed rule in any significant way to alter the rights or obligations of the public or any financial institution.

As to the other points, it is clear that the definition of "mortgage loan" includes second, as well as first, mortgage loans. The Department considers misleading or deceptive advertising practices of financial institutions relating to second mortgage loans to be indistinguishable and equally in need of regulation as those relating to first mortgage loans. Therefore, the definition of "mortgage loan" has not been modified to exclude second mortgage loans.

COMMENT: One comment suggests that the definition of "point" in N.J.A.C. 3:2-1.2 should be modified to be consistent with that contained in a companion proposal found at 20 N.J.R. 1021(b) and entitled "Mortgage loans, Fees, Charges, Obligations." That definition excludes from the definition of "discount points" any points collected from a borrower as a "commitment fee" following the borrower's acceptance of a commitment.

RESPONSE: The Department rejects this suggestion, since to accept it would permit the advertisement of a "no points" mortgage loan for a loan upon which the payment of points might be required as a commitment fee. Such an advertisement, the department feels, would be deceptive. In addition, a modification to the definition is being adopted to make clear that "points" shall mean any points, whenever in the application process and for whatever purpose they may be collected.

This modification, which constitutes a non-substantive change to the proposed amendments, is being adopted without further opportunity for public comment inasmuch as the requirement found in N.J.A.C. 1:30-4.3

that substantive changes require reproposal is inapplicable. The modification neither substantially changes what is being prescribed, proscribed or mandated; or enlarges the scope of the proposed rule in any significant way to alter the rights or obligations of the public or any financial institution.

COMMENT: One comment suggests a modification of the provision in N.J.A.C. 3:2-1.3(c) that all advertisements of loan products shall comply with the Truth in Lending Law and Regulation Z. The point is made that Truth in Lending may not be applicable to certain loan products covered by the proposed amendments.

RESPONSE: The Department agrees and has made the appropriate modification, which constitutes merely a technical correction.

COMMENT: Two comments address the provision in N.J.A.C. 3:2-1.4(b) prohibiting the advertisement of "immediate approval" of a loan application or "immediate closing" of a loan. One questions whether the prohibition precludes use of only the quoted words or is intended to be more general. The other suggests that a lender which can demonstrate ability to provide immediate approval of an application or immediate closing of a loan should be permitted to so advertise.

RESPONSE: The Department agrees that use of words other than those quoted but having the same import can be equally misleading. Appropriate modification has therefore been made clarifying that the prohibition extends not only to promises of "immediate approval" or "immediate closing", but also to promises which are not so worded but which convey the same meaning.

This modification, which constitutes a non-substantive change to the proposed amendments, is being adopted without further opportunity for public comment inasmuch as the requirement found in N.J.A.C. 1:30-4.3 that substantive changes require reproposal is inapplicable. The modification merely serves to conform the regulatory language to its intent.

As to the other point, the Department believes that immediate approval of a loan application or immediate closing of a loan is not achievable. Some verification of data must occur, even for so-called "no documentation" loans. In addition, the Department feels that terms like "immediate" are too susceptible to differing interpretations by advertisers and the public for their use in this context to be permitted. For that reason, the Department rejects the suggestion in this regard.

COMMENT: Two comments address the provision in N.J.A.C. 3:2-1.4(b)2 prohibiting the advertisement of a "no points" loan when points are charged at closing or commitment. One asks whether the prohibition would apply where a lock-in fee, expressed in terms of points, is collected during the application process but is refundable at closing. The other suggests that any advertisement of a "no points" mortgage loan should include a statement that "no points" loans generally carry a higher rate of interest than loans of the same type with points.

RESPONSE: So long as the purchase of rate lock protection is optional, it would appear that a lender may advertise a "no points" loan consistent with the proposed amendments. That a borrower chooses to pay points to purchase rate lock protection in that case would not mean that a lender's advertised offer of "no points" loans is in any way deceptive, misleading or untrue.

The Department believes that the suggested additional disclosures for "no points" loan advertisements are unnecessary and therefore rejects this suggestion.

One non-substantive modification to this paragraph is being adopted which would merely simplify and clarify the language contained therein. It changes "when points are accepted as a condition for commitment or closing" to "when points are charged."

COMMENT: Four comments address the provision in N.J.A.C. 3:2-1.4(b)4 governing "rate" advertisements. This provision prohibits an advertiser from advertising a rate which is not linked to any specific rate then available from or through that advertiser, unless the advertiser offers lock-ins to a reasonable number of qualified applicants at that rate or includes in the same advertisement the rate at which such loans are currently being closed by or through the advertiser.

RESPONSE: One comment suggests that the "reasonable number" as used in subparagraph (b)4i requires definition. The Department disagrees. However, if experience shows a need for such definition, the Department will seek to establish one.

Another comment claims the provision is unnecessary since typical "prevailing rate" advertisements do publish the rate at which the loans are then being closed. The Department agrees with the commenter that most advertisements are acceptable in this regard. However, the Department still sees a need for this provision, namely, to stop or prevent publication of advertisements that set forth rates which are not truly available.

A third comment questions whether the provision prohibits use of the words "prevailing type" in an advertisement absent the required additional disclosures or whether "prevailing rate" refers merely to the type of loan. The intent was the latter. This is clarified in a modification being adopted to simplify this provision. The modification will require an advertiser wishing to include a specific rate in its advertisement to either offer lock-ins at the rate or specify that the advertised rate represents the rate at which loans are then being closed by or through the advertiser and are subject to change. No other rate will be permitted to be included in the advertisement.

This modification, which constitutes a non-substantive change to the proposed amendments, is being adopted without further opportunity for public comment inasmuch as the requirement found in N.J.A.C. 1:30-4.3 that substantive changes require reproposal is inapplicable. The modification neither substantially changes what is being prescribed, proscribed or mandated; or enlarges the scope of the proposed rule in any significant way to alter the rights or obligations of the public or any financial institution.

The last comment of this point suggests that Federal regulations already prohibit such conduct. Whether or not that is so, the Department believes that inclusion of this provision in the State rules will better serve to protect the public.

COMMENT: One comment on N.J.A.C. 3:2-1.4(c) suggests that a provision should be inserted specifying that the lender is not responsible for publisher error.

RESPONSE: The Department rejects this suggestion as unnecessary, since a mechanism already exists to excuse a violation resulting from publisher error. Under N.J.A.C. 3:2-1.5, enforcement of the advertising rule is by means of a cease and desist order executed by the Commissioner only upon a finding that the institution's formal explanation following notification of possible violation is unsatisfactory.

Full text of the adoption follows (additions to the proposal are shown in boldface enclosed with asterisks ***thus***; deletions from the proposal are shown in brackets enclosed with asterisks *[thus]*).

3:2-1.1 Authority, scope and enforcement

(a) This subchapter is promulgated pursuant to the provisions of chapter 193, Public Laws of 1979. This subchapter applies to financial institutions subject to supervision, regulation or licensing by the Department of Banking.

(b) Compliance with this subchapter and chapter 193, Public Laws of 1979 shall be enforced by the Commissioner of Banking of the State of New Jersey.

3:2-1.2 Definitions

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

. . .

"Financial institution" means any bank, savings bank, state association, credit union, mortgage banker, mortgage broker, secondary mortgage lender, small loan company, or any other institution, corporation, partnership, or individual subject to supervision, regulation or licensing by the Department of Banking.

"Lender" means the financial institution which makes the loan or issues the loan commitment.

"Mortgage loan" means a loan made by a financial institution ***to a natural person for a personal, family or household purpose***, secured by a mortgage constituting a lien upon real property on which there is erected or to be erected a structure containing one to six dwelling units, a portion of which may be used for nonresidential purposes, or upon a lease of the fee of such real property, in the making of which the financial institution relies primarily upon the value of the mortgaged property. *[Mortgage loan shall not include a loan made to a corporation.]*

"Point" means an amount of money equal to one percent of the principal amount of the loan *[and payable only at closing or commitment]*.

3:2-1.3 Disclosure of interest rates and loan terms

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

(c) All advertisements of loan products shall comply with the requirements of the Federal Truth-in-Lending Law and Regulation

Z, 15 U.S.C. 1601 et seq. and 12 CFR 226 et seq., respectively*, **where applicable***.

3:2-1.4 Violations of the Act

(a) No financial institution shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of banking, lending or being a financial institution or with respect to any person in the conduct of such business, which is inaccurate, untrue, deceptive or misleading, or which negatively affects the public's confidence in such financial institution or financial institutions in general.

(b) Without limiting (a) above, the following conduct shall be deemed deceptive or misleading:

1. The advertisement of "immediate approval" of a loan application or "immediate closing" of a loan *, **or words to that effect***;

2. The advertisement of a "no-point" mortgage loan when points, as defined herein, are ***charges*** *[accepted as a condition for commitment or closing]*, or the advertisement of an incorrect specific number of points;

3. The advertisement of unqualified access to credit without clearly and conspicuously disclosing that material limitations on the availability of such credit may exist;

4. The advertisement of a *["prevailing rate" mortgage loan where a]* specific rate *[is indicated in the advertisement]* ***for a mortgage loan*** unless:

i. The lender offers lock-in agreements to a reasonable number of qualified applicants at that rate; or

ii. The advertiser specifically states in the advertisement that the expressed rate *[may be changed or not be available at commitment or closing and includes in the advertisement, in type as large as the advertised rate,]* ***is*** the rate at which such *["prevailing rate"]* loans offered by the lender are currently being closed or committed (in cases where the lender customarily commits to close at a specific rate) ***and that the rate is subject to change***;

5. The advertisement of a mortgage loan by a mortgage broker (or a mortgage banker that acts merely as a mortgage broker with regard to the advertised loan) which does not specifically and conspicuously state that the advertiser will not make any mortgage loan commitments or fund any mortgage loans under the advertised program; and

6. The advertisement of a mortgage loan by a mortgage banker or mortgage broker without including in the advertisement or broadcast announcement the words "licensed mortgage banker—N.J. Department of Banking" or "licensed mortgage broker—N.J. Department of Banking," whichever the case may be.

(c) No loan or savings product may be advertised by an entity subject to this subchapter unless the entity has the advertised product available to a reasonable number of qualified applicants responding to the advertisement on the date the advertisement appears, or on the next business day if the advertisement appears on a day the advertiser is not open for business.

(d) Nothing in this section shall require a lender to offer any loan product to an unqualified applicant.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(a)

Homelessness Prevention Program Eligibility; Period of Assistance

Adopted Amendments: N.J.A.C. 5:12-1.1, 2.1 and 2.4

Proposed: October 5, 1987 at 19 N.J.R. 1777(a).

Adopted: October 5, 1988 by Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: October 5, 1988 as R.1988 d.521, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27C-24 and 52:27D-280.

Effective Date: November 7, 1988.

Expiration Date: January 1, 1990.

Summary of Public Comments and Agency Responses:

Comments were received from Ocean-Monmouth Legal Services and Legal Services of New Jersey, expressing concern that certain provisions of the amendments would have an effect contrary to the purpose and spirit of the Prevention of Homelessness Act and should therefore be modified or rejected. Specific objections were as follows:

COMMENT: Proposed N.J.A.C. 5:12-2.1(d), which would make a person having a delinquent loan with the Program, or who has caused the Program to forfeit a security deposit, ineligible could affect people who are, for no fault of their own, unable to make repayment or involved in a dispute with a landlord who unreasonably refuses to return a security deposit.

RESPONSE: The Department agrees that these situations might well exist and modified the provision so as to allow continued eligibility, where the cause of the delinquency or forfeiture was beyond the control of the applicant, or a violation by another person of the rights of the applicant, and is unlikely to recur.

COMMENT: Proposed N.J.A.C. 5:12-2.1(e) should be clarified to limit its applicability to where there exits a final judgment adjudicating guilt entered in an administrative fair hearing or judicial proceeding and there should be a fair hearing procedure for determining if a person has made any material misrepresentation to the Program.

RESPONSE: The Department points out that the language of N.J.A.C. 5:12-2.1(e) makes a finding in an administrative or legal proceeding a necessary precondition for declaring a person ineligible by reason of having made a material misrepresentation to the Program and recognizes the right of appeal. However, the proposed amendment is being revised to make it clear that the administrative or legal proceeding referred to is one in which the person is given notice and the opportunity to be heard.

COMMENT: Proposed N.J.A.C. 5:12-2.1(f) unreasonably makes people ineligible who receive a housing subsidy under any other program, since such a person may still be in the position of needing additional temporary assistance in order to stay in his or her home. Not all subsidized housing programs adjust subsidies to compensate for temporary losses of income or other emergency situations.

RESPONSE: The Department points out that its intention is to have the rules reflect N.J.S.A. 52:27D-283, which provides that "no person shall continue to receive temporary rental assistance if alternative sources of rental subsidy, including, without limitation, rental assistance under the Federal section 8 programs and public housing, become available." Since there may be situations where a person is in a rental subsidy program, but that program does not provide assistance equivalent to that which would be provided by the Program, the proposed amendment has been revised to limit the exception to those situations in which the person has the alternative of receiving an equivalent subsidy from another program.

COMMENT: Proposed N.J.A.C. 5:12-2.1(g) would disqualify anyone who cannot find a dwelling unit renting at not more than 120 percent of the "Fair Market Rental" (FMR) established by the U.S. Department of Housing and Urban Development (HUD). It is contended that this is unreasonable and unrealistic because units renting at the FMR are almost impossible to find and people could thus be rendered ineligible by the same rent increase that puts them in need of the program in the first place. It is recommended that there be provision for exceptions.

RESPONSE: The Department has deleted the provision in question.

COMMENT: The commenters contend that proposed N.J.A.C. 5:12-2.1(h) improperly excludes those who would not be able to pay shelter costs after the period of temporary assistance under the Program has ended and, since it contains no standards for determining who would or would not be excluded, is subject to varying interpretations by different members of the Program's staff.

RESPONSE: The Department points out that this Program, which has limited funding and is not an entitlement program, is intended to provide temporary assistance only and not to be a substitute for public welfare programs intended to assist those whose need is clearly of a more long-term nature. The whole point of the Program is to help people stay in their homes, or find equivalent homes, rather than having to go to motels or homeless shelters or the streets, when the assistance given will help them to "get back on track" in reasonably short order. Where there is no track to get back onto, this Program is inapplicable. In any event, as with any other determination, a determination of ineligibility under this subsection is subject to review by the Program's senior staff and to appeal in an administrative hearing.

COMMENT: Proposed N.J.A.C. 5:12-2.1(i) fails to take account of situations in which people face not loss of income, but increased housing costs due to increased rents, displacement due to condominium conversions or owners taking occupancy of units and other causes.

RESPONSE: The rule is being amended to refer to temporary increases in necessary expenses as well as loss of income. Causes other than those enumerated are already covered by N.J.A.C. 5:12-2.1(i)6.

COMMENT: Proposed N.J.A.C. 5:12-2.1(j) unreasonably excludes people with liens other than first mortgage liens and unrealistically requires that the total monthly payments for property taxes and all mortgages does not exceed 120 percent of the FMR.

RESPONSE: The Department is deleting this language. It is, however, retaining the limitation on total payments in foreclosure cases to six times the FMR.

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

5:12-1.1 Title; purpose

(a) (No change.)

(b) The purpose of these regulations is to implement the "Prevention of Homelessness Act (1984)" and, in so doing, to provide temporary assistance to persons who are homeless, or face imminent loss of their homes by eviction or foreclosure, because they are without adequate funds for reasons beyond their control.

5:12-2.1 Eligibility

(a) To be eligible for assistance under the Homelessness Prevention Program, a person or household must be either homeless or in imminent danger of losing their home as a result of eviction for nonpayment of rent, or mortgage foreclosure, or some other cause which the Bureau of Housing Services determines to be comparable.

1.-3. (No change.)

(b) No person or household shall be eligible for assistance if their annualized current income (that is, 52 times current weekly income) exceeds the upper limit of "moderate income" as defined in guidelines published annually by the United States Department of Housing and Urban Development.

(c) (No change.)

(d) No person or household having a delinquent loan with the Program or which has caused the Program to forfeit a security deposit shall be eligible for additional assistance ***unless the Bureau of Housing Services finds that the delinquency or forfeiture was due to a cause that was either beyond the control of the person or household receiving assistance, or constituted a violation of the rights of that person or household by another person, and that the cause of the delinquency or forfeiture is not likely to recur***.

(e) No person or household found in any administrative or legal proceeding***, in which notice and an opportunity to be heard have been given,*** to have committed fraud or abuse in another governmental assistance program, including, without limitation, other programs providing rental subsidies, or ***to*** have made any material misrepresentation to the Program, shall be eligible for assistance. This provision shall not apply, however, to any case in which a finding of fraud, abuse or material misrepresentation has been reversed on final appeal.

(f) No person or household already receiving *[a]* ***an equivalent*** housing subsidy under any other program shall be eligible for assistance.

1. A housing subsidy shall be deemed to be "equivalent" for purposes of this subsection if it provides a level of compensation sufficient to ensure that the recipient is required to spend no more than 30 percent of gross household income on shelter costs.

[(g) No assistance shall be provided for the rental of any dwelling unit when the amount of the monthly rental exceeds 120 percent of the appropriate Fair Market Rental for the region in which the unit is located, as determined in accordance with guidelines published annually by the United States Department of Housing and Urban Development.]

*[(h)]**(g)* No person or household determined by the Bureau of Housing Services to be unlikely to be able to pay shelter costs after the period of assistance has ended shall be eligible for assistance. ***A person or household having shelter costs not in excess of the greater of 60 percent of gross income or 100 percent of net income shall be presumed to be able to pay shelter costs after the expiration of the period of assistance.***

*[(i)]**(h)* To be eligible for assistance, a person or household must have experienced an uncompensated loss of income ***or increase in expenses for a limited period of time that are necessarily incurred for the preservation of human life***, which must be documented, for one or more of the following reasons:

1. Loss of employment;
2. Medical disability or emergency;
3. Loss or delay in receipt of other benefits;
4. Natural or man-made disaster;
5. Substantial and permanent change in household composition;
6. Any other condition which, in the judgment of the Bureau of Housing Services, constitutes a severe hardship comparable in its effect to the causes listed in (i)1-5 above.

*[(j)]**(i)* Assistance to any person or household facing foreclosure as a result of mortgage or property tax arrearages shall be in the form of a loan which shall be secured by a recorded mortgage.

1. No person or household shall be eligible for a mortgage loan unless the home was owned for at least one year prior to falling into arrears on the mortgage or property taxes *[and unless there are no liens other than a first mortgage]*.

2. *[No mortgage loan shall be given unless the total monthly payment for all mortgages and property taxes does not exceed 120 percent of the Fair Market Rental for the region in which the property is located, as determined in accordance with guidelines published annually by the United States Department of Housing and Urban Development.]* The total amount of any mortgage loan shall not exceed an amount equal to *[120]* ***720*** percent of the *[said]* ***monthly*** Fair Market Rental for *[a six month period]* ***existing housing for the region in which the property is located, as determined in accordance with guidelines published annually by the United States Department of Housing and Urban Development***.

5:12-2.4 Period of assistance

(a) (No change.)

(b) No person shall continue to receive assistance under the Homelessness Prevention Program for more than six months, nor shall any person receive assistance to pay more than three months' rental arrears, unless the Bureau of Housing Services finds there to be sufficient extenuating circumstances to justify an extension.

(c) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Barrier Free Subcode: Recreation Standards
Adopted Amendments: N.J.A.C. 5:23-7.104 and 7.116

Proposed: August 1, 1988 at 20 N.J.R. 1764(b).
Adopted: September 21, 1988 by Anthony M. Villane, Jr., D.D.S., Acting Commissioner, Department of Community Affairs.
Filed: September 26, 1988 as R.1988 d.503, **without change.**
Authority: N.J.S.A. 52:27D-123 and 52:32-5.
Effective Date: November 7, 1988.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-7.104 Recreation: pools

(a) At least one pool of each type provided in each distinct area on a site, intended for swimming, soaking, wading, or diving, exclusive of those intended for ornamental, decorative, or mechanical purposes, must adjoin an accessible route of travel. The interior of swimming pools, defined as pools with a depth ranging between 24 inches and 13 feet, and the interior of soaking pools shall be made accessible by one of the methods detailed in (a)1 through 3 below. Wading pools, defined as pools with a maximum depth less than 24 inches, and diving pools, defined as pools or tanks whose minimum depth is over 13 feet, are excluded from this interior access requirement.

1. A vertical lift meeting the following criteria and as shown in Figure 7.104a:

i. Designed by its manufacturer for independent operation by the user;

ii. Equipped with a chair designed for independent transfer from a wheelchair. The chair shall have a rigid seat with a depth of at least 15 inches and shall have a rigid back support at least 15 inches high;

(1) As an alternative to (a)1ii above, a pool may be equipped with a moving platform meeting the criteria of N.J.A.C. 5:23-7.81. A wheelchair shall be provided to the user if this option is used.

iii. Adjoining a clear level floor area meeting the criteria of N.J.A.C. 5:23-7.17 whose minimum dimensions are five feet by five feet;

iv. Having controls which meet the criteria of N.J.A.C. 5:23-7.81;

v. Located to meet the criteria of Figure 7.104a.

2. Interior/exterior steps meeting the criteria of Figure 7.104b.

i. The edge of the steps shall be white, orange, yellow or some other color which contrasts with the color of the pool for the safety of the visually impaired.

3. A ramp meeting the criteria of Figure 7.104c.

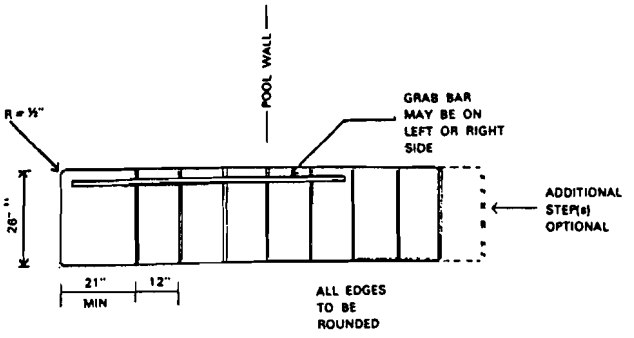
i. A wheelchair shall be provided to the user if this option is used.

ii. The edge of the ramp shall be white, orange, yellow or some other color which contrasts with the color of the pool for the safety of the visually impaired.

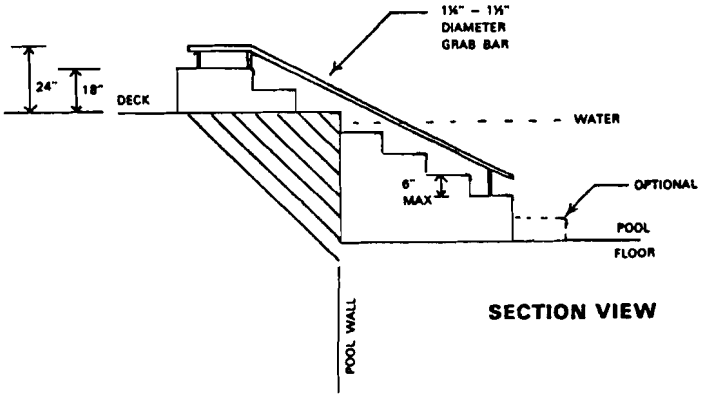
5:23-7.116 Recreation: equestrian facilities

At the area normally used for mounting at each recreational equestrian facility, a mounting platform for the disabled shall be provided. The top of the platform shall be at a height 32 inches above the surface upon which the horse stands. The mounting platform shall have a minimum dimension of five feet long and three feet wide. Any ramp necessary to provide access to the mounting platform shall meet the criteria of N.J.A.C. 5:23-7.24 except that a maximum slope of 1:9 shall be allowable.

Figure 7.104b



PLAN VIEW



SECTION VIEW

EDUCATION

(b)

STATE BOARD OF EDUCATION

Marie Katzenbach School for the Deaf
Adopted Amendments: N.J.A.C. 6:78-1.1 and 1.3
Adopted Repeal and New Rule: N.J.A.C. 6:78-1.2.

Proposed: July 18, 1988 at 20 N.J.R. 1678(a).
Adopted: October 11, 1988 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Filed: October 17, 1988 as R.1988, d.534, **without change.**
Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-10 et seq., 18A:39-1, 18A:46-1 et seq., 18A:60-2 to 60-3, and 18A:61-1 et seq.
Effective Date: November 7, 1988.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: N.J.A.C. 6:78-1.2(e)2. David B. Harris, Deputy Public Advocate, commented, in a letter to the Department received during the comment period, that including the term health status in considering suitable capacity for instruction, makes the regulation susceptible to being misapplied to exclude from eligibility pupils who have special health needs but whose needs would not prevent them from benefiting from the Katzenbach program.

RESPONSE: Knowledge of health status is required by N.J.A.C. 6:28 and must be included in the IEP. The admission team must review all required information to determine the ability of the school to adequately

serve the student. There is no intention to discriminate against applicants with special health needs.

Full text of the adoption follows.

6:78-1.1 Function of the Marie H. Katzenbach School

(a) The function of the Marie H. Katzenbach School for the Deaf is to provide tuition-free residential and day education facilities and instruction for auditorily handicapped children from birth through 21 years of age in the following areas:

1. Early intervention;
2. Preschool through high school; and
3. Post-secondary education.

(b) An enrolled pupil who exits the high school program shall meet the high school graduation requirements according to N.J.A.C. 6:28-4.4, 6:8-7.1 and 6:39-1.5, unless exempted in his or her individualized education program. Fulfillment of the individualized education program requirements would qualify the pupil for a State-endorsed diploma. The pupil shall have the choice of receiving the State endorsed diploma of the Marie H. Katzenbach School for the Deaf or the school district of residence.

6:78-1.2 Admission requirements

(a) Application for admission shall be made to the Marie H. Katzenbach School for the Deaf through the pupil's district board of education in accordance with the admission procedures established by the school.

(b) All applications will be processed by the admissions office. A completed application form must be accompanied by:

1. Classification conference report;
2. Individualized education program;
3. Psychological assessment;
4. Educational assessment;
5. Social assessment;
6. Comprehensive health appraisal and record of immunizations;
7. Audiological evaluation;
8. Hearing aid evaluation;
9. Specialists' evaluations as appropriate;
10. Speech and language evaluation; and
11. Achievement test scores.

(c) An on-site screening will be conducted by the admissions committee which shall be comprised of the following Katzenbach school personnel: director of admissions; learning disabilities teacher-consultant; school psychologist; school audiologist; school social worker; program administrator; and others when deemed necessary.

(d) The admissions committee shall review the application and prepare a recommendation to the superintendent. The superintendent shall review the application and shall notify the parent/guardian and district board of education regarding the disposition of the pupil's application within 30 calendar days of receipt of the application by the admissions office.

(e) All applicants of suitable age and capacity for instruction and legal residents of the State shall be eligible for admission. The following criteria shall be utilized for admission:

1. All applicants must be classified as auditorily handicapped or multiply handicapped with an auditory deficit, in accordance with N.J.S.A. 18A:46-1 et seq. and as defined in N.J.A.C. 6:28-3.5.

2. Suitable capacity for instruction for each applicant shall be determined by the admissions committee assessing the applicant's present levels of educational performance and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, health status, language proficiency, communication style, physical education and recreation needs, and prevocational, vocational and self-help skills. This determination shall be made upon review of the completed application, the results of the on-site screening and the ability of the school program to fulfill the requirements of the applicant's individualized education program.

3. Applicants must have a residence other than the school. The residential program operates on a five-day weekly schedule. The school closes on weekends, holidays and other prescribed vacation periods. There are no provisions for permanent residence.

(f) If an applicant has a multiple handicapping condition, but his or her major educational handicap is auditory impairment, special programs, facilities and specialized personnel may be added in accordance with N.J.S.A. 18A:46-15 and 61-2 to accommodate such applicant.

(g) If the number of eligible applicants exceeds the placements available at the school, the number admitted shall be apportioned so that each county is represented by the ratio of its auditorily handicapped pupil population to the total pupil population of the State.

(h) An applicant who is refused admission after following the admission procedures may appeal such decision in writing to the Commissioner of Education. Such appeal shall be processed by the Department of Education in conformity with the procedures contained in N.J.A.C. 6:24-1.

(i) If the number of placements available at the school are not filled by State residents, then out-of-State applicants may be considered for placement. Tuition charged to out-of-State applicants, subject to the approval of the Commissioner, will be calculated by dividing the approved operational budget by the projected enrollment for the year of student attendance. Such tuition shall be calculated separately for the regular program and the deaf/blind program and differentiated for day and residential placements. No eligible New Jersey resident shall be denied admission due to the enrollment of out-of-State pupils.

6:78-1.3 Transportation

(a) A district board of education shall be required to furnish necessary daily transportation Monday through Friday to and from the Katzenbach School for nonboarding pupils when such transportation is approved by the county superintendent of schools in accordance with such rules and regulations as the State Board shall promulgate for such transportation.

(b) The residential portion of the Katzenbach program operates on a five-day week. All pupils are required to be the responsibility of the parents or legal guardian each weekend throughout the school year and those other times designated as holidays by the school calendar.

(c) The Katzenbach School shall develop a general plan of transportation for residential pupils which includes the following:

1. Determination of regional pick-up and drop-off sites and times;
2. Transportation of pupils between the school and the established regional sites; and
3. The assignment of an adult monitor to each bus.

(d) District boards of education are responsible for the transportation of residential pupils between established regional sites and the pupil's home in accordance with N.J.A.C. 6:28-3.7(a)5. Such transportation is eligible for State transportation aid.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System Hazardous Waste Sampling and Analysis of Discharge to Groundwater

Adopted Amendment: N.J.A.C. 7:14A-6.4

Proposed: October 19, 1987 at 19 N.J.R. 1863(b).
Adopted: October 13, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.
Filed: October 14, 1988 as R.1988 d.529, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with portions not adopted.**

Authority: N.J.S.A. 58:10A-1 et seq.

DEP Docket Number: 044-87-09.
Effective Date: November 7, 1988.
Expiration Date: June 4, 1989.

Summary of Public Comments and Agency Responses:
No public hearing was held on this proposed amendment. Three written

comments were received by the Department by the close of the public comment period on November 18, 1987. All comments received were in response to proposed changes under N.J.A.C. 7:14A-6.4(b)1.

COMMENT: Treatment, storage, and disposal (TSD) owners/operators will be inappropriately burdened with the cost of radionuclide analyses, which are already regulated at N.J.A.C. 7:28.

RESPONSE: The amendment imposes minor reporting requirements only, and does not impose new monitoring requirements. Under existing rules, the owner or operator of a TSD facility subject to N.J.A.C. 7:14A-6 is required to determine groundwater concentrations for the substances listed in Table 1, at N.J.A.C. 7:14A-6.4. Under N.J.A.C. 7:14A-6.6(a)2i, if concentrations exceed maximum levels listed in Table 1, the owner or operator must separately identify those substances for each monitoring well when reporting groundwater monitoring information to the Department. There are currently no maximum levels listed. The amendment adds maximum levels to Table 1.

COMMENT: The imposition of maximum levels derived from secondary drinking water standards under the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., which are based on desirable but not always achievable aesthetic qualities of drinking water, is inappropriate here.

RESPONSE: The Department has reevaluated the proposed imposition of maximum levels for the secondary drinking water standards based on the comments received, and will not adopt concentration limits for these parameters at this time. These parameters, NH4-N, iron, manganese, sodium, sulfate, chloride, and phenols, are retained in the adoption without maximum concentration levels.

COMMENT: The proposed concentration for 2,4-D is different than the referenced Federal standard.

RESPONSE: The Department appreciates the correction of this typographical error. The maximum level for 2,4-D will be set at 0.1 mg/l, which is consistent with the corresponding Federal table at 40 CFR Part 265, Appendix III.

COMMENT: Under N.J.A.C. 7:14A-6.1(a)4, the applicability of N.J.A.C. 7:14A-6.3 through 6.6 includes nonhazardous waste management facilities, contrary to the statements made in the proposal summary describing the intent and applicability of the proposed rule amendment.

RESPONSE: Although N.J.A.C. 7:14A-6.1(a)4 does state that N.J.A.C. 7:14A-6.3 through 6.6 applies to any discharger to groundwater, hazardous waste monitoring requirements under N.J.A.C. 7:14A-6.2 to 6.4 are limited to hazardous waste facilities, and Table 1 at N.J.A.C. 7:14A-6.4 is specially titled monitoring parameters for hazardous waste facilities.

COMMENT: Several commenters stated that the amendment will have a significant economic impact on permittees since extensive groundwater investigation and possibly remediation may be required if levels of the parameters listed under N.J.A.C. 7:14A-6.4(b) are found to exceed their respective concentration limits in wells used to monitor the facility. One commenter further stated that there would be an increased financial burden on permittees charged with identifying the source of a pollutant detected in monitoring well above the maximum allowable limit.

RESPONSE: The amendment will not have a significant economic impact on the regulated community because it only clarifies rules already in effect. Analyses for the parameters listed in Table 1 at N.J.A.C. 7:14A-6.4(b) are already required of hazardous waste TSD facilities. The Department will continue to require pollutant source identification, groundwater quality assessment, and remediation based on requirements under N.J.A.C. 7:14A-6.5 and 6.15. Exceeding maximum levels in Table 1 will not in itself subject a facility to the compliance and remediation requirements at N.J.A.C. 7:14A-6.15. However, the concentration levels in Table 1 have been determined by the Federal government to be safe levels for drinking water supplies, and the Department has in the past and will continue to incorporate these levels into Discharges to Groundwater (DGW) permits where appropriate.

COMMENT: The amendment will have an adverse social impact because imposition of very low limits on groundwater pollutants will result in violations of permit conditions, even if the well or site where it is located has nothing to do with hazardous waste.

RESPONSE: The Department maintains that the amendment will have a positive social impact. The maximum levels for the primary drinking water parameters are health-based numbers and are included in DGW permits issued to hazardous waste management facilities and to other facilities with an actual or potential discharge to groundwater.

COMMENT: What is the rationale for the utilization of these standards in light of the Department's development of new standards, aquifer classification, and natural background levels?

RESPONSE: Until such time as new standards for the interim primary drinking water parameters are developed and promulgated, the Department will continue to utilize existing standards. However, where existing water quality does not conform with these standards solely as a result of natural causes, natural water quality characteristics shall prevail. For facilities located in the State's Central Pine Barrens, described at N.J.A.C. 7:9-6.7, the groundwater quality criteria listed under N.J.A.C. 7:9-6 shall prevail.

COMMENT: The intent of the amendment is inconsistent with the Federal program in that the Federal program uses the proposed concentration limits only as a basis of comparison, not as maximum allowable concentrations, and groundwater assessment or investigation under the Federal program is triggered only by statistically significant differences in indicator parameters between downgradient monitoring wells and background parameter values.

RESPONSE: The Department is adding a sentence to the amendment upon adoption at N.J.A.C. 7:14A-6.4(b)1 to clarify that exceeding the maximum levels in Table 1 will result in additional reporting requirements only. Groundwater assessment or investigation will continue to be triggered in response to requirements under N.J.A.C. 7:14A-6.5 and 6.15.

COMMENT: The language in N.J.A.C. 7:14A-6.4(b)1 and the title of Table 1 should be changed to the language in the corresponding United States Environmental Protection Agency regulations, which specifically characterize the Table 1 parameters as drinking water standards.

RESPONSE: Because N.J.A.C. 7:14A-6.4(b)1 already indicates that the Table 1 parameters are to be used to establish groundwater quality and the suitability of the groundwater as a drinking water supply, the Department will not make the suggested change.

COMMENT: The turbidity measurement is not required for groundwater and the turbidity unit requires clarification.

RESPONSE: Turbidity measurements typically are required for drinking water systems using surface water sources, and are expressed as nephelometric turbidity units (NTU) or turbidity units. For purposes of clarification, the Department will add a note to Table 1 indicating that turbidity is applicable to surface water supplies.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

7:14A-6.4 Sampling and analysis concerning DGW of hazardous waste

(a) (No change.)

(b) The owner or operator shall determine the concentrations or values of the following parameters in groundwater samples:

1. Parameters establishing groundwater quality and characterizing suitability of the groundwater as a drinking water supply as specified but not limited to those in Table 1 (Monitoring parameters for hazardous waste facilities). ***If the parameters exceed the maximum levels in Table 1, the owner or operator shall comply with the reporting requirements at N.J.A.C. 7:14A-6.6(a)2i.***

Table 1. Monitoring parameters for Hazardous Waste Facilities.

Parameter	Maximum Level (mg/l) unless otherwise noted
As	0.05
Ba	1.0
Cd	0.01
Cr	0.05
F	1.4-2.4
Pb	0.05
Hg	0.002
NO_3-N	10
[NH_4-N]	*[0.5]*
Se	0.01
Ag	0.05
[Iron]	*[0.3]*
[Manganese]	*[0.05]*
[Sodium]	*[50]*
[Sulfate]	*[250]*
[Chloride]	*[250]*
[Phenols]	*[0.3]*
Lindane	0.004
Methoxychlor	0.1
Toxaphene	0.005

2,4-D	*[0.005]* ***0.1***	***Manganese***	*—*
2,4,5-TP Silvex	0.01	***Sodium***	*—*
Endrin	0.0002	***Sulfate***	*—*
Radium	5 picocuries per liter	***Chloride***	*—*
Gross Alpha	15 picocuries per liter	***Phenols***	*—*
Gross Beta	4 millirem/yr		
Turbidity	1 Turbidity Units		
Coliform Bacteria	1/100 ml		
NH_4-N	*—*		
Iron	*—*		

(Note: Turbidity is applicable only to surface water supplies.)

2.-4. (No change.)

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

DIVISION OF FISH, GAME AND WILDLIFE

(a)

Fish and Game Council
1988-89 Game Code
Adopted Amendment: N.J.A.C. 7:25-5.7

Proposed: September 6, 1988 at 20 N.J.R. 2217(a).
Adopted: October 11, 1988 by the Fish and Game Council, George McCloskey, Chairman.
Filed: October 14, 1988 as R.1988 d.530, **without change.**

Authority: N.J.S.A. 13:1B-29 et seq., specifically 13:1B-30 and 13:1B-32, and 23:1-1 et seq.

DEP Docket Number: 035-88-08.
Effective Date: November 7, 1988.
Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

7:25-5.7 Wild turkey (Melegris gallapavo)

(a)-(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1989 Spring Turkey Hunting Season Permit Quotas are as follows:

(l) (No change.)

(m) Turkey Hunting Areas are as follows:

1.-11. (No change.)

12. Turkey Hunting Area No. 14: That portion of Burlington, Mercer, Monmouth and Ocean Counties lying within a continuous line beginning at the intersection of Route 1 and the Delaware River; then east along Route 1 to its intersection with Route 206; then south along Route 206 to its intersection with Route 524; then east along Route 524 to its intersection with Route 195; then east along Route 195 to its intersection with Route 34; then south along Route 34 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Route 72; then north and west along Route 72 to its intersection with Route 70; then west along Route 70 to its intersection with Route 38 at Cherry Hill; then west along Route 38 to its intersection with Route 30; then west along Route 30 to the Delaware River; then north along the east bank of the Delaware River to the point of beginning.

13. Turkey Hunting Area No. 15: That portion of Atlantic, Burlington, Camden and Gloucester Counties lying within a continuous line beginning at the intersection of Routes 70 and 206 at Red Lion; then south along Route 206 to Hammonton; then south along Route 54 from Hammonton to its intersection with Route 40 at Buena; then west along Route 40 to its intersection with Route 47; then north and west along Route 47 to its intersection with Route 322; then west along Route 322 to its intersection with the Delaware River; then north along the east bank of the Delaware River to its intersection with Route 30 at Camden; then east along Route 30 to its intersection

1989 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quotas*	Season Total	Portion of Counties Involved
1	100	500	Sussex
2	120	600	Sussex, Warren
3	80	400	Sussex, Warren
4	100	500	Sussex, Warren, Morris
5	100	500	Sussex
6	150	750	Sussex, Passaic, Bergen
7	150	750	Sussex, Morris, Passaic
8	50	250	Warren, Hunterdon
9	50	250	Warren, Hunterdon, Morris
10	25	125	Essex, Middlesex, Morris, Somerset, Union
11	25	125	Middlesex, Mercer, Hunterdon, Somerset
14	50	250	Burlington, Ocean, Mercer, Monmouth
15	50	250	Burlington, Camden, Atlantic
16	60	300	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	50	250	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	1,210	6,050	

*Applied to each of the five hunting periods (A,B,C,D,E) in all areas:

A. Monday, April 24, 1989-Friday, April 28, 1989
B. Monday, May 1, 1989-Friday, May 5, 1989
C. Monday, May 8, 1989-Friday, May 12, 1989
D. Monday, May 15, 1989-Friday, May 19, 1989 and Monday, May 22, 1989-Friday, May 26, 1989
E. Saturday, April 29; 1989; Saturday, May 6, 1989; Saturday, May 13, 1989 and Saturday, May 20, 1989

with Route 38; then east along Route 38 to its intersection with Route 70; then east along Route 70 to the point of beginning.

14. Turkey Hunting Area No. 16: That portion of Burlington and Atlantic Counties lying within a continuous line beginning at the intersection of Routes 206 and 70 at Red Lion; then east along Route 70 to its intersection with Route 72; then southeast along Route 72 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with the Mullica River; then east along the south bank of the Mullica River to Great Bay; then east along the south shore of Great Bay to the Atlantic Ocean; then south along the Atlantic Ocean to Sea Isle Boulevard (Route 625) in Sea Isle City; then west along Sea Isle Boulevard to its intersection with Route 9; then north along Route 9 to its intersection with Route 50; then north along Route 50 to its intersection with Route 557; then north and west along Route 557 to its intersection with Route 40; then west along Route 40 to its intersection with Route 54; then north along Route 54 to its intersection with Route 206; then north along Route 206 to the point of beginning.

Renumber 18. through 20. as 15. through 17. (No change in text.)

(a)

Fish and Game Council
1989-90 Fish Code
Adopted Amendments: N.J.A.C. 7:25-6.

Proposed: July 18, 1988 at 20 N.J.R. 1627(a).
Adopted: October 11, 1988 by the Fish and Game Council, George McCloskey, Chairman.
Filed: October 14, 1988 as R.1988 d.531, **without change.**

Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq.

DEP Docket Number: 023-88-06.
Effective Date: November 7, 1988.
Operative Date: January 1, 1989.
Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

These amendments were proposed on July 18, 1988. A public hearing concerning the amendments was held on August 9, 1988 at the Assunpink Wildlife Conservation Center of the Division of Fish, Game and Wildlife located on Eldridge Road within the Assunpink Wildlife Management Area, Robbinsville, New Jersey. One verbal comment was made at this hearing. There were no written comments received during the public comment period which closed on August 17, 1988.

COMMENT: The traditional April opening of the trout season should be the first Saturday in April (April 1) rather than the second Saturday (April 8) as currently proposed.

RESPONSE: Considering that stocking of waters commences three weeks prior to the opening day, the later date will generally produce weather and stream conditions which are more conducive to successful trout fishing. Since April 1 is the opening date of New York's trout season, the April 8 New Jersey opening date will allow New Jersey anglers to take advantage of both states' openers.

Full text of the adoption follows.

SUBCHAPTER 6. 1989-90 FISH CODE

7:25-6.1 General provisions

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

7:25-6.2 Trout season and angling in trout-stocked waters

(a) The trout season for 1989 shall commence 12:01 A.M. January 1, 1989 and extend to midnight March 19, 1989. The trout season shall re-open at 8:00 A.M. Saturday, April 8, 1989 and extend to include March 18, 1990. (See separate rules for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania, Round Valley Reservoir, Musconetcong River "No Kill" Area, Pequest River Trout Conservation Area and the Van Campens Brook Natural Trout Fishing Area.)

(b) It shall be unlawful to fish for any species of fish from midnight of the 19th of March to 8:00 A.M. on April 8, 1989 in ponds, lakes or those portions of streams that are listed herein for stocking during 1989. (See separate rules for Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake and Wawayanda Lake.)

(c) (No change.)

(d) Trout stocked waters for which in-season closures will be in force are as follows (waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated):

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April 14, 21, 28; May 5, 12, 19, 26;

2. Black River—Route 206, Chester at Dam to lower end of Hacklebarney State Park—April 13, 20, 27; May 4, 11, 18, 25;

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April 10, 17, 24; May 1, 8, 15, 22;

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April 10, 17, 24; May 1, 8, 15, 22;

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April 10, 17, 24; May 1, 8, 15, 22;

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April 14, 21, 28; May 5, 12, 19, 26;

7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Delaware River—April 13, 20, 27; May 4, 11, 18, 25;

8. Pequest River—Source to Delaware River—April 14, 21, 28; May 5, 12, 19, 26;

9. Pohatcong Creek—Route 31 to Delaware River—April 11, 18, 25; May 2, 9, 16, 23;

10. Ramapo River—State line to Pompton Lake—April 13, 20, 27; May 4, 11, 18;

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April 12, 19, 26; May 3, 10, 17, 24;

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April 11, 18, 25; May 2, 9, 16, 23;

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April 10, 17, 24; May 1, 8, 15, 22;

14. Toms River—Ocean County Route 528, Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April 10, 17, 24; May 1, 8, 15, 22;

15. Wallkill River—W. Mt. Road to Route 23, Hamburg—April 10, 17, 24; May 1, 8, 15, 22; and

16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April 14, 21, 28; May 5, 12, 19, 26.

(NOTE: The Division reserves the right not to stock on the above dates when emergency situations prevail.)

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force are as follows (figures in parentheses indicates the anticipated number of stockings to be carried out from April 11 through May 31):

(NOTE: The Division reserves the right to suspend stocking when emergency conditions prevail):

1.-13. (No change.)

14. Morris County

Beaver Brook—Rockaway, entire length—(3)
Burnham Park Pond—Morristown—(1)
Drakes Brook—Flanders, entire length—(2)
Flanders Brook—Mt. Olive, entire length—(2)
Hibernia Brook—Hibernia, entire length—(4)
India Brook—Mt. Freedom to Rt. 24, Ralston, entire length—(2)
Lake Hopatcong—Lake Hopatcong—(2)
Lake Musconetcong—Netcong—(2)
Ledgewood Brook—Ledgewood—(2)
Mill Brook—Center Grove, entire length—(2)
Mt. Hope Pond—Mt. Hope—(2)
Passaic River—White Bridge to Dead River—(6)
Pompton River—Pequannock Township (see Passaic Co.)—(6)
Rhinehart's Brook—Hacklebarney State Park, entire length—(1)
Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(3)

Speedwell Lake—Morristown—(2)
Trout Brook—Hacklebarney State Park, entire length—(1)
Whippany River—Tingley Road, Morris Township, to Rt. 202, Morristown—(3)
15. (No change.)
16. Passaic County
Barbour's Pond—West Paterson—(2)
Clinton Reservoir—Newark Watershed—(2)
Greenwood Lake—West Milford—(3)
Monksville Reservoir—Hewitt—(3)
Oldham Pond—North Haledon—(2)
Pequannock River—Route 23, Smoke Rise to Paterson-Hamburg Turnpike, Pompton Lakes—(3)
Pompton Lake—Pompton Lakes—(2)
Pompton River—Pompton Lake to Newark—Paterson Turnpike—(6)
Ringwood Brook—State line to Sally's Pond, Ringwood Park—(4)
Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)
17.-18. (No change.)
19. Sussex County
Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)
Andover Junction Brook—Andover, entire length—(3)
Bier's Kill—Shaytown, entire length—(2)
Big Flat Brook, Upper—Saw Mill Lake, High Point State Park to 100 ft. above Steam Mill Bridge on Crigger Road—(1)
Canistear Reservoir—Newark Watershed—(2)
Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(3)
Cranberry Lake—Byram Township—(2)
Culver's Lake Brook—Frankford Township, entire length—(2)
Dry Brook—Branchville, entire length—(0)
Franklin Pond Creek—Hamburg Mt. W.M.A., entire length—(3)
Glenwood Brook—Lake Glenwood to Stateline—(1)
Iliff Lake—Andover Township—(3)
Kymer's Brook—Andover, entire length—(2)
Lake Musconetcong—Netcong—(2)
Lake Hopatcong—Lake Hopatcong—(2)
Lake Ocquittunk—Stokes State Forest—(6)
Little Flat Brook—Sandyston Township, entire length—(3)
Little Swartswood Lake—Swartswood—(2)
Lubbers Run—Byram Township, entire length—(3)
Neldon Brook—Swartswood, entire length—(2)
Papakating Creek—Plains Road bridge to Route 565 Lewisburg—(2)
Papakating Creek, W. Br.—Libertyville, entire length—(2)
Parker Brook—Stokes State Forest, entire length—(1)
Pond Brook—Middleville, entire length—(2)
Roy Spring Brook—Stillwater, entire length—(2)
Saw Mill Lake—High Point State Park—(6)
Shimers Brook—Montague Township, entire length—(1)
Stony Brook—Stokes State Forest, entire length—(2)
Stony Lake—Stokes State Forest—(3)
Swartswood Lake—Swartswood—(4)
Trout Brook—Middleville, entire length—(2)
Tuttles Corner Brook—Tuttles Corner, entire length—(2)
Wawayanda Lake—Vernon—(4)
20. (No change.)
21. Warren County
Barker's Mill Brook—Vienna, entire length—(2)
Bear Creek—Southtown, entire length—(2)
Beaver Brook—Silver Lake Dam to Pequest River—(2)
Blair Creek—Hardwick Center to Blair Lake—(2)
Blair Lake—Blairstown—(0)
Buckhorn Creek—Roxburg, entire length—(2)
Dark Moon Brook—Johnsonburg, entire length—(1)
Dunnfield Creek—Delaware Water Gap National Recreation Area, entire length—(3)
Furnace Brook—Oxford, entire length—(2)
Furnace Lake—Oxford—(5)
Honey Run—Swayze's Mill Road to Route 519, Hope Township—(2)
Jacksonburg Creek—Jacksonburg, entire length—(3)
Lopatcong Creek—Route 519 to South Main Street, Phillipsburg—(3)
Merrill Creek—Stewartsville, entire length—(2)
Merrill Creek Reservoir—Stewartsville—(3)
Mountain Lake—Buttzville—(5)
Pohatcong Creek—Mt. Bethel to Route 31—(2)
Pophandusing Creek—Oxford Road, Hazen to Delaware River—(1)
Roaring Rock Brook—Brass Castle, entire length—(2)
Trout Brook—Hackettstown, entire length—(3)
Trout Brook—Hope, entire length—(2)
(g) (No change.)
(h) No person shall take, kill, or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout or hybrids thereof during the period extending from 8:00 A.M. April 8, 1989 until midnight May 31, 1989, or more than four of these species during the periods of January 1, 1989 to midnight March 19, 1989 and June 1, 1989 through midnight March 18, 1990 except as designated for specially regulated trout fishing areas.
(i) Lake Hopatcong in Morris County, Spruce Run Reservoir in Hunterdon County, Swartswood Lake and Wawayanda Lake in Sussex County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March 19, 1989 and extending to 8:00 A.M., April 8, 1989, must be returned to the water immediately and unharmed.

7:25-6.3 Fly-fishing waters
(a) From 5:00 A.M. on Monday, April 17, 1989 to and including November 30, 1989 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:
1.-2. (No change.)
(b) Beginning January 1, 1989 to midnight March 19, 1989 and from 8:00 A.M. on April 8, 1989 to midnight, March 18, 1990, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:
1. (No change.)
(c) (No change.)
(d) The following rules shall apply to the above designated fly-fishing waters:
1. (No change.)
2. Not more than six trout may be killed daily during the April 8 through May 31 portion of the season; at other times the limit is four.
i. (No change.)
3.-5. (No change.)

7:25-6.4 (No change.)

7:25-6.5 Pequest Trout Conservation Area
(a) (No change.)
(b) During the period of May 29 through October 1, the following rules shall apply to the above designated Pequest River Trout Conservation Area:
1.-5. (No change.)

7:25-6.6 Round Valley Reservoir
(a)-(c) (No change.)
(d) The season for lake trout shall extend from 12:01 A.M. January 1 to midnight September 30, 1989.
(e)-(f) (No change.)

7:25-6.7 Baitfish
(a) (No change.)
(b) In waters listed in this code to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March 20 to June 15 except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter or an umbrella net no greater than three and one-half feet square.
(c)-(d) (No change.)

7:25-6.8 Nets

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

(c) In the tidal waters of the tributaries of the Delaware River, in New Jersey, between Trenton Falls, and Birch Creek:

1.-8. (No change.)

(d) (No change.)

7:25-6.9 (No change.)

7:25-6.10 Warmwater fish

(a) Except for largemouth bass and as noted for waters stocked with trout, closed seasons are hereby eliminated in open (unfrozen) waters on all freshwater fish and on striped bass or any hybrid thereof (See Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate rules.)

(b)-(m) (No change.)

(n) The minimum length for striped bass shall be 33 inches and the minimum length for their hybrids shall be 16 inches. The daily bag and possession limit for either shall be two.

7:25-6.11 through 6.14 (No change.)

7:25-6.15 Greenwood Lake

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following rules for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York, are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both states.

1. (No change.)

2. On Greenwood Lake, it shall be legal for any ice fisherman to use up to five tip-ups and two hand-held devices for the taking of fish. All devices that are not hand-held must be plainly marked with the name and address of the angler. The ice fishing season is from ice-in to ice-out (when ice is present in a sufficient quantity to support fishing activities).

3.-5. (No change.)

7:25-6.16 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following rules for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Bag Limit
Trout	April 8-Sept. 30	No Minimum	5
Largemouth bass and smallmouth bass	No closed season	9 inch minimum	5 in total
Walleye	No closed season	15 inch minimum	5
Chain pickerel	No closed season	12 inch minimum	5
Muskellunge, and any hybrid thereof	No closed season	30 inch minimum	2
Northern pike	No closed season	24 inch minimum	2
Striped bass	No closed season	33 inch minimum	2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed—endangered species		
All other freshwater species	No closed season	No minimum	No limit

2.-7. (No change.)

7:25-6.17 and 6.18 (No change.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Special Medical Waste
Readoption of Concurrent
Proposed New Rules: N.J.A.C. 7:26-3A

Proposed: September 6, 1988 at 20 N.J.R. 2321(a).

Adopted: October 7, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: October 7, 1988 as R.1988 d.523, **without change.**

Authority: N.J.S.A. 13:1B-3, 13:1E-1 et seq., particularly 13:1E-6, 58:10A-1 et seq., particularly 58:10A-4.

DEP Docket Number: 036-88-08.

Effective Date: October 7, 1988.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

This new subchapter was adopted on an emergency basis pursuant to N.J.S.A. 52:14B-4(c) on August 10, 1988. Notice of the Adopted Emergency Rule and Concurrent New Proposed Rule was published on September 6, 1988 in the New Jersey Register at 20 N.J.R. 2321(a). The notice advised that a public hearing concerning the concurrent proposal was to be held on September 26, 1988 at 10:00 A.M. at the War Memorial Auditorium, Trenton, New Jersey, to afford the public an opportunity to be heard on these new rules. The notice further advised that written comments concerning the proposed new rules could be submitted on or before October 6, 1988. In addition, notice of these new rules, the comment period and the September 26, 1988 public hearing was published in the Newark Star Ledger, the Asbury Park Press, the Atlantic City Press, the Bergen Record and the Philadelphia Inquirer.

Fifty-six individuals attended the September 26, 1988 public hearing and 12 chose to testify. Sixteen written submissions concerning the new rules were received during the comment period. These written and oral comments are summarized below:

COMMENT: The small quantity generator exemption should be maintained.

RESPONSE: The reason the special medical waste rule contains a 100 kilogram or less small quantity gnerator exemption was to make it consistent with similar rules in the State of New York which became effective at the same time. (Note that New York has recently eliminated its small quantity generator exemption.) At this time, the Department is planning to maintain this exemption.

COMMENT: The small quantity generator exemption should be reduced or eliminated because any amount of special medical waste taken off-site presents health hazards for those involved in transporting, handling and disposing of it.

RESPONSE: The Departments of Environmental Protection and Health currently have very little data regarding the type and amount of special medical waste generated from small quantity generators. As a result, the Department has required summary reports from all generators. This will provide the Departments with the necessary information upon which to determine if the small quantity generator exemption should be altered or eliminated. A bill is currently in the New Jersey Legislature (S-2343/A-2853), which would eliminate the 100 kilogram or less exemp-

tion, requiring all generators to manifest. This bill passed the Senate unanimously several months ago and recently passed the Assembly. However, due to a number of modifications, the bill is currently back at the Senate. In addition to this bill, the State of New York recently removed its small quantity generator exemption.

COMMENT: Any future rules should include a provision requiring the identification of all medical devices and apparatus for tracking purposes. This could be accomplished by etching, imprinting, or stamping with indelible ink.

RESPONSE: The identification of devices and apparatus likely to become special medical waste would be costly to the affected industries and logistically very difficult to implement. In the case of very small devices, such as needles, it may be impossible to selectively identify each unit. The cost effectiveness of such a program which evaluates the impact on industry versus the enhanced tracking capability of the device, should be determined. The summary reporting information, required by N.J.A.C. 7:26-3A.6, will provide data on the type, amount and disposal practices being used at present so that such identification options can be evaluated for possible future rulemaking.

COMMENT: All autoclaved waste should be double bagged in two 3.0 mil. bags, and those bags be inserted in a translucent red bag.

RESPONSE: This special medical waste rule does not address the packaging requirements concerning special medical waste, but rather, the "cradle to grave" tracking of such waste. However, the Department is presently considering the development of comprehensive rules which would address, in addition to other areas, the handling, treatment, and disposal practices of special medical waste including bag specifications.

COMMENT: Packer trucks should not be used in the collection and transportation of special medical waste and only certain vehicles should be used for this purpose.

RESPONSE: These rules do not address truck specifications regarding the transportation of special medical waste, but rather the tracking of such waste. However, pursuant to N.J.A.C. 7:26-3A.10(h), special medical waste shall not be transported in the same vehicle with other solid waste unless it is separately contained in rigid containers or kept separate by rigid barriers from other solid waste or unless all of the solid waste is to be treated or disposed of as special medical waste. As stated elsewhere, the Department is presently considering the development of comprehensive regulations which would address, among other items, truck specifications for those vehicles which transport special medical waste.

COMMENT: Those persons who deal directly with the disposal of special medical waste need to be educated about the special medical waste rules so as to inform them of how the rules directly or indirectly affect them.

RESPONSE: In recognition of the need to inform the public of the requirements of these rules, the Department has already conducted two mailings of detailed information packages to licensed health care facilities, blood banks, clinical laboratories and anticipated small quantity generators (doctors, dentists, veterinarians, etc.). In addition, a third mailing is planned for distribution to solid waste transporters and facility operators. The information packages included both a summary of and full text of the special medical waste rules, a completed sample manifest and instructions on manifest completion, reporting forms and instructions, and general information, as well as specific guidance information from the Department of Health. In addition to these mailings, educational seminars have already been given for hospital administrators, nursing home administrators in northern and southern New Jersey, and to solid waste transporters in northern New Jersey. The Department also provides a special medical waste advisement service at (609)984-7840 which supplies immediate telephone assistance to those persons regulated by these rules.

COMMENT: Segregation of special medical waste from ID-10 municipal waste is necessary at the point of generation.

RESPONSE: The rules specify, in N.J.A.C. 7:26-3A.9, that all special medical waste from generators of more than 100 kilograms per month must be segregated prior to manifesting. Small quantity generator waste may be discarded as ID-10 waste into the municipal solid waste stream.

COMMENT: All generators who produce less than one pound per month should be exempted from completing the daily log.

RESPONSE: There is a lack of information regarding the amount of special medical waste produced both by large and small quantity generators. Such information is critical in the development of future rules regarding special medical waste. The daily log requirement will aid in the compilation of the one-time-only summary report required by all generators of special medical waste (see N.J.A.C. 7:26-3A.6). Further, the continuous daily logging requirement serves as a check for the Department to assure that those required to manifest do manifest. It is for that reason that all generators, regardless of size and quantity generated, are required to complete the daily log.

COMMENT: How can hospitals that wish to incinerate medical waste generated off-site by outside generators, obtain permits to do so. Are any existing facilities exempt from registration requirements?

RESPONSE: The permitting and registration requirements of the Solid Waste Management Act are found at N.J.A.C. 7:26-2, 2A, 2B, 16, and 16A. Exemptions to registration and permits are found at N.J.A.C. 7:26-1, 16, and 16A.

In addition to permitting and registration requirements, it is necessary for a waste incinerator to be included in the approved District Solid Waste Management Plan of the district within which the facility is located. This process requires a formal resolution, following a public hearing by the respective Board of Chosen Freeholders, and review and approval by the Commissioner of the State Department of Environmental Protection (DEP).

Should it be decided that the facility will accept special medical waste from sources outside of the county within which it is to be located, an interdistrict agreement between the Boards of Chosen Freeholders of the sending and receiving counties is required under the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

It may also be necessary to obtain a Certificate of Public Convenience and Necessity from the New Jersey Board of Public Utilities, which sets tariff rates for solid waste facilities which operate on a commercial basis in the State of New Jersey.

It should also be noted that additional permits may be required. Applicants should complete a CP#1 form and contact the Department's Permitting Division at (609)292-5196 for further information on this issue.

COMMENT: The New Jersey Department of Environmental Protection should form a small and informal task force which should include representatives from the medical community, hauling industry and disposal industry to offer input and guidance in the implementation of these rules.

RESPONSE: Presently, there is a committee being formed to provide input to the Department in developing the comprehensive medical waste rules for the State. Representatives of the above noted groups may be asked to participate on this task force. Anyone interested in participating should contact Bob Confer at (609)292-5196.

COMMENT: The DEP should increase the enforcement of the medical waste manifest rules and other comprehensive rules dealing with this problem.

RESPONSE: While the special medical waste rules do not contain specific enforcement provisions, violators of the rules may be subject to a civil administrative penalty of up to $50,000 per violation per day pursuant to N.J.S.A. 13:1E-9 and N.J.S.A. 58:10A-10.

COMMENT: The manifest for special medical waste should be modified to reflect that the transporter and disposal facility received the cargo, and "certifies" that the containers containing medical waste as described by the generator were received.

RESPONSE: The Department believes that the manifest tracking system is an effective way of ensuring the cradle-to-grave transportation of special medical waste. Any discrepancies in the transported load of special medical waste is documented in numbers 7 and 9 of the manifest form. The transporter, after picking up the waste from the generator, will note any discrepancies in the space provided in number 7. If the load which is picked up by the transporter is not identical to the description noted in number 4, it may be noted in number 7. After the waste is delivered to the disposal facility, any discrepancies are documented by the facility in space number 9. Also, both the transporter and the disposal facility certify the waste received in the spaces provided on that same manifest form.

COMMENT: The manifest does not address the non-medical, non-government handlers of the waste.

RESPONSE: The special medical waste manifest rules apply to all generators and transporters of special medical waste, including non-medical and non-government handlers.

COMMENT: An indicator should be placed on the bag or carton, verifying that it has been autoclaved.

RESPONSE: These rules were not intended to address the issue of placing indicators on medical waste bags, but rather the "cradle-to-grave" tracking of such waste. There are presently autoclavable bags on the market which have indicators affixed on them, which verify that the waste has been effectively autoclaved. Comprehensive rules, being considered

by the Department for future development, may address among other items, aspects of the packaging of special medical waste.

COMMENT: Are board of education and board of health-run clinics included in the "all other generators" category for the purpose of the daily log and summary report requirements.

RESPONSE: Any generator of special medical waste that is not a Department of Health-licensed health care facility, clinical laboratory, or blood bank is considered as belonging to the "all other generator" category for the purpose of completing the summary report. If the clinics produce more than 100 kilograms of special medical waste in a calendar month and dispose of any amount of certain special medical waste, described in N.J.A.C. 7:26-7(f), off-site, they were to commence logging on August 22, 1988. If the clinics fall under the small quantity generator exemption of N.J.A.C. 7:26-3A.8, they were to commence logging on October 1, 1988.

COMMENT: Are placentas considered special medical waste?

RESPONSE: Yes. Pursuant to N.J.A.C. 7:26-3A.4, Class C special medical waste consists of pathlogical waste which includes tissues, organs, body parts including products of conception which are discarded after surgery, obstetrical procedures, autopsy, and laboratory procedures.

COMMENT: The State should get a copy of the completed manifest from the disposal facility so that transporter activity and the destruction of special medical waste can be verified.

RESPONSE: At the present time, the Department believes that it is unnecessary to receive a copy of every special medical waste manifest; rather, the Department believes it is only necessary to be notified if the waste does not reach the intended disposal location or if there is a discrepancy between the waste delivered and the waste described on the manifest. In the future, if the Department determines it has become necessary to receive copies of all manifests, the rules will be revised. In the meantime, manifests must be obtained for three years and made available for DEP inspection (see N.J.A.C. 7:26-3A.7(e) and (g)).

COMMENT: A methodology should be developed to allow hospitals to accept special medical waste generated through the home health field which were rendered non-infectious in the home.

RESPONSE: Pursuant to N.J.A.C. 7:26-3A.7(b), special medical waste from small quantity generators and special medical waste not required to be manifested may be disposed of in the same manner as ID-10 (municipal solid waste), provided that the requirements of the Department of Health (DOH) are met. At the option of the generator, this waste may also be disposed of in the same manner that manifested special medical waste is disposed of. At this time, no consideration is being given to authorized hospitals by rule to accept special medical waste generated through home self-care.

COMMENT: There is a need for consistency in the medical waste rules which are promulgated among the individual states.

RESPONSE: While the U.S. Environmental Protection Agency (EPA) has previously issued national guidance in the form of the "EPA Guide for Infectious Waste Management", dated May 1986, in the area of special medical waste management, there currently are no national regulations which apply to the 50 states. However, legislation at the state and Federal level seek to accomplish regional management of special medical waste.

At the Federal level, S-2680, entitled the "New Jersey-New York-Connecticut Medical Waste Tracking Act of 1988", seeks to establish a pilot program for the tracking of medical waste in those states. Further, New Jersey Senate No. 2343 and Assembly No. 2853, if passed in its present form, would require the Department of Environmental Protection to seek the cooperation of the states of New York and Pennsylvania in developing regional special medical waste tracking, identification, packaging, storage, control, monitoring, handling, collection, and disposal procedures.

COMMENT: No special medical waste should be deemed safe following autoclaving only. All medical waste should be incinerated.

RESPONSE: An existing rule at N.J.A.C. 8:43B-3.6, covering the area of pathological and infectious waste, is embodied within Section 306 of the New Jersey Hospital Manual of Standards. Provisions of these standards apply to licensed health care facilities regulated by the New Jersey Department of Health. Currently, waste-specific treatment and disposal provisions are set forth in these rules. Among these provisions autoclaving is considered an acceptable form of sterilization and is recommended by the New Jersey Department of Health for cetain types of medical waste. At the present time, the Department of Environmental Protection supports the Department of Health's position regarding these waste specific treatment provisions and the use of autoclaving where appropriate.

COMMENT: It is currently impossible for a transporter of special medical waste to obtain liability insurance for this service. An additional tax on either the total waste or just on the medical waste should be considered. The State of New Jersey would then be the liability insurance carrier for the transporters, or the Insurance Commissioner could create a special classification through private companies to which this fund would pay the premiums.

RESPONSE: The Department acknowledges industry-wide difficulties in obtaining liability insurance. Those involved in the solid and hazardous waste industry have experienced liability insurance problems for sometime. While Department initiatives in this regard are worth further research and consideration, the Department has no intention at this time to offer liability insurance to transporters of special medical waste.

COMMENT: Laboratories of the State Department of Agriculture, Division of Animal Health, should be exempted from the medical waste rules as they apply to special medical waste, specifically pathology remains (Class C).

RESPONSE: The rules exempt home self-care generated solid waste from the definition of special medical waste. In addition, pursuant to N.J.A.C. 7:26-3A.8(a), special medical waste from small quantity generators is exempt from manifesting requirements. Other than these exemptions, no others are specified in the rules. Other exemptions would be considered by the Department for possible inclusion in future rule amendments, provided sufficient justification for such exemptions is demonstrated.

COMMENT: How should the daily log be completed with respect to blood and urine. Can they approximate these amounts?

RESPONSE: Pursuant to N.J.A.C. 7:26-3A.4, urine is exempt from the definition of Class B special medical waste. In terms of bulk blood, quantities generated in excess of 20 cubic centimeters of liquid volume per vessel may be estimated daily for the purposes of logging. The basis for the estimation should be embodied within the standard operating procedures of the institution and be reflected in the daily and summary logging documents maintained by the facility.

COMMENT: Additional treatment requirements for special medical waste should be included in these rules.

RESPONSE: The Department of Health's Hospital Manual of Standards already provides waste-type specific treatment provisions for special medical waste for facilities regulated by the Department of Health. Additional treatment requirements were considered to be too difficult to include and implement through emergency rulemaking proceedings. However, in its draft form, Senate No. 2343 and Assembly No. 2853, does require the Department of Health to address treatment provisions for all types of special medical waste. In addition, both the Departments of Health and Environmental Protection are considering the development of comprehensive special medical waste rules which would involve greater attention to the area of treatment and disposal.

COMMENT: The manifest forms should require titles of person(s) receiving the waste, as well as the required signatures to assure adequate accountability for shipping, transporting and receiving the waste.

RESPONSE: At present, manifest forms require both the printing and signature of both transporters and facility operators receiving special medical waste. The form does not require the listing of individual work titles of these individuals. At this time, the Department determined that such an addition to the form is unnecessary.

COMMENT: Is blood soaked gauze considered special medical waste if it has greater than 20 cubic centimeters (cc's) of blood.

RESPONSE: Pursuant to the definition of Class B special medical waste found at N.J.A.C. 7:26-3A.4, bulk blood, blood products, and body fluids other than urine, at least 20 cc's liquid volume per vessel is considered special medical waste. Since this definition is keyed to the liquid volume per vessel, blood soaked gauze is generally not considered Class B special medical waste. However, it would be considered Class F special medical waste if the blood originated from rare, unusual, or special cases involving highly communicable diseases as determined by the State Department of Health or Class E special medical waste if it came from the bedding of a research animal intentionally exposed to pathogens.

COMMENT: Body fluids should not be considered special medical waste if disposed of in a sanitary sewer. The monitoring and measurement of all body fluids disposed of in a sanitary sewer is an unrealistic and unmanageable task.

RESPONSE: Pursuant to the definition of special medical waste at N.J.A.C. 7:26-3A.4, the six noted classes of waste material are considered special medical waste when first generated. Therefore, despite the fact that use of sanitary sewers may be an acceptable disposal method for bulk blood and body fluids, the logging provisions of N.J.A.C. 7:26-3A.5

and the summary report requirement of N.J.A.C. 7:26-3A.6 are still required for all generators. However, as noted above, it is acceptable to estimate the daily amount of material discharged to sanitary sewers provided such estimation is embodied within the standard operating procedures of the institution and reflected in daily and summary log forms.

COMMENT: Will the Board of Public Utilities have a role in setting rates for special medical waste?

RESPONSE: The Board of Public Utilities has requested that any questions regarding the need for Certificates of Public Convenience and Necessity be addressed to it in writing or by telephone at (201)648-2152.

COMMENT: A proposal was submitted for an expanded 10-part manifest system. A "Certificate of Destruction" was also suggested which would be completed by the disposal facility and sent to the State, and then cross-referenced with the completed manifest for discrepancies.

RESPONSE: The commenter has submitted for consideration a greatly expanded form of the four-part manifest system created through the rules. At present, the manifest created under the emergency rules represents the first Statewide attempt in New Jersey to carefully regulate the flow of special medical waste. Once the Department receives data pursuant to the generator reporting requirements of N.J.A.C. 7:26-3A.6, it will be in a better position to evaluate the need for expanding the existing manifest requirements. At that time, both the comprehensive nature of the proposed 10-part manifest system and the concept of requiring a certificate of destruction may be considered for possible inclusion in subsequent comprehensive rules developed by the Department.

COMMENT: To reduce paperwork for small shipments, the manifesting exemption should depend on the amount of waste transported off-site and not the amount initially generated.

RESPONSE: Pursuant to the definition of special medical waste found at N.J.A.C. 7:26-3A.4, special medical waste is defined in terms when it is first generated. This is consistent with the approach taken in the small quantity generator provisions of hazardous waste rules at N.J.A.C. 7:26-8.3. This provision is linked to the logging requirements of N.J.A.C. 7:26-3A.5, where it is the Department's intent to obtain summary information regarding the amount and types of special medical waste being generated, as well as routine transportation, treatment and disposal practices by all generators, regardless of size or management practices.

COMMENT: The Department should revise the rules to allow the use of a hazardous waste manifest in place of the special medical waste manifest when shipping medical waste to a hazardous waste facility.

RESPONSE: In accordance with N.J.A.C. 7:26-3A.9(b)2, "A generator who transports, or offers for transportation, special medical waste for off-site disposal shall complete a special medical waste manifest prior to transporting the waste off-site." Since this definition deals with the special medical waste manifest only, a hazardous waste manifest is not an acceptable form for documenting the transportation and disposal of special medical waste. Moreover, only hazardous waste facilities with permits specifying that special medical waste may be treated or disposed of may accept special medical waste. Even in this situation, a special medical waste manifest is still required.

COMMENT: The Department should revise the rules to allow registered hazardous waste haulers to handle medical waste.

RESPONSE: N.J.A.C. 7:26-3A.9(b)3 states that "A generator shall not offer special medical waste to, or allow special medical waste to be transported by, a transporter who does not possess a New Jersey Department of Environmental Protection Solid Waste Transporter Registration number or who is not registered in accordance with N.J.A.C. 7:26-3 (unless they are exempted under this subchapter) and a Board of Public Utilities certification number." Since this provision applies only to those transporters who possess a solid waste transporter's license, registered hazardous waste transporters must also have a solid waste permit in order to transport special medical waste.

COMMENT: Medical waste should be allowed to go to a hazardous waste transfer station which is permitted to handle non-hazardous materials.

RESPONSE: The Department has determined, at N.J.A.C. 7:26-3A.10(f), that special medical waste required to be manifested shall not be transported to or unloaded at any transfer station in order to prevent any potential mishandling and spillage of manifested special medical waste at transfer stations.

COMMENT: Is a glass vessel containing less than 20 cc's of blood considered Class D waste because of the potential for punctures or cuts which can result from the broken container?

RESPONSE: Blood collection devices, which are commonly called vacuum collection tubes, containing less than 20 cc's of blood would be classified as special medical waste under Class D if they are potentially infectious and if they have a potential for causing punctures or cuts.

COMMENT: Special medical waste should be removed from doctors' offices at least once a month. This eliminates the possibility of doctors leaving waste unattended in offices for long periods of time.

RESPONSE: The rules were not intended to address such storage practices. This issue may be considered for inclusion in comprehensive medical waste management rules which are presently being considered jointly by the Departments of Environmental Protection and Health.

COMMENT: A concern was expressed regarding the disposal of live or attenuated vaccines because experts in the field agree that it is unnecessary to handle empty vials as thoroughly as other special medical waste.

RESPONSE: Live and attenuated vaccines are considered Class A special medical wastes and, as such, are subject to the manifest requirements if it has not been rendered non-infectious on-site by approved sterilization techniques (see N.J.A.C. 7:26-3A.4 and 3A.7(f)1). The Department of Environmental Protection is concerned with how these vials are determined to be empty. Even a vial considered empty, if not autoclaved or otherwise rendered non-infectious, has the possibility of infecting a person coming into contact with it.

COMMENT: Some type of safety management or health considerations are needed for the men and women who handle special medical waste.

RESPONSE: The Departments of Health and Environmental Protection recognize the need and value of an occupational health and safety educational program for those who handle special medical waste. However, it is not intended that these rules address this issue, although it may be addressed in future rulemaking activities.

COMMENT: Diabetics should be allowed to reuse needles after proper sterilization procedures.

RESPONSE: These rules do not prohibit the reuse of needles by diabetics. Diabetics are encouraged to follow the guidance of their physician on the reuse of syringes prior to disposal.

COMMENT: To eliminate confusion at transfer stations, a distinction should be made in the rules between vials and vacuum containers.

RESPONSE: It is not clear to the Department what the commenter meant by confusion at transfer stations. However, if a vial contains 20 cc's or more of bulk blood, blood products, and body fluids other than urine, it is Class B special medical waste. If the generator is not a small quantity generator, the waste must be manifested if disposed off-site and it cannot go to a transfer station (see N.J.A.C. 7:26-3A.10(f)).

Class D special medical waste consists of medical or laboratory articles that are potentially infectious and that might cause punctures or cuts; this includes vacuum collection containers. Once again, if the generator is not a small quantity generator, this waste must be manifested if disposed of off-site and cannot go to a transfer station.

COMMENT: Research and development and laboratories generating small quantities of used syringes and large scale facilities which effectively manage their own waste should be exempt from any daily logging and reporting procedures because of the time constraints imposed on their employees, the general shortage of staff at major facilities, and in some cases the small amounts of waste generated on a daily basis.

RESPONSE: The reporting requirement is necessary in order to gather data on special medical waste generation and disposal practices, which will provide a basis for the Department's development of rules in the future. This is a one-time-only report requirement. The daily log requirement assures that special medical waste is tabulated correctly for use in preparation of the summary report. The continuous daily log requirement will also serve as the Department's check to assure that those required to manifest do manifest.

COMMENT: There is a need for regional points of transfer for special medical waste and there also appears to be a problem with "awareness" of such material at transfer stations.

RESPONSE: Due to the relatively low volume of special medical waste produced by most generators, regional transfer and disposal options may represent best management practice in the future. The Department has required, through N.J.A.C. 7:26-3A.6, the submission of generator summary reports which will provide a comprehensive data base on the types, amounts, treatment, and disposal practices being used at this time. With respect to awareness of special medical waste at transfer stations, the Department is in the process of completing a fact sheet and information booklet which will be distributed to all solid waste transporters and facility operators in the State. It is intended that this mailing will help clarify which materials from the medical waste stream are considered "special" for the purposes of the rules and which are not. Note that in

accordance with N.J.A.C. 7:26-3A.10(f), transfer stations cannot accept special medical waste that is required to be manifested.

COMMENT: The existing definitions of special medical waste are unclear and more precise definitions are needed.

RESPONSE: The present classifications of medical waste identify six major categories of special medical waste. Each of these categories lists multiple types of wastes which are grouped according to the nature of their characteristics. As new types of waste are identified, they may be added to the special medical waste classifications in future rule amendments to more precisely define all identified sources of special medical waste.

COMMENT: Clarification is needed as to what is included in Class A waste. Are cultures derived from animal cells included in Class A waste? Does the waste need to be a known infectious agent, or merely a potentially infectious agent? Clarification is needed on the definitions of "associated biologicals" and "waste from the production of biologicals" in the definition of Class A special medical waste.

RESPONSE: All cultures and stocks of infectious agents have been designated as special medical waste because of the high concentrations of pathogenic organisms typically present. Thus, any cultures and stocks containing microorganisms capable of producing an infectious disease are considered Class A special medical waste. The rules do not differentiate between human and veterinary sources.

Additionally, "associated biologicals" and "biologicals" include, but are not limited to, discarded live and attenuated vaccines; culture dishes and devices used to transfer, inoculate, and mix cultures; lyophilized cultures; and waste by-products generated during such processes.

COMMENT: Generators of relatively small amounts of total waste produced at different locations should be allowed to combine classes of waste for reporting and disposal purposes.

RESPONSE: For the purposes of these special medical waste rules, in a company such as a home health care company, which sends nurses off-site to administer medication to patients and in the process generates a small amount of special medical waste, that waste may be returned to the central facility for collection and reporting prior to disposal. However, classes of waste cannot be combined for reporting purposes. The classes can be combined for disposal purposes as long as the manifest, if required, properly identifies the amounts of each class.

COMMENT: Do small generators of medical waste with multiple sites have to hire registered NJDEP solid waste transporters to transport this waste to their main clinic site for disposal?

RESPONSE: Per N.J.A.C. 7:26-3, a transporter of solid waste may transport solid waste in a vehicle which is not registered with the DEP if the vehicle's gross weight is less than 5000 pounds. If the vehicle weight is over 5000 pounds, a DEP registration would be required. (See, however, the proposed amendment to N.J.A.C. 7:26-3.3 in this issue of the New Jersey Register).

COMMENT: The special medical waste manifest should not be required where a generator is transferring waste, using its own employee, to another facility owned by the company because such a system is unnecessary for control of waste which is retained by the company.

RESPONSE: All generators of over 100 kilograms of special medical waste are required to manifest any special medical waste that is described in N.J.A.C. 7:26-3A.7(f) and that is transported off-site for disposal. This requirement allows the Department to track the special medical waste from cradle-to-grave.

COMMENT: Generators should only be required to log information on the day(s) that waste is picked up, whether that pick-up occurs daily or less frequently because the daily log requirement is burdensome.

RESPONSE: In accordance with N.J.A.C. 7:26-3A.5, all other generators of special medical waste shall maintain a continuous daily log, on forms available from the Department, of all special medical waste generated.

The daily log will enable the Department to verify the actual amounts of waste being generated daily by a generator, which is an important enforcement tool for the Department. Since the small quantity generator exemption in N.J.A.C. 7:26-3A.8 is based on amount generated in a month, rather than on amounts disposed per month, the daily log is geared to date-of-generation.

COMMENT: A Board of Public Utilities (BPU) number should not be applicable to those generators which transport special medical waste between facilities owned or operated by them.

RESPONSE: The special medical waste rules presently require all transporters of special medical waste, including those generators which transport special medical waste between facilities owned or operated by them, to have both a DEP registration and a BPU certification number. The BPU is presently issuing temporary certification to transporters who do not possess a BPU certification number so as to allow them to transport special medical waste. Special medical waste transportation is part of solid waste collection practices and as such may be regulated by the BPU.

COMMENT: Can jurisdiction over transporters of special medical waste be imposed upon the BPU by the DEP through the promulgation of rules?

RESPONSE: Special medical waste falls within the definition of solid waste and, if transported for treatment and disposal on a commercial basis in New Jersey, the BPU has jurisdiction over the transportation of special medical waste. The Department was not attempting to impose jurisdiction over special medical waste upon the BPU. The Department will discuss this matter further with the BPU and, if necessary, will modify the rules in the future. For the meantime, a BPU certificate, presently being issued on a temporary basis by the BPU to transporters of special medical waste, is required of transporters (see N.J.A.C. 7:26-3A.9(b)3).

COMMENT: The manifest should provide space for listing primary and secondary treatment locations.

RESPONSE: A special medical waste manifest is intended to track special medical waste from its point of generation to its point of disposal. If special medical waste is partially treated at one facility and then transported to a second facility, the first facility will be required to manifest the waste to the final treatment facility.

COMMENT: Each separate corporation occupying space in the same building or site in a rental complex should be responsible for manifesting its own waste, and the landlord's janitorial service should not be considered a transporter.

RESPONSE: Each distinct corporation is required by the special medical waste rules to manifest its waste if more than 100 kilograms per month is generated and to perform all of the logging and reporting requirements of N.J.A.C. 7:26-3A, regardless of its physical proximity to other corporations. Unless the janitorial service possesses a solid waste transporter registration from the DEP and a BPU certificate, the service is not permitted to transport special medical waste unless exempted pursuant to N.J.A.C. 7:26-3.

COMMENT: A clarification is needed of reporting requirements for sites that support different activities such as research and development, infirmary, and office work.

RESPONSE: Reporting requirements and other requirements of the special medical waste emergency rules apply to a specific site where special medical waste is generated. For example, in the hospital context, if special medical waste is generated by various activities in different areas of the same building such as emergency rooms, operating theatres, doctors' offices and laboratories, the requirements of the special medical waste rules may be satisfied by reporting the amount of total waste generated on the site after it is mustered and measured at a single collection point. The small quantity generator exemption limit cannot be applied to each separate point of special medical waste production, such as each office or operating room, within a site, but rather is applied to the entire site.

COMMENT: Thirty days should be allowed for the return of the manifest to those generators instead of 20 days as specified in the rules.

RESPONSE: Pursuant to N.J.A.C. 7:26-3A.9, the generator must notify the Department in writing, if, within 20 days of the date on the generator's certification, the generator has not received a signed copy of the manifest from the designated facility (or from the transporter if the waste is taken to an out-of-State facility). At the present time, the Department believes that 20 days is an adequate period of time for the return of the copy to the generator. However, if experience indicates that this time is insufficient, the Department will amend the rule.

COMMENT: Are municipal transfer stations obligated to accept small quantities of special medical waste or can they refuse it? What are the appropriate procedures to legally require transfer stations to accept special medical waste as ID 10 municipal waste? If they can refuse small quantities of special medical waste, what other disposal options are available to generators? Would these answers vary on a county basis?

RESPONSE: Under the provisions of N.J.A.C. 7:26-3A.7(b), special medical waste from small quantity generators may be disposed of as municipal solid waste, provided the requirements of the Department of Health are met. Further, N.J.A.C. 7:26-3A.7(c) states that disposal facilities may accept such material. The Department's position is that transfer stations are obligated to accept this material in accordance with the Interdistrict and Intradistrict Solid Waste Flow Rules found at N.J.A.C. 7:26-6, provided all requirements of the Department of Health are met. In addition, with respect to Class D special medical waste, the provisions of N.J.S.A. 2A:170-25.17 must be complied with to ensure destruction.

The use of the word "may" in N.J.A.C. 7:26-3A.7(b) and (c) is to clarify the authority to dispose of small quantities as ID 10 and the authority of transfer stations to accept this waste; it is not intended to allow the transfer stations the discretion to refuse to accept it.

Transfer stations which accept municipal solid waste from a specific service area pursuant to N.J.A.C. 7:26-6 operate in the form of a public utility. Therefore, refusal to accept municipal solid waste is a violation of the waste flow rules and may be a violation of the Certificate of Public Convenience and Necessity and Tariff issued to that facility by the Board of Public Utilities. In cases where this situation arises, it is advisable to contact the county solid waste coordinator, the DEP Enforcement Program, and BPU.

The basic position above is uniform for all counties, with the exception of instances where the Board of Public Utilities does not exercise economic rate setting authority. Such a circumstance can exist where a facility is owned or regulated by a municipal utilities authority. Handling procedures at transfer stations may vary in each county, but the waste flow rules and tariff authority does not.

COMMENT: The transporter should receive a copy of the manifest form from the disposal facility, to certify to the transporter that proper disposal has been performed, so that the transporter can notify the generator that disposal has occurred.

RESPONSE: The copy (number 1) which goes back to the generator from the disposal facility, certifies to the generator that the disposal facility has received the waste, thereby establishing accountability for the waste at the disposal facility. The commenter's suggestion, however, will be considered for possible inclusion in future rulemaking activities.

COMMENT: From a collection standpoint, discarded needles and other similar objects have the ability to both provide a portal of entry and to transmit disease. There should be no exemption of sharps.

RESPONSE: The special medical waste rules exempt small quantity generators from the manifest requirements; therefore, they would not have to manifest needles and sharps. However, the disposal of needles and syringes is regulated by N.J.S.A. 2A:170-25.17 and this statute applies to all persons. N.J.S.A. 2A:170-25.17 requires that a needle be destroyed or discarded in a rigid container or destroyed by incineration or by any method approved by the Department of Health. Needles and syringes do not have to be manifested if the requirements of N.J.S.A. 2A:170-25.17 are followed. The information on the summary reports from all generators will be utilized in formulating the Department's future position on this issue which may be reflected in future rulemaking.

COMMENT: Veterinary medical waste should not be included in the emergency special medical waste rules. There is a lack of supporting documentation of a public health or environmental risk arising from the disposal of waste from veterinary hospitals or clinics, especially in spay procedures where pathological wastes are removed from a dog or cat. This waste type is comparable with slaughter house waste or meat discarded from restaurants. The Department's definition of special medical waste should include only those wastes capable of causing infectious disease in humans. The definition of pathological waste should specify human pathological waste.

RESPONSE: These special medical waste rules do not differentiate between human and veterinary sources. Needles, syringes, cultures, and glass vacuum collection containers pose a physical hazard to solid waste management personnel. The types of waste defined as a special medical waste are identical in physical appearance regardless if they originate from human or veterinary sources. Therefore, from an enforcement perception and aesthetic prospective, it would be inappropriate to differentiate at this time.

The summary report required in these rules will provide valuable data to define the scope of impact on the veterinary industry.

COMMENT: Laboratory hardware such as test tubes, pipettes, and the like that are not used in biological or medical work should be specifically excluded from these emergency rules and from the final rules since they do not have an infectious potential.

RESPONSE: The definition of special medical waste at N.J.A.C. 7:26-3A.4 does not include laboratory hardware unless they are potentially infectious or might cause punctures; generally, waste generated in nonbiological research does not fall within the definition. These rules stipulate that culture dishes and devices used to transfer, inoculate, and mix cultures of infectious agents must be treated prior to disposal. This microbiological waste is considered infectious because culture media may act as a reservoir which will sustain microbial growth. Also, with significant quantities of pathogenic agents, there is a threat of infection from punctures caused by contaminated glassware used to transfer or mix pathogenic organisms.

COMMENT: Clarification is needed of the Department's position regarding blood soiled bandages that are generated by many company and university infirmaries.

RESPONSE: There is no reason to suspect that blood stained bandages are more likely to cause infection during proper handling and disposal than residential waste. This position has been supported in recent literature published by the Centers for Disease Control (CDC). Thus, this type of material is considered special medical waste only if it originates from a patient with a rare, unusual, or special highly communicable disease (Class F) or from the bedding of research animals that were intentionally exposed to pathogens (Class E).

COMMENT: Once needles and syringes have been decontaminated and destroyed on-site in accordance with N.J.S.A. 2A:170-25.17, is a manifest required? Must the generator continue to maintain a daily log to identify the volume of needles and syringes generated?

RESPONSE: N.J.A.C. 7:26-3A.7(f)4 exempts from the manifest requirement needles and syringes that have been decontaminated and destroyed in accordance with N.J.S.A. 2A:170-25.17. Although exempt from manifesting requirements, these generators must maintain a daily log (see N.J.A.C. 7:26-3A.5).

COMMENT: Why are Class B waste and glassware that has blood residue (Class D) required to be manifested after they are autoclaved on-site?

RESPONSE: Class B bulk bloods which have been autoclaved on-site may be disposed of in the sanitary sewer system or shipped off-site for disposal by a commercial biohazard disposal firm. Manifesting for off-site disposal would be required in this situation. It is not appropriate to dispose of bulk liquids in the general solid waste stream because persons in the solid waste industry have no way of determining whether this bulk blood has been autoclaved or not.

If Class D special medical waste consisting of medical or laboratory articles has been autoclaved, it does not have to be manifested (see N.J.A.C. 7:26-3A.7(f)).

COMMENT: With regard to the special medical waste manifest, at what point does the generator's liability end? Provided that special medical waste is properly identified and prepared for shipment, liability should cease once the waste is accepted by a duly registered NJDEP solid waste transporter.

RESPONSE: Liability of the generator may continue beyond transportation and disposal, depending on the factual context of each specific situation. However, at a minimum, liability continues to the point of disposal.

COMMENT: The generator should not have the responsibility of naming an ultimate disposal facility because several facilities are utilized and, therefore, special medical waste is transported to several locations so that the waste can be destroyed as efficiently and expeditiously as possible.

RESPONSE: N.J.A.C. 7:26-3A.9(b)4 requires the generator to provide the name, address, and business phone number of the disposal facility where the waste will be delivered. Requiring the generator to determine the ultimate place of disposal for special medical waste will ensure that there is full control and awareness over where the waste is going by the generator who produced the special medical waste. This provision of the rules should not in any way inhibit the expeditious disposal of medical waste. Further, special medical waste that must be manifested cannot be transported or unloaded at a transfer station (see N.J.A.C. 7:26-3A.10(f)). If the special medical waste is being transported from one disposal facility to another disposal facility, N.J.A.C. 7:26-3A.12(f) applies. This subsection states that, "the facility designated on the manifest shall not transport the special medical waste to another facility, unless prior written approval from the generator of the waste is obtained and all required manifest forms are completed."

COMMENT: Isolation waste was not included in the definition of special medical waste with the exception of CDC/NIH Biosafety Level 4 diseases such as lassa fever or smallpox. The commentor felt that handling any contaminated waste with potentially infectious agents could result in infection in a susceptible individual. Legionella pneumophila and franciscella tularensis were examples of organisms which can be transmitted through aerosol exposure in CDC/NIH Biosafety Level 2 and occur with much greater frequency in the United States.

RESPONSE: The principles of disease transmission serve as a logical basis for the classification of infectious waste. The process of disease transmission is best described as a chain comprised of six links representing essential steps in the transfer of an infectious agent. If a break occurs in any of the links along the chain, infection will be prevented. The six links of this chain of disease transmission are: an adequate dose of an infectious agent, a reservoir, a portal of exit from the reservoir,

a mode of transmission, an infectious route of entry, and finally, a susceptible host.

The State Department of Health, in conjunction with the Centers for Disease Control, used this basic principle of epidemiology to determine the types of communicable diseases that would warrant a concern over the solid waste generated from the medical community. Franciscella tularensis is essentially transmitted by contact with infected wild animals. Legionella pneumophila is a ubiquitous organism found naturally in soil and water. Handling of patient waste with either of these diseases does not pose a significant health risk.

COMMENT: The presence of pathogen in sufficient numbers to cause an infection cannot be ruled out with articles contaminated with blood. Also grossly contaminated wound dressings and disposal equipment present handling as well as disposal problems for transporters of solid waste.

RESPONSE: Waste generated from rare, unusual, or special cases involving highly communicable diseases as determined by the Department of Health (Class F), waste consisting of medical or laboratory articles that are potentially infectious and that might cause punctures and cuts (Class D), and bedding from research animals that were intentionally exposed to pathogens (Class E) are considered special medical waste.

However, unless the waste is generated from the classes mentioned above, the Department does not believe that they pose a hazard any greater than that posed by residential waste. Even if one of these items, when grossly contaminated with blood, could maintain the moisture and nutrient conditions to support microbial growth, it is highly unlikely that it could also serve as a potential vehicle for disease transmission.

When infectious agents are removed from their natural source or reservoir and exposed to the physical, chemical, and biological stresses of the inanimate environment, there is usually a diminution in the number of organisms. Generally, microbial growth requires very specific temperature, moisture, light, nutrient, and pH conditions. Also, the mode of transmission of an infectious agent is crucial to its survival and ability to establish in a host and induce disease. It is for these reasons that blood-stained medical devices such as tubing, gauge, soiled linen, etc. have a limited capacity to induce infection.

Nevertheless, it is recognized that the presence of certain blood contaminated wastes emanating from health care facilities has precipitated concern on the part of waste handlers. This issue should be addressed through educational efforts of solid waste haulers and landfill operators. Also, comprehensive rules, being considered by the Department, may address, among other items, the handling and disposal of special medical waste.

Full text of the adoption follows:

SUBCHAPTER 3A. SPECIAL MEDICAL WASTE

7:26-3A.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the logging, reporting and manifesting requirements for special medical waste.

(b) The requirements of this subchapter are in addition to the requirements of N.J.A.C. 7:26-1 and to the requirements of the Department of Health.

7:26-3A.2 Construction

This subchapter shall be liberally construed to permit the Department to implement its statutory duties.

7:26-3A.3 Severability

If any section, subsection, provision, clause or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:26-3A.4 Definitions

In addition to the definitions set forth in N.J.A.C. 7:26-1.4, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Blood banks" means blood banks as defined in N.J.A.C. 8:8-1.2.

"Clinical laboratories" means clinical laboratories as described in N.J.A.C. 8:44-2.2.

"Licensed health care facilities" means health care facilities as defined in N.J.S.A. 26:2H-2 which are licensed by the State Department of Health.

"Special medical waste" means any of the following when it is first generated and does not include any solid waste generated by home self-care:

1. Cultures and stocks of infectious agents and associated biologicals (Class A) including:

i. Specimen cultures;

ii. Culture dishes and devices used to transfer, inoculate and mix cultures;

iii. Wastes from the production of biologicals; and

iv. Discarded live and attenuated vaccines;

2. Bulk blood, blood products, and body fluids other than urine, at least 20 cubic centimeters of liquid volume per vessel (Class B);

3. Pathological wastes consisting of tissues, organs, body parts including products of conception which are discarded after surgery, obstetrical procedures, autopsy, and laboratory procedures (Class C);

4. Needles and syringes or any other medical or laboratory articles that are potentially infectious and that might cause punctures or cuts including intravenous tubing with needles attached, vacuum collection containers/tubes containing blood and blood products, etc. (Class D);

5. The carcasses, body parts, and bedding of all research animals that were intentionally exposed to pathogens (Class E); and

6. Solid waste generated from rare, unusual, or special cases involving highly communicable diseases as determined by the State Department of Health (Class F).

7:26-3A.5 Logging requirements for generators of special medical waste

(a) Commencing August 22, 1988, all generators of special medical waste who are required to manifest pursuant to this subchapter shall maintain a continuous daily log, on forms available from the Department, of all special medical waste generated. The continuous daily log shall include the information listed in (c) below.

(b) Commencing October 1, 1988, the following generators of special medical waste, who are not required by this subchapter to manifest, shall maintain a continuous daily log, on forms available from the Department, of all special medical waste generated. The continuous daily log shall include the information listed in (c) below.

1. Licensed health care facilities;

2. Clinical laboratories; and

3. Blood banks.

(c) Commencing November 15, 1988, all other generators of special medical waste (not listed in (a) and (b) above), shall maintain a continuous daily log, on forms available from the Department, of all special medical waste generated. The continuous daily log shall include, but is not limited to, the following information:

1. The date of the entry;

2. A description of the special medical waste generated, by Class;

3. The total quantity of the special medical waste generated each day;

4. The name and NJDEP Solid Waste Transporter Registration number of each transporter;

5. The name and address of each disposal facility and the Class of special medical waste disposed;

6. The date the special medical waste was given to the transporter; and

7. The method of disposal for each Class (for example, on-site incineration, off-site disposal).

(d) The logging forms are available from the address listed in N.J.A.C. 7:26-3A.6(c).

7:26-3A.6 Reporting requirements for generators of special medical waste

(a) By December 1, 1988, the following generators, including small quantity generators, shall submit a report to the Department, on forms available from the Department, covering all special medical waste generated from October 1, 1988 through November 1, 1988. The report shall include the information listed in (b) below:

1. Licensed health care facilities;

2. Clinical laboratories; and

3. Blood banks.

(b) By January 16, 1989, all other generators of special medical waste (not listed in (a) above), including small quantity generators,

shall submit a report to the Department, on forms available from the Department, covering all special medical waste generated from November 15, 1988 through December 15, 1988. The report shall include, but is not limited to, the following information:

1. A description of the special medical waste, by Class;
2. The total quantity of the special medical waste generated;
3. Whether the special medical waste was decontaminated, sterilized or otherwise rendered non-infectious on-site and, if yes, the method employed for each Class;
4. The quantity of special medical waste transported off-site to each disposal facility;
5. The name and address of all transporters, with the NJDEP Solid Waste Transporter Registration number for each;
6. The name and address of all off-site disposal facilities; and
7. The method of ultimate disposal, by Class.

(c) The report forms are available from and shall be submitted to:

Division of Solid Waste Management
Bureau of Registration and Permits Administration
New Jersey Department of Environmental Protection
401 East State Street, CN 414
Trenton, New Jersey 08625

7:26-3A.7 Special medical waste requirements, generally

(a) In addition to the requirements of this subchapter, all relevant requirements of the Department of Health shall be complied with.

(b) Special medical waste from small quantity generators and special medical waste not required to be manifested may be disposed of in the same manner as ID 10 municipal solid waste, provided that the requirements of the Department of Health are met.

(c) Solid waste facilities approved by the Department to accept ID 10 municipal solid waste may accept special medical waste from small quantity generators and special medical waste not required by this subchapter to be manifested.

(d) For the purpose of this subchapter, special medical waste manifest forms, available from the Department upon request, shall be used for the tracking of special medical waste.

(e) Copies of the special medical waste manifest forms shall be retained by the generator, transporter and disposal facility for a period of three years, unless the Department specifically requires an additional retention period for a particular generator, transporter, or disposal facility.

(f) The manifesting requirements of this subchapter apply only to the following portions of special medical waste:

1. Class A special medical waste which has not been rendered noninfectious on site by approved sterilization techniques;
2. Class B special medical waste;
3. Class C special medical waste;
4. Class D special medical waste as follows:

i. Needles and syringes that have not been decontaminated and destroyed on site in accordance with N.J.S.A. 2A:170-25.17; or

ii. Any other medical or laboratory articles that are potentially infectious and that might cause punctures or cuts including intravenous tubing with needles attached, vacuum collection containers/tubes containing blood and blood parts, etc.;

5. Class E special medical waste; and
6. Class F special medical waste which has not been rendered noninfectious on site by State Department of Health-approved sterilization/decontamination techniques.

(g) All special medical waste records, including the daily log required by N.J.A.C. 7:26-3A.5 and the special medical waste manifests, shall be made available for inspection by the Department.

7:26-3A.8 Small quantities of special medical waste

(a) Special medical waste from small quantity generators are exempt from the manifesting requirements of this subchapter.

(b) A generator is a small quantity generator in a calendar month if he or she generates 100 kilograms (220 pounds) or less of special medical waste in that month.

1. For example, in October, X generates 100 kilograms of special medical waste. In November, X generates 150 kilograms of special medical waste and transports 50 kilograms of the special medical waste described in N.J.A.C 7:26-3A.7(f) off-site. Result: X is a small quantity generator for the month of October and is not required to manifest in that month. X is required to manifest for the month of November because she is not a small quantity generator for that month.

(c) If a small quantity generator generates special medical waste in a calendar month in quantities greater than set forth in (a) above, all quantities of that special medical waste are subject to regulation under N.J.A.C. 7:26-3A.9.

7:26-3A.9 Manifesting requirements for generators of special medical waste

(a) The requirements of this section apply only to special medical waste described in N.J.A.C. 7:26-3A.7(f).

(b) All special medical waste generators, except small quantity generators, shall comply with the following requirements commencing August 22, 1988.

1. Special medical waste shall be segregated by all generators from other solid waste. If a generator combines special medical waste with any other solid waste, the entire combination shall be considered special medical waste.

2. A generator who transports, or offers for transportation, special medical waste for off-site disposal shall complete a manifest prior to transporting the waste off-site.

3. A generator shall not offer special medical waste to, or allow special medical waste to be transported by, a transporter who does not possess a NJDEP Solid Waste Transporter Registration number or who is not registered in accordance with N.J.A.C. 7:26-3 (unless they are exempted under that subchapter) and a Board of Public Utilities certification number.

4. A generator shall provide the following information on manifests available from the Department:

i. The generator's name, address, business phone number and contact person at the point of generation;

ii. The transporter's name, address, business phone number, NJDEP Solid Waste Transporter Registration number and Board of Public Utilities certification number;

iii. The name, address and business phone number of the disposal facility;

iv. A description of the special medical waste;

v. Any special handling instructions; and

vi. The generator's signature.

5. The generator shall remove and retain copy 4 of the manifest and shall give the remaining copies of the manifest to the transporter.

6. If within 15 days of the date on the generator's certification, the generator has not received a copy of the manifest signed by the owner or operator of the in-State disposal facility (or from the transporter if the waste is taken to an out-of-State disposal facility), the generator shall immediately contact the transporter and the disposal facility to determine the status of the special medical waste.

7. If within 20 days of the date on the generator's certification, the generator has not received a signed copy of the manifest form from the designated disposal facility (or from the transporter if the waste is taken to an out-of-State disposal facility) or if there are any discrepancies, the generator shall notify the Department in writing and the notification shall include the following:

i. A copy of the manifest; and

ii. An explanation of the efforts taken to ascertain the status of the special medical waste and the results of those efforts.

8. The notification shall be sent to the following address:

Bureau of Registration and Permits Administration
Division of Solid Waste Management
Department of Environmental Protection
401 E. State Street, CN 414
Trenton, New Jersey 08625

(c) Manifests are available from the Department at the address specified in (b)8 above.

7:26-3A.10 Manifesting requirements for transporters of special medical waste

(a) The requirements of this section apply only to special medical waste described in N.J.A.C. 7:26-3A.7(f).

(b) Unless the generator is a small quantity generator, a transporter shall not accept special medical waste from a generator located in New Jersey or special medical waste from an out-of-State gener-

ator for disposal in New Jersey unless it is accompanied by a special medical waste manifest, properly completed with all information required by the Department and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-3A.9.

(c) Before transporting the special medical waste, and in accordance with the instructions on the manifest, the transporter shall supply the generator with the following:

1. The transporter's NJDEP Solid Waste Transporter Registration number and Board of Public Utilities certification number; and

2. The name, address, and business phone number of the disposal facility that will receive the special medical waste.

(d) The transporter shall note any discrepancies, sign and date the manifest acknowledging acceptance of the special medical waste from the generator and return a signed copy (copy 4) to the generator before leaving the generator's property.

(e) The transporter shall retain copies 1, 2 and 3 of the manifest.

(f) The transporter shall deliver the special medical waste to the disposal facility designated on the manifest. No special medical waste required to be manifested shall be transported to or otherwise unloaded at any transfer station.

(g) After the disposal facility owner or operator completes the manifest, the transporter shall retain copy 3 for his or her records and shall give the disposal facility copies 1 and 2. For out-of-State disposal, the transporter shall retain copies 1, 2 and 3, and within seven days after delivery, shall send copy 1 to the generator.

(h) Special medical waste shall not be transported in the same vehicle with other solid waste unless it is separately contained in rigid containers or kept separate by rigid barriers from other solid waste or unless all of the solid waste is to be treated or disposed of as special medical waste.

7:26-3A.11 Transporter registration

No person shall engage or continue to engage in the transportation of special medical waste in this State without first complying with N.J.A.C. 7:26-3.

7:26-3A.12 Manifesting requirements for owner/operator of a disposal facility

(a) The requirements of this section apply only to special medical waste described in N.J.A.C. 7:26-3A.7(f).

(b) The disposal facility owner or operator shall only accept special medical waste shipments which are accompanied by a properly completed special medical waste manifest, unless no manifest is required pursuant to N.J.A.C. 7:26-3A.8.

(c) If a disposal facility owner or operator receives special medical waste accompanied by a manifest, the disposal facility owner or operator shall:

1. Note any discrepancies in the manifest;

2. Sign and date the manifest to certify that the special medical waste described in the manifest was received; and

3. Give the transporter a copy (copy 3) of the signed manifest.

(d) The disposal facility shall retain copy 2 of the manifest for its records.

(e) Within seven days after the delivery, the owner or operator of a disposal facility shall send copy 1 of the manifest to the generator.

(f) The facility designated on the manifest shall not transport the special medical waste to another facility, unless prior written approval from the generator of the waste is obtained and all required manifest forms are completed.

HEALTH

DRUG UTILIZATION REVIEW COUNCIL

(a)

Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: January 19, 1988 at 20 N.J.R. 146(a).

Adopted: September 29, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: September 30, 1988 as R.1988 d.509, **with portions of the proposal not adopted but still pending.**

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

Effective Date: November 7, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

The following products and their manufacturers were **adopted**:

Triamterene/HCTZ tabs 75/50	**Cord**
Trifluoperazine tabs 1, 2, 5, 10 mg	**Cord**

The following products were **not adopted but are still pending**:

Cefadroxil caps 500 mg	Biocraft
Cefadroxil for susp 125/5, 250/5, 500/5	Biocraft
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Diphenhydramine liquid 12.5 mg/5 ml	LuChem
Fluphenazine tabs 1, 2.5, 5, 10 mg	Chelsea
Flurazepam caps 15, 30 mg	Chelsea
Guaifenesin/PPA tabs 400/75	LuChem
Hydromorphone HCl tabs 2, 4 mg	Roxane
Isosorbide dinitrate tabs 20, 30 mg	Chelsea
Levorphanol tartrate tabs 2 mg	Roxane
Lorazepam tabs 0.5, 1, 2 mg	Chelsea
Meperidine HCl syrup 50 mg/5 ml	Roxane
Oxazepam caps 10, 15, 30 mg	Barr
Oxtriphylline elixir 100 mg/5 ml	Barre
Propranolol tabs 10 mg	Lemmon
Valproic acid caps 250 mg	Chelsea

OAL NOTE: See prior adoptions at 20 N.J.R. 900(a), 1461(a) and 1711(b).

(b)

Interchangeable Drug Products
Adopted Amendment: N.J.A.C. 8:71

Proposed: April 18, 1988 at 20 N.J.R. 871(a).

Adopted: September 29, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: September 30, 1988 as R.1988 d.510, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: November 7, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: Concerning norethindrone/ethinyl estradiol: The New Jersey Pharmaceutical Association reiterated its earlier objections to generic substitution for oral contraceptives in general, namely: bioequivalence differences for low dose products make them critical; unique packaging could make pharmacists continually instruct patients when packages change, which would be time-intensive; and fear of potential legal liability if unwanted pregnancies occur.

RESPONSE: No clinical evidence was presented that the low dose nature of some of the oral contraceptives render them "more critical", and thus less substitutable. The Council does not agree that the low dose products are different in this regard from the higher dose products.

The Council acknowledges that pharmacists may have to spend extra time in counseling patients when oral contraceptives are substituted. Such time spent is considered appropriate, and not wasted, and should be welcomed by pharmacists who value their patients' confidence. In addition, the use of generics generally increases a pharmacist's profitability, thus some time expenditure should be expected.

Pharmacists' fear of increased legal liability is understandable, but unwarranted. Even should unwanted pregnancies occur, if the pharmacist has substituted as the statute mandates, his/her increased liability should be minimal.

COMMENT: Ortho Corporation specified its objections to the proposed oral contraceptives and to the general subject of substitution for oral contraceptives, and asked that the proposed oral contraceptives, as well as all others, not be added to the Formulary.

Ortho's points were mostly similar or identical to those they have raised several times before. New issues include:

1. The specific products proposed do not have bioequivalency data on individual subjects.
2. Variability data should be obtained for the proposed products.
3. Searle's biodata show large differences, especially in Tmax for norethindrone and for ethinyl estradiol.

RESPONSE: The Council responds to Ortho's comments as follows:

1. Individual subjects' bioequivalency data have been provided to the Council and were found acceptable.
2. Variability data for the proposed products are not necessary; the Council decides based on average data and their statistical analyses, including confidence intervals, not on "variability" data, which are prone to misinterpretation.
3. The Searle biodata objections are not germane to this specific proposal.
4. The Council agrees that the Watson products, in the strengths stated, are not bioequivalent to the Ortho brand, and therefore has rejected the specific Watson products listed below.
5. The Council has previously added to the List of Interchangeable Drug Products another oral contraceptive (Genora by Rugby). At the time of that action, the Council reviewed, and rejected, all of the other Ortho objections that concern packaging and also Ortho's contention that oral contraceptives, in general, are not suitable for generic substitution. The Council therefore considers those questions as having been previously settled, but to reiterate: the Council has decided that oral contraceptives are suitable for generic substitution, despite differences in packaging, because the differences can be explained to patients so that any potential confusion is minimized. Further, any potential errors that might conceivably occur due to substitution and occasion an unwanted pregancy are offset by the pregnancies that will not occur when some women who could not afford the expensive branded products are able to afford the less expensive generic.

COMMENT: Warner-Chilcott supported the bioequivalency and thus interchangeability of Watson's proposed products based on their review of the clinical literature, which was claimed to show little evidence that such products could not be interchanged, and also based on Warner-Chilcott's extensive experience in distributing the Watson product.

Specifically, Warner-Chilcott stated that the small differences in bioequivalency shown between the Watson and Ortho products were not sufficient to render the Watson products not substitutable.

RESPONSE: The Watson low-strength product, norethindrone-ethinyl estradiol (0.5/.035), was not compared in a direct manner to the product for which it is proposed as a substitute. While acknowledging that the comparison was a general "dose proportionality" study, the Council rejects the low strength product based on lack of a direct comparison.

On the Watson higher strength product, norethindrone-ethinyl estradiol (1.0/0.35), the difference in Cmax for the ethinyl estradiol component was both statistically significant and outside the acceptable confidence interval, being 0.78 when the acceptable level is above 0.8; thus, the product was rejected by the Council. Thus, even though Warner-Chilcott found no literature support for therapeutic differences and has extensive experience, the rejected Watson products have specific deficiencies which makes them unacceptable as generic substitutes.

The following products and their manufacturers were **adopted**:

Doxepin caps 75, 100 mg	**Barr**
Norethindrone/ethinyl est. 1/35 tabs	**Schering**
Trifluoperazine 1, 2, 5, 10 mg	**Bolar**

The following products were **not adopted**:

Norethindrone/ethinyl est. 0.5/35, 1/35	Watson

The following products were **not adopted but are still pending**:

Amiloride/HCTZ tabs 5/50	Barr
Carisoprodol tabs 350 mg	Mutual
Cortisone acetate tabs 25 mg	T-P
Diphenhydramine elixir 12.5 mg/5 ml	Cenci
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Barr
Hydrochlorothiazide tabs 25, 50, 100 mg	T-P
Metaproterenol tabs 10, 20 mg	PharmBasics
Nystatin tabs 500,000 units	Mutual
Perphenazine tabs 2, 4, 8, 16 mg	Cord
Prednisolone acetate ophth soln 1%	Americal
Prednisolone tabs 5 mg	T-P
Prednisone tabs 2.5, 5, 20 mg	T-P
Stuartnatal 1+1(R) substitute	Copley
Stuartnatal 1+1(R) substitute	Amide
Tolazamide tabs 100 mg	PharmBasics
Trazodone tabs 50, 100 mg	Purepac
Verapamil tabs 80, 120 mg	Bolar

OAL NOTE: See prior adoption at 20 N.J.R. 1710(b).

(a)

Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: August 1, 1988 at 20 N.J.R. 1766(a).
Adopted: September 29, 1988, by Sanford Luger, Chairman, Drug Utilization Review Council.
Filed: September 30, 1988 as R.1988 d.511, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: November 7, 1988.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: Concerning choline magnesium salicylate, the Purdue Frederick Company objected to Copley's proposed product based on unresolved patent questions.

RESPONSE: Patent issues are not the province of the Council. The Council decided that this product, being a salicylate, does not require biodata and therefore should be added to the Formulary.

COMMENT: Concerning oral contraceptives, the general comments from Ortho and the Council's response has been given in an accompanying adoption (see this issue of the New Jersey Register, R.1988 d.510). Specific to these amendments, Ortho stated that Searle's biodata show large differences, especially in Tmax for norethindrone and for ethinyl estradiol.

RESPONSE: Three of the Tmax differences between the Searle and Ortho products were not statistically significant, thus acceptable. The 25 percent statistically significant difference in the mestranol Tmax for the 1/50 strength was considered of no clinical importance. The Council re-emphasizes their general approach that Tmax differences are of little clinical importance for all products that are chronically administered.

COMMENT: Concerning Sidmak's trazodone tablets, 150 mg,

1. Bristol-Myers' (Mead-Johnson's) comments:

This company followed up on their verbal comments with written objections specifying their opposition to the 150 mg Sidmak trazodone tablets. Their points were as follows:

1. The Sidmak product is not pharmaceutically equivalent to Desyrel "Dividose".
2. Dose adjustment and flexibility in dosage are important to patients.
3. Desyrel "Dividose" is often used in fractional doses.
4. The Sidmak product doesn't break well, thus it will be wasteful.
5. Patients using the Dividose are often elderly.
6. The Dividose is unique and patented.
7. Sidmak's product is not "functionally equivalent" to Desyrel.
8. Sidmak's product is impractical as a substitute.

2. Sidmak's rebuttal to Mead-Johnson's comments:

Sidmak made these points:

1. Their 150 mg trazodone meets all legal requirements for inclusion in the List of Interchangeable Drug Products.
2. Mead-Johnson is trying for an exclusivity not granted by FDA and contrary to New Jersey's generic law.
3. The Mead-Johnson objections are largely unrelated to the legal criteria which make Sidmak's product acceptable in New Jersey.
4. Sidmak's trazodone meets the Council's requirements for:
a. "physical criteria" (for example, weight, integrity, tablet form)
b. manufacturer criteria (meets GMPs)
c. bioequivalence (rated "AB")
5. There is no DURC requirement that pieces of a tablet be bioequivalent.
6. Mead-Johnson has no clinical studies on fractional tablets.
7. The DURC has never required equivalency of broken tablets (several examples cited).
8. The DURC cannot legally, and suddenly, change its interpretation, which affects many products.
9. Mead-Johnson cannot claim exclusivity except through FDA mechanisms, which they have not done.
10. Sidmak's product is "pharmaceutically equivalent". (Its strength is 150 mg, and it is a tablet.)
11. Claims that Dividose breaks cleanly and Sidmak's product does not are irrelevant to the NJ statutory standard.
12. Bristol's surveys are biased.
13. Bristol's laboratory "breakage" tests are flawed and biased.
14. Data Sidmak provides claim that only a small percentage of prescriptions (approximately 10 percent) indicate the use of fractional doses for the 150 mg tablet.
15. All data on fractional doses should be irrelevant to the Council, as it has been for many other generic products which are not scored in the same fashion as the branded references.

Sidmak asked the Council to accept their product based on the Council's criteria, which have been met, and to reject Mead-Johnson's irrelevant "fractional dose" arguments.

RESPONSE: The Council decided that Sidmak's biodata were acceptable and therefore meet all the Drug Utilization Review Council's criteria for admission to the Formulary. However, based on comments received and on a practical examination of the Desyrel and Sidmak products, the Council decided that adding Sidmak's product to the Formulary will cause practical problems that delimit interchangeability whenever a prescriber orders fractional doses.

The Council decided that Sidmak's product would be added to the Formulary, with a cautionary note that it is to be used as a substitute only when the prescribed dose is whole tablets. This will allow patients who use whole tablets to benefit from a generic, if they wish, but prevent the use of an impractical generic when partial doses are ordered (see note 2 under Miscellaneous below).

COMMENT: Concerning tetracycline capsules by Superpharm, Superpharm wrote in support of their tetracyclines, citing dissolution data.

RESPONSE: Because tetracyclines do not possess a critical therapeutic ratio, the Council decided to add this product to the Formulary, based on the dissolution data, buttressed by the FDA's "AB" rating.

The following products and their manufacturers were **adopted**:

Baclofen tabs 10, 20 mg	**Vitarine**
Cephalexin caps 250, 500 mg	**Stevens**
Cephradine for susp 125/5, 250/5 ml	**Barr**
Choline/mag. salicylate tabs 500, 750 mg	**Copley**
Clorazepate tabs 3.75, 7.5, 15 mg	**Purepac**
Doxycycline hyclate caps 50 mg	**Vitarine**
Fenoprofen caps 200, 300 mg; tabs 600 mg	**Amer. Ther.**
Fenoprofen calcium tabs 600 mg	**Chelsea**
Fenoprofen caps 200, 300 mg	**Halsey**
Fenoprofen tabs 600 mg	**Halsey**
Fenoprofen calcium caps 200, 300 mg	**Quantum**
Fenoprofen calcium tabs 600 mg	**Quantum**
Fenoprofen caps 200, 300 mg	**Watson**
Fenoprofen tabs 600 mg	**Watson**
Haloperidol oral solution 2 mg/ml	**Roxane**
Hydrocodone/APAP tabs 5 mg/500 mg	**Central**
Hydrocortisone cream 1%, 2.5%	**Naska**
Hydrocortisone lotion 1%	**Naska**
Hydrocortisone oint 1%	**Naska**
Hydroxyzine HCl tabs 10, 25, 50 mg	**Halsey**
Loxapine succinate caps 5, 10, 25, 50 mg	**Watson**
Maprotiline tabs 25, 50, 75 mg	**Watson**
Meclizine HCl tabs 50 mg	**Par**
Meclofenamate sodium caps 50, 100 mg	**PharmBasics**
Mefenamic acid caps 250 mg	**Vitarine**
Metaproterenol tabs 10, 20 mg	**Amer. Ther.**
Metaproterenol tabs 10, 20 mg	**Par**
Methyldopa tabs 125, 250, 500 mg	**Halsey**
Methyldopa tabs 125, 250, 500 mg	**Sidmak**
Metoclopramide tabs 5 mg	**Quantum**
Norethindrone/ethinyl estr 1 mg/35 mcg tab	**Searle**
Norethindrone/mestranol 1 mg/50 mcg tab	**Searle**
Nystatin cream 100,000 U/g	**Naska**
Pramoxine 1%/HC 1% rectal foam	**Copley**
Propranolol/HCTZ tabs 40/25, 80/25	**Sidmak**
Quinine sulfate tabs 260 mg	**Chelsea**
SMZ/TMP susp. 400/80/5 ml	**Naska**
Tetracycline caps 250, 500 mg	**Superpharm**
Theophylline elixir 80 mg/15 ml	**Naska**
Trazodone tabs 150 mg	**Sidmak**
Triple sulfa vaginal cream	**G & W**

The following products were **not adopted**:

Doxycycline tabs 100 mg	Superpharm
Ergotamine/caffeine suppositories	G & W
Ibuprofen tabs 400, 600 mg	Danbury
Promethazine suppositories 50 mg	G & W

The following products were **not adopted but are still pending**:

APAP/codeine elix 120/12/5 ml	Naska
Amiloride/HCTZ tabs 5/50	Par
Amitriptyline/CDP tabs 5/12.5, 10/25	Par
Chlorthalidone tabs 25, 50 mg	Superpharm
Cyclobenzaprine tabs 10 mg	Par
Diazepam tabs 10 mg	Pharbita
Dipyridamole tabs 25, 50, 75 mg	Lederle
Disopyramide ER caps 100, 150 mg	KV
Divalproex EC tabs 125, 250, 500 mg	Par
Doxepin caps 10, 25, 50 mg	Danbury
Doxepin caps, 75, 100, 150 mg	Purepac
Doxepin caps 75, 150 mg	SKF
Erythromycin E.C. pellet caps 250 mg	Abbott
Erythromycin E.C. tabs 250, 333 mg	Abbott
Erythromycin solution 2%	Naska
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Chelsea
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Duramed
Fenoprofen calcium caps 200, 300 mg	Par
Fenoprofen calcium tabs 600 mg	Par
Fluphenazine tabs 1, 2.5, 5, 10 mg	Par
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Lidocaine viscous solution 2%	Naska
Meclofenamate caps 50, 100 mg	Par
Megestrol acetate tabs 20, 40 mg	Par
Metaproterenol tabs 20 mg	Quantum
Methocarbamol/Aspirin tabs 400/325	Par
Methylprednisolone tabs 2, 4, 8, 16, 24, 32 mg	Par
Minoxidil tabs 2.5 mg	Quantum
Norethindrone/ethin. estradiol 10/11-21	Watson
Norethindrone/mestranol 1 mg/50 mcg tabs	Watson
Oxacillin for susp 250/5 ml	Biocraft
Oxybutynin tabs 5 mg	PharmBasics
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Sidmak
SMZ/TMP tabs 400/80, 800/160	Pharbita
Sulindac tabs 150, 200 mg	Par
Trazodone tabs 50, 100 mg	TEVA
Triamcinolone cream 0.5%	Naska
Triamcinolone oint 0.025, 0.1, 0.5%	Naska
Triamcinolone/nystatin oint 1 mg/100 MU	Naska
Triameterene/HCTZ tabs 75/50	Par

Miscellaneous:

1. Carisoprodol/aspirin tabs 200/325 mg — Par
This product's application was withdrawn by the manufacturer.
2. Note on Trazodone tabs 150 mg — Sidmak
The Council agreed that this generic is not a practical substitute for the brand, Desyrel 150 mg, when the prescriber orders partial tablet

dosages or when directions are not specified (for example, "Use as directed"). Desyrel tablets, 150 mg, will not be considered substitutable under those circumstances.

HIGHER EDUCATION

BOARD OF HIGHER EDUCATION

(a)

Facilities Planning Standards and Approval Procedures for New Jersey Public Colleges and Universities

Readoption: N.J.A.C. 9:3
Adopted Amendment: N.J.A.C. 9:3-1.2

Proposed: August 1, 1988 at 20 N.J.R. 1768(a).
Adopted: September 26, 1988 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: September 27, 1988 as R.1988 d.506, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:3-14q.

Effective Date for Readoption: September 27, 1988.
Effective Date for Amendment: November 7, 1988.
Expiration Date: September 27, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Agency-Initiated Changes:

The Board of Higher Education has made one change to the readoption in N.J.A.C. 9:3-1.2(c). The change allows institutions of higher education to employ an architect or other professional facilities consultant to assist in the development of project cost estimates necessary for the completion of concept documents. Previously, institutions were not allowed to hire such individuals until concept document approval had been received by the Board of Higher Education. This change will assist the institutions in developing more accurate cost estimates in the early stages of projects.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 9:3.

Full text of the changes between proposal and adoption follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

9:3-1.2 Concept approval

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

(c) ***Institutions are permitted to employ an architect or other professional facilities consultant to assist in the development of project cost estimates necessary for completion of a concept document.*** Unless otherwise qualified by specific circumstances, approval of the concept proposal by the Board of Higher Education is the authorization for employment of an architect to assist the institutions in the preparation of a program document. Concept approval permits planning only, and does not commit funds for project construction. Responsibility for the selection and engagement of a project architect and other professional consultants essential to the project development shall be vested in the governing board of the institution. Fees for professional services will be part of the total project budget and will be within the range of schedules adopted by the State Treasury Department. A current professional service fee schedule is included in Appendix B. In the case of design projects administered by the State Treasury, Division of Building and Construction, selection of architects will be made in consultation with the Division of Building and Construction and the Department of Higher Education.

(d) (No change.)

(b)

BOARD OF HIGHER EDUCATION

Chargeback
Learning Disabled, Auditorily Impaired and Visually Impaired Students

Adopted Amendment: N.J.A.C. 9:4-1.5

Proposed: June 20, 1988 at 20 N.J.R. 1330(a).
Adopted: September 27, 1988 by T. Edward Hollander, Chancellor and Secretary, Board of Higher Education.
Filed: October 5, 1988 as R.1988 d.519, **without change.**

Authority: N.J.S.A. 18A:64A-7 and 18A:72H-8.

Effective Date: November 7, 1988.
Expiration Date: October 30, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

OAL NOTE: The text of N.J.A.C. 9:7-4.2, Academic requirements, currently in the New Jersey Administrative Code, is erroneous, and is the text of a proposed new N.J.A.C. 9:7-4.2 and 4.4 which was not adopted (see 20 N.J.R. 720(a) and 1558(a)), but replaced by proposed new rule N.J.A.C. 9:7-4.2 now adopted.

Full text of the adoption follows.

9:4-1.5 Chargeback

(a)-(f) (No change.)

(g) For the purpose of chargeback, Comprehensive Support Centers for Learning Disabled Students, New Jersey Centers for Collegiate Deaf Education and College Resource Centers for Visually Impaired Students designated by the Chancellor, shall be considered eligible programs of study. Out-of-county students, who meet the eligibility requirements and are accepted into direct service programs in a Center located at a community or county-assisted college, shall be permitted to register for and attend, on a chargeback basis, all course work necessary to satisfy the requirements of a program of study approved by the Director of the Center in which the student is enrolled.

(h) Students required to enroll in a comprehensive remedial program, as defined by the Chancellor, must take that full sequence of remediation in the home county with the exception of students enrolled in Comprehensive Support Centers for Learning Disabled Students, New Jersey Centers for Collegiate Deaf Education or College Resource Centers for Visually Impaired Students. Students enrolled in the programs of these Centers may complete required comprehensive remedial programs at the Centers. Each academic year, the Chancellor shall determine and distribute to the county colleges a definition of comprehensive remedial program for such students which shall be based upon severe deficiencies in reading, writing and mathematics as evidenced by New Jersey College Basic Skill Placement Tests results. After the successful completion of such remediation, students will be eligible to take the intended courses of study on a chargeback basis at the out-of-county institution.

(i) Students not required to enroll in a comprehensive remedial program as defined in (h) above may take such remediation as part of the program of study at the out-of-county institution on a chargeback basis.

(j) A student shall be eligible to attend an out-of-county community or county-assisted college on a chargeback basis if the student's local county or county-assisted college cannot admit the student into a particular course or program of study desired by the student due to lack of available space in the course or program of study which continue or will continue over one year from the initial date of attempted admission.

(k) The college accepting such out-of-county students shall charge the sending counties according to a system of differential chargeback rates as determined by the Board of Higher Education, calculating the amount to be charged in the following manner:

1. The total number of current year's estimated resident credit-hour and equivalent credit-hour enrollments and divide by 30 to obtain the full-time equivalent student enrollments (resident FTE's).

i. Equivalent credit hours for State fundable non-credit course offerings shall be calculated by dividing total non-credit course contact hours by 15.

ii. Resident credit-hour and equivalent credit-hour enrollments are defined as all county resident enrollments which are eligible for State funding pursuant to N.J.A.C. 9:4-3.10 and 9:4-3.12.

2. Divide the sum of all resident FTE's from (k)1 above into the current county operating appropriation to determine the base chargeback rate.

3. Multiply the sending county's eligible credit-hour and equivalent credit-hour enrollments for each differential funding group by their respective differential ratios, and total. Divide the total by 30 to determine the sending county's eligible weighted FTE's.

4. Multiply the base chargeback rate times the sending county's eligible weighted FTE's to determine the charge to the sending county.

5. The receiving college shall adjust the charge to sending counties when audited actual credit-hour and equivalent credit-hour enrollments become available from the annual enrollment audit. The calculations in (k)1 to 4 above shall be made utilizing the audited actual credit-hour and equivalent credit-hour enrollments divided by 30 to equal FTE's and adjusted county operating appropriation, if applicable. The difference between this adjusted chargeback amount and the previous State Fiscal Year's chargeback amount to each sending county shall be added to or subtracted from the following year's initial chargeback billing to said sending counties, and be so identified upon that bill.

(l) Each receiving college shall provide to the sending counties:

1.-3. (No change.)

(m) The receiving college may expend the $1.00 per credit hour collected for minor capital purposes as part of its chargeback billing subject to the following limitations:

1.-2. (No change.)

STUDENT ASSISTANCE BOARD

(a)

Tuition Aid Grant Program
Part-Time Students
Adopted Amendment: N.J.A.C. 9:7-3.5

Proposed: August 15, 1988 at 20 N.J.R. 2007(a).
Adopted: October 12, 1988 by the Student Assistance Board, M. Wilma Harris, Chairperson.
Filed: October 14, 1988 as R.1988 d.533, **without change.**

Authority: N.J.S.A. 18A:71-44 and 18A:71-48.

Effective Date: November 7, 1988.
Expiration Date: February 28, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

9:7-3.5 Part-time students

(a) Eligibility for Tuition Aid Grants will be extended on an annual basis to part-time students upon the approval of the Student Assistance Board and the Board of Higher Education depending on the level of appropriated funds.

(b) An eligible student shall:

1. Be enrolled for at least six credits;

2. Be matriculated in a degree or certificate program;

3. Maintain minimum standards of academic progress as determined by the institution; and

4. Be receiving an award under the Educational Opportunity Fund Program pursuant to N.J.A.C. 9:11-1.23.

(c) The provisions of N.J.A.C. 9:7-2 shall apply to part-time students receiving Tuition Aid Grants except where such provisions specifically refer to full-time students.

(d) Payments to eligible students will be counted for the purpose of the requirements set forth in N.J.A.C. 9:7-2.11 as one-half a semester of payment.

(e) An eligible student enrolled on a half-time basis (six to eight credits) shall receive a part-time Tuition Aid Grant award equal to the value of one-half of the student's full-time award. An eligible student enrolled on a three-quarter time basis (nine to 11 credits) shall receive a part-time Tuition Aid Grant award equal to three-quarters of the student's full-time award. The value of the part-time award, however, shall not exceed the actual tuition charge for the student's part-time enrollment.

(b)

Garden State Scholarships
Academic Requirements; Eligibility Requirements; Award Amounts
Adopted Repeal and New Rule: N.J.A.C. 9:7-4.2.
Adopted Amendment: N.J.A.C. 9:7-4.3.
Adopted New Rule: N.J.A.C. 9:7-4.4.

Proposed: July 18, 1988 at 20 N.J.R. 1635(a).
Adopted: October 12, 1988 by the Student Assistance Board, M. Wilma Harris, Chairperson.
Filed: October 14, 1988 as R.1988 d.532, **without change.**

Authority: N.J.S.A. 18A:71-26.5, 26.6, 26.8, 26.10, and 26.12.

Effective Date: November 7, 1988.
Expiration Date: February 28, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

9:7-4.2 Academic requirements

(a) Garden State Scholarship recipients shall meet the academic requirements defined by the Student Assistance Board to be eligible to receive a grant in any program category.

(b) The academic requirements for Garden State Scholarships shall include secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test (SAT) scores. Where SAT scores are not available, the appropriate equivalent from the American College Testing (ACT) Program may be used.

(c) Distinguished Garden State Scholars shall be selected on the basis of the following criteria:

1. Class rank within the top 10 percent of the graduating class at the end of the junior year; and

2. SAT scores of 1,200 or above at the end of the junior year; or

3. Class rank of one or two in the graduating class at the end of the junior year.

(d) Distinguished Garden State Scholars who are identified as Urban Scholars attending secondary schools within the Type A and B school districts as determined by the New Jersey Department of Education shall be selected on the basis of the following criteria:

1. Class rank within the top 10 percent of the graduating class at the end of the junior year; and

2. Grade point average (GPA) of at least 3.0 on a scale of 4.0 (or an equivalent scale) at the end of the junior year.

(e) Students from each school selected pursuant to (d) above shall be ranked among the students selected at that school according to the following formula and the highest ranking students will be offered scholarships:

1. Academic qualification for a scholarship is determined by an Academic Index (AI). The AI is derived by combining two factors, secondary school GPA and rank in class which will be weighted equally. The formula for combining the two factors is:

AI = (GPA x 37.5) + 2 Converted Rank

2. The converted rank shall be determined from the table set forth in (h)1ii below.

(f) For students selected pursuant to (d) and (e) above, each school located within a Type A and B school district will receive that proportion of the total available scholarships which reflects the size of the graduating class at the end of the junior year as compared

to the total number of students in the graduating classes from all schools within Type A and B districts at the end of the junior year.

(g) Garden State Scholars shall be selected on the basis of the following criteria:

1. Class rank within the top 30 percent of the graduating class at the end of the junior year; and

2. SAT scores of 1,000 or above at the end of the junior year, or through the January administration of the SAT in the senior year.

(h) Garden State Scholars shall be ranked according to the following formula and the highest ranking students will be offered scholarships at the end of the junior year, with additional scholarships offered during the second half of the senior year.

1. Academic qualification for a scholarship is determined by an Academic Index (AI). The AI is derived by combining two factors, the SAT scores from the College Entrance Examination Board and a converted secondary school rank in class. The formula for combining the two factors is:

$$AI = \frac{\text{Verbal + Math SAT scores}}{10} + 2 \text{ Converted Rank}$$

i. SAT scores: Verbal and math scores are to be weighed equally. Where SAT scores are not available, the appropriate equivalent from the ACT may be used. The highest verbal score from any administration may be combined with the highest math score from any administration.

ii. Rank in class: In order to weigh secondary school rank equally with SAT scores, the converted rank is multiplied by two. Conversion of the secondary school rank to a standardized score is necessary in order to combine it equally with the SAT scores which have also been standardized. The following table gives the converted rank multiplied by two, which is the figure to be combined with the test score sum in the AI formula given in this subsection.

(i) Up to 10 percent of freshman Garden State Scholars awards may be provided to students, including students who do not meet the criteria set forth in (g) above, if these students are recommended by the president of a New Jersey college or university.

9:7-4.3 Eligibility requirements

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

(d) Students may not simultaneously hold a Garden State Distinguished Scholars award and a Garden State Scholars award.

9:7-4.4 Award amounts

(a) Garden State Scholars shall receive annual awards of up to $500.00 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(h). The award may be increased up to an additional $500.00 based upon the student's New Jersey Eligibility Index pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following formula:

New Jersey Eligibility Index (TAG Table)	Additional Amount of Grant
0-3499	$500
3500-9499	250
over 9499	0

(b) Distinguished Garden State Scholars shall receive annual awards of up to $1,000 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(c), (d), and (e). The award may be increased up to an additional $1,000 based upon the student's New Jersey Eligibility Index pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following formula:

New Jersey Eligibility Index (TAG Table)	Additional Amount of Grant
0-3499	$1,000
3500-6499	500
6500-9499	250
over 9499	0

(c) Undergraduate scholarship award amounts shall be a minimum of $200.00.

(d) These scholarships in combination with other financial aid shall not exceed the cost of attendance as determined by the institution.

SECONDARY SCHOOL RANK CONVERSION TABLE

Percent Standing		Converted Rank × 2	Percent Standing		Converted Rank × 2	Percent Standing		Converted Rank × 2
00-01	=	150	13-14	=	122	44-47	=	102
02	=	142	15-16	=	120	48-52	=	100
03	=	138	17-18	=	118	53-56	=	98
04	=	136	19-21	=	116	57-60	=	96
05	=	134	22-24	=	114	61-64	=	94
06	=	132	25-27	=	112	65-68	=	92
07	=	130	28-31	=	110	69-72	=	90
08	=	128	32-35	=	108	73-75	=	88
09-10	=	126	36-39	=	106			
11-12	=	124	40-43	=	104			

HUMAN SERVICES

OFFICE OF LEGAL AND REGULATORY LIAISON

(a)

Department of Human Services Administration Adopted New Rules: N.J.A.C. 10:1

Proposed: May 16, 1988 at 20 N.J.R. 1050(a).

Adopted: September 26, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: September 26, 1988 as R.1988 d.504, **without change.**

Authority: N.J.S.A. 30:1-12, 52:14B-4(f).

Effective Date: November 7, 1988.

Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 1
DEPARTMENT OF HUMAN SERVICES ADMINISTRATION

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. PUBLIC COMMENTS AND PETITIONS REGARDING DEPARTMENT RULES

10:1-2.1 Public comments regarding existing rules

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

(c) Public comments regarding existing rules should be submitted in writing and addressed to:

Office of Legal and Regulatory Liaison
Department of Human Services
CN 700
Trenton, NJ 08625

10:1-2.3 Public petitions regarding Department rulemaking

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

(c) Petitions for the promulgation, amendment or repeal of a rule by the Department of Human Services shall be addressed to:

Office of Legal and Regulatory Liaison
Department of Human Services
CN 700
Trenton, NJ 08625

(d) (No change.)

(a)

Statewide Respite Care Program

Adopted Amendments: N.J.A.C. 10:14-1.4, 4.1, 6.3

Proposed: May 16, 1988 at 20 N.J.R. 1051(a).
Adopted: September 26, 1988 by Drew Altman, Commissioner, Department of Human Services.
Filed: September 26, 1988 as R.1988 d.505, **without change.**

Authority: N.J.S.A. 30:4F-7 et seq., specifically N.J.S.A. 30:4F-12 (P.L. 1987 c.119 (effective September 11, 1987).

Effective Date: November 7, 1988.
Expiration Date: May 16, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:14-1.4 Definitions

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

. . .

"Liquid resources" means any checking accounts, savings accounts, individual retirement accounts, certificates of deposits, stocks, or bonds, that can be converted into cash within 20 working days.

. . .

10:14-4.1 Eligibility standards

(a) For the purposes of the Statewide Respite Care Program, an eligible person shall meet the following eligibility standards:

1.-3. (No change.)

4. An eligible individual means an individual whose liquid resources (as declared by the individual) do not exceed $40,000.

10:14-6.3 Sliding fee scale for co-payments

(a) Co-payment fees shall apply to individuals rendered respite care services in accordance with the co-payment fee scale set forth in (b) below. In all cases the point at which cost-sharing shall be initiated will be based upon the most current Federal Poverty Income Guidelines at 42 U.S.C. 9902(2). The co-payment fee scale is based upon the most current Supplemental Security Program Income (SSI) guidelines in effect under section 1611(c)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act). The threshold beyond which an individual becomes ineligible for program services, is 300 percent of the SSI guidelines.

(b) The sliding fee scale shall be as follows:

Income as a percentage of the Monthly SSI Level	Percent of Costs To Be Paid By Eligible Person
Less than 100%	0%
100%—Federal Poverty Level	0%
Federal Poverty Level to 145%†	1%
146%-160%	5%
161%-175%	10%
176%-191%	15%
192%-207%	20%
208%-222%	25%
223%-238%	30%
239%-253%	35%
254%-269%	40%
270%-285%	45%
286%-300%††	50%

†For one person in the community.
††Institutional SSI level.

(c) (No change.)

(d) Sponsor agencies may seek a waiver of co-payment through submission of a written request to the Department Program Director. Requests for waiver of co-payment shall only be considered for the following reasons:

1. Death of the client:

2. Demonstrated extreme financial hardship as a result of extraordinary and catastrophic financial burden;

3. Dual participation of the client in both the Statewide Respite Care Program and the Community Care Program for the Elderly and Disabled (CCPED) or the Home and Community Based Services Waivers for Blind or Disabled Children and Adults (Model Waiver) Program.

(e) No waiver of co-payment may be made without written Departmental approval.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Family Day Care Registration

Adopted New Rules: N.J.A.C. 10:126

Proposed: July 5, 1988 at 20 N.J.R. 1508(a).
Adopted: September 26, 1988 by Drew Altman, Commissioner, Department of Human Services.
Filed: September 28, 1988 as R.1988 d.507, **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. 30:5B-19, 23, and 25.

Effective Date: November 7, 1988.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:

The Division received comments from one agency, the Association for Children of New Jersey (ACNJ), which raised two issues of concern:

COMMENT: The Division should develop a simple, easy-to-read brochure to inform parents about some of the basic requirements for registration as well as some of the safety, health and program requirements that the parent can expect to be met for his or her child.

RESPONSE: The Division agrees that such a brochure would be helpful, but its development does not necessitate any changes in the proposed rules. The Division has already developed appropriate materials in a Family Day Care Technical Assistance Handbook that has been distributed to the family day care sponsoring organizations. The Division also plans to initiate a public awareness campaign to inform both parents and potential family day care providers about the registration program, including the areas mentioned by ACNJ.

COMMENT: The Division should change the provisions in proposed N.J.A.C. 10:126-6.2(a)10 so as to require every provider to have a telephone in the home. A telephone is a necessity for emergencies, as well as to provide access for conversation between the parent and the provider or the parent and child.

RESPONSE: The proposed rule requires a telephone in the family day care home except under narrowly specified conditions. The provider must demonstrate his or her inability to afford a telephone; must reduce the maximum number of children served; must have a telephone accessible within five minutes from the home; and must not leave the children unattended to use the nearby telephone.

In addition, the Division has included in its Technical Assistance Handbook information about Link Up America, a program offered by New

Jersey Bell Telephone Company that provides a 50 percent discount on telephone connection charges to participants in programs such as Aid to Families with Dependent Children, Medicaid, Home Energy Assistance Program, and Food Stamps. The availability of this program reduces the number of providers that might still be unable to afford a telephone. Of the 531 providers registered between January 1 and July 31, 1988, only one does not have a telephone in the home.

The provisions allowing registration of providers who cannot afford a telephone were developed in consultation with a broad spectrum of community groups, who agreed that requiring a telephone with no exceptions would make it economically prohibitive for low-income residents to become registered family day care providers, thus reducing the number of registered providers in neighborhoods convenient to low-income parents seeking family day care services for their children. The Division has decided that the existing provisions in the proposed rules protect the safety of the children in family day care while promoting an accessible and equitable registration program.

Summary of changes between proposal and adoption:

The Division has made several technical changes to correct cross-references, inconsistency, citations and typographical errors, and has added, in the children's interest, a requirement at N.J.A.C. 10:126-6.13 that drinking water be made available to children at all times. This requirement was proposed applicable to all children under 1½ years at N.J.A.C. 10:126-6.14(d), now it is applicable to all.

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

CHAPTER 126
MANUAL OF REQUIREMENTS FOR FAMILY DAY CARE REGISTRATION

SUBCHAPTER 1. GENERAL PROVISIONS

10:126-1.1 Legal authority

(a) This chapter is promulgated pursuant to the Family Day Care Provider Registration Act of 1987, N.J.S.A. 30:5B-16 et seq. (P.L. 1987, Chapter 27), which became effective April 27, 1987.

(b) Under N.J.S.A. 30:5B-16 et seq., the Division of Youth and Family Services has the authority to:

1. Adopt regulations for the:

i. Operation and maintenance of family day care sponsoring organizations; and

ii. Voluntary registration of family day care providers; and

2. Contract with certain agencies or organizations to serve as sponsoring organizations for the voluntary registration of family day care providers.

(c) Responsibility for ensuring that a sponsoring organization complies with all applicable provisions of N.J.S.A. 30:5B-16 et seq., and of this chapter is delegated by the Division to the Bureau of Licensing, which shall:

1. Inspect and monitor the sponsoring organization to determine compliance with applicable provisions of this chapter;

2. Conduct random inspections of family day care homes to ensure compliance with applicable provisions of this chapter; and

3. Provide technical assistance to the sponsoring organization.

(d) A sponsoring organization is authorized to:

1. Register family day care provider applicants within a specific geographic area. A geographic area may include:

i. A single county; or

ii. A group of several counties;

2. Issue new and renewal Certificates of Registration to family day care providers;

3. Provide administrative services, including but not limited to technical assistance, training and consultation to providers;

4. Evaluate and monitor providers at least once every two years;

5. Annually monitor no less than 20 percent of providers on a random basis;

6. Collect a $25.00 registration fee payable to the sponsoring organization each time a Certificate of Registration is initially granted or renewed;

7. Maintain permanent records on each provider;

8. Ensure that each provider complies with all applicable requirements of N.J.A.C. 10:126, the Manual of Requirements for Family Day Care Registration; and

9. Provide a program of outreach and public relations to inform providers and potential providers of the provisions of this chapter.

10:126-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Bureau" means the Bureau of Licensing, Division of Youth and Family Services, New Jersey Department of Human Services.

"Certificate of Registration" means a document issued by a sponsoring organization to a family day care provider, acknowledging that the provider is in compliance with all applicable provisions of this chapter.

"Chapter" means the requirements contained in the Manual of Requirements for Family Day Care Registration, N.J.A.C. 10:126.

"Child" means any person under 14 years of age.

"Cooperative agreement" means an agreement between a provider and a parent to exchange child care services in lieu of a fee for child care services.

"Denial of a Certificate of Registration" means a refusal by the sponsoring organization to issue an initial Certificate of Registration.

"Department" means the New Jersey Department of Human Services.

"Division" means the Division of Youth and Family Services, New Jersey Department of Human Services.

"Evaluate" or "evaluation" means the review of a family day care provider by a sponsoring organization upon receipt of an application for a Certificate of Registration to determine the applicant's compliance with the requirements of this chapter.

"Family day care home" means a private residence in which child care services are provided for a fee to no fewer than three and no more than five children for no fewer than 15 hours per week, except that the Division shall not exclude a family day care home with fewer than three children from voluntary registration.

"Family day care provider applicant" or "provider applicant" means a person at least 18 years of age who has applied for a Certificate of Registration.

"Family day care provider" or "registered family day care provider" or "provider" means a person who has received an initial, renewal or temporary Certificate of Registration issued by a sponsoring organization.

"Family day care sponsoring organization" or "sponsoring organization" means an agency or organization that contracts with the Division to assist in the voluntary registration of family day care providers and that complies with all applicable requirements of the Manual of Requirements for Family Day Care Registration.

"Fee for child care services" or "fee" means the payment of money or the provision of any service(s) other than child care, by the parent(s) of enrolled children, in exchange for family day care services.

"Manual of Requirements for Family Day Care Registration" or "Manual of Requirements" means the requirements contained in this chapter (N.J.A.C. 10:126).

"Monitor" or "monitoring visit" means to visit a registered family day care provider to review the provider's compliance with the applicable requirements of the Manual of Requirements.

"Parent" means a natural, foster or adoptive parent, guardian, or any person with responsibility for, or custody of, a child.

"Provider assistant" means a person at least 14 years of age who has been designated by the provider and approved by the sponsoring organization to assist the provider in caring for children in the home.

"Refusal to renew a Certificate of Registration" or "nonrenewal" means the nonissuance of a Certificate of Registration by the sponsoring organization after the expiration of the existing Certificate of Registration.

"Registration fee" means payment to a sponsoring organization by a provider or applicant upon issuance of a temporary or regular Certificate of Registration.

"Renewal of a Certificate of Registration" means the issuance of a Certificate of Registration by the sponsoring organization after the expiration of the existing Certificate of Registration.

"Revocation of a Certificate of Registration" means a permanent *[rescinding]* ***removal*** of a provider's current Certificate of Registration for failure to comply with the applicable requirements of the Manual of Requirements.

"Staff member" means a person employed by or working for a sponsoring organization on a regularly scheduled basis. This includes full-time, part-time, and voluntary staff, whether paid or unpaid.

"Substitute provider" means a person at least 18 years of age designated by the provider and approved by the sponsoring organization who is readily available to provide child care in the provider's home in the event the provider becomes ill or encounters an emergency.

"Suspension of a Certificate of Registration" means a temporary *[rescinding]* ***removal*** of a provider's current Certificate of Registration, which can be reinstated by the sponsoring organization upon the provider's compliance with the applicable requirements of the Manual of Requirements.

"Temporary Certificate of Registration" means a document issued by the sponsoring organization to a provider which indicates that the provider is in substantial compliance with the requirements of the Manual of Requirements, provided that no imminent hazard affecting the children exists in the home.

10:126-1.3 Approval requirements for sponsoring organizations

(a) A sponsoring organization shall obtain approval from the Bureau of Licensing pursuant to the legal authority specified in N.J.A.C. 10:126-1.1(c) upon execution of a contract with the Division.

(b) The Bureau will conduct a biennial comprehensive programmatic inspection of the sponsoring organization to determine compliance with the applicable provisions of this chapter.

(c) If the sponsoring organization meets all applicable provisions of this chapter, the Bureau will issue a letter of approval.

(d) The Bureau will notify the sponsoring organization in writing if a letter of approval will not be issued.

(e) If the Bureau determines that the sponsoring organization is in substantial compliance with all applicable provisions of this chapter, the Bureau may issue a letter of temporary approval.

(f) The Bureau may issue as many temporary approvals as it deems necessary. Each letter of temporary approval, however, may be issued for a period not to exceed six months.

(g) When a letter of temporary approval is issued, the Bureau will provide a written statement explaining what the sponsoring organization must do to achieve full compliance.

(h) Each approval period, which may include the issuance of one or more letters of temporary approval and/or one letter of approval, shall be two years.

1. In determining the expiration date of the first letter of approval, the Bureau shall compute the two-year approval period from the date of issuance of the first letter of approval or temporary approval.

2. In determining the expiration date of a renewed approval, the Bureau shall compute the two-year approval period from the date on which the sponsoring organization's previous letter of approval expired.

(i) The letter of approval or temporary approval shall be maintained on file at the sponsoring organization's offices.

(j) An authorized representative of the Bureau may make an announced or unannounced visit at any time during the sponsoring organization's normal operating hours to inspect the sponsoring organization and/or review files, reports or records to determine its compliance with provisions of this chapter and/or to investigate a complaint.

(k) A sponsoring organization's approval may be denied or revoked for any activity, policy or conduct that presents a serious or imminent hazard to the health, safety and well-being of a child or that otherwise demonstrates the sponsoring organization's unfitness or inability to operate a sponsoring organization or to administer the family day care registration program in accordance with the provisions of this chapter and with sound and effective administrative and financial policies, procedures and practices. *[(See N.J.A.C. 10:126-5.7.)]*

SUBCHAPTER 2. ADMINISTRATION OF SPONSORING ORGANIZATIONS

10:126-2.1 Sponsoring organization eligibility

(a) Any public agency or private not-for-profit agency or organization may apply to become a family day care sponsoring organization, provided the agency meets the eligibility requirements specified in (b) below.

(b) A family day care sponsoring organization, in order to secure, maintain or renew a contract to provide registration services, shall:

1. Demonstrate the capability of providing administrative services, including, but not limited to, training, technical assistance, consultation, inspection, supervision and monitoring of family day care providers;

2. Meet the contracting requirements of the Department of Human Services, as specified in the Department of Human Services' Contract Policy and Information Manual and Cost Reimbursement Manual and all applicable requirements of the Manual of Requirements; and

3. Comply with all performance provisions and level of service provisions, as specified in the executed contract and its annexes.

10:126-2.2 Administrative responsibility

(a) A privately operated sponsoring organization shall have a governing board that has the authority to:

1. Set overall administrative and operational policies for the sponsoring organization;

2. Ensure the financial viability of the sponsoring organization;

3. Establish policies pertaining to, but not limited to:

i. Program services; and

ii. Personnel recruitment, selection, training and performance evaluation; and

4. Oversee fiscal operations, including budget and resource development.

(b) A publicly operated sponsoring organization shall have an advisory board or committee that offers advice and counsel to the sponsoring organization on the fiscal and administrative operation of the family day care registration program.

(c) The sponsoring organization shall delegate responsibility for day-to-day operations to an executive director or administrator and clearly delineate in writing the respective duties of the governing or advisory board and of the executive director or administrator.

(d) The sponsoring organization shall appoint an appeals committee, which shall:

1. Hear appeals made by providers or provider applicants on actions taken by the sponsoring organization to deny, suspend, revoke or refuse to renew a Certificate of Registration;

2. Exclude from its membership staff members responsible for decisions regarding the denial, suspension, revocation or refusal to renew a Certificate of Registration; and

3. Maintain on file documentation of its findings, as specified in N.J.A.C. 10:126-2.4(a)1ix.

(e) The sponsoring organization shall provide family day care registration services throughout all municipalities in its designated geographic area.

(f) The sponsoring organization may subcontract for the provision of services to providers and/or provider applicants. The sponsoring organization shall ensure that:

1. An agency under subcontract complies with all applicable requirements of the Manual of Requirements in the delivery of services to providers and/or provider applicants;

2. An agency under subcontract to register providers does not deny a Certificate of Registration to any provider applicant who is in full compliance with the applicable requirements of the Manual of Requirements; and

3. A copy of the subcontract between the sponsoring organization and the agency subcontracted to perform services related to family day care registration is maintaineded on file, as specified in N.J.A.C. 10:126-2.4(a)1xi.

(g) The Bureau will notify the sponsoring organization and the appropriate regional office of the Division, in writing, whenever the Bureau determines that the sponsoring organization is operating in violation of any of the requirements of the Manual of Requirements,

in which case the notification will specify the corrective action that must be taken by the sponsoring organization in order to abate the violation(s).

(h) Whenever the Division determines that a provider is operating in violation of any of the requirements of the Manual of Requirements, the Division will notify the sponsoring organization. In case of imminent danger(s) or hazard(s) to the health and safety of the children in the home, the Division may:

1. Suspend the Certificate of Registration *[(See N.J.A.C. 10:126-5.7)]* **, as specified in N.J.A.C. 10:126-5.7;*** and

2. Institute a civil action, as specified in N.J.A.C. 10:126-5.8.

10:126-2.3 Reporting requirements

(a) The sponsoring organization or any staff member shall notify verbally the Division's Office of Child Abuse Control (toll free 1-(800)-792-8610) immediately, whenever there is reasonable cause to believe that a child has been subjected to abuse/neglect by a provider or any other person, pursuant to the State Child Abuse and Neglect Law (N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14).

(b) The sponsoring organization or any staff member shall notify the Bureau immediately of any imminent danger(s) or hazard(s) that threaten the health and safety of children in the provider's home.

(c) The sponsoring organization shall notify the local health department in the provider's municipality of the occurrence of a reportable disease, as specified in Chapter 2 of the State Sanitary Code (N.J.A.C. 8:57-1.2). Such notification shall be made by the next working day after the sponsoring organization learns of the occurrence.

(d) The sponsoring organization shall notify the appropriate regional office of the Division and the Bureau, verbally, of any of the following changes or events by the next working day after the sponsoring organization learns of their occurrence:

1. Injury that results in the admittance of a child to a hospital while in the care of a provider;

2. The death of a child while in the care of a provider;

3. Damage to the sponsoring organization's offices that affects the operation of family day care registration;

4. Any criminal conviction(s) of the staff of the sponsoring organization or of a provider, substitute provider, provider assistant, or member of a provider's household;

5. Cancellation of the sponsoring organization's general/comprehensive liability insurance coverage; and

6. Unanticipated permanent or temporary closing of the sponsoring organization.

(e) The sponsoring organization shall notify the appropriate regional office of the Division and the Bureau, verbally, within three working days, of any change in the name, location, executive director or administrator of the sponsoring organization.

(f) The sponsoring organization shall report statistical data, as specified in N.J.A.C. 10:126-2.4(a)3, to the Bureau upon request.

10:126-2.4 Sponsoring organization records

(a) The sponsoring organization shall maintain in files located at its office the following records:

1. Administrative records:

i. The Manual of Requirements for Family Day Care Registration;

ii. The document providing information to parents, as specified in N.J.A.C. 10:126-4.9(a);

iii. Staff records, as specified in N.J.A.C. 10:126-3.1(g);

iv. Documentation of training sessions provided to staff members, as specified in N.J.A.C. 10:126-3.4(a)2;

v. A copy of the sponsoring organization's insurance policy/policies, as specified in the Department of Human Services' Contract Policy and Information Manual;

vi. Financial records, as specified in the Department of Human Services' Contract Policy and Information Manual;

vii. Documentation of provider training sessions, as specified in N.J.A.C. 10:126-4.2(f);

viii. Files documenting denials, suspensions, revocations and nonrenewals of Certificates of Registration, as specified in N.J.A.C. 10:126-4.6(d);

ix. Documentation of findings by the appeals committee, as specified in N.J.A.C. 10:126-2.2(d)3;

x. Documentation of registration fees collected from providers, as specified in N.J.A.C. 10:126-4.5(b); and

xi. A copy of contracts between the sponsoring organization and any subcontracted agency to perform services related to family day care registration, as specified in N.J.A.C. 10:126-2.2(f)3.

2. Records on providers:

i. The provider's completed application form, as specified in N.J.A.C. 10:126-5.2(a);

ii. A copy of the provider's Certificate of Registration, as specified in 10:126-5.3 and 5.4;

iii. Health records, as specified in N.J.A.C. 10:126-5.2(b)1 and 2;

iv. References submitted by the provider applicant prior to the issuance of a Certificate of Registration, as specified in N.J.A.C. 10:126-5.2(b)3;

v. Disclosure(s) of criminal conviction(s) if any, as specified in N.J.A.C. 10:126-5.2(a)10;

vi. A written report of each visit to the home of the applicant/provider, as specified in N.J.A.C. 10:126-4.1(c)5 and 4.7(d);

vii. A record of pre-service and in-service training sessions completed by the applicant/provider, as specified in N.J.A.C. 10:126-4.2(f);

viii. A record of any complaints of alleged violations of the Manual of Requirements against the provider, as specified in N.J.A.C. 10:126-4.6(d);

ix. Files on providers who have discontinued family day care services; and

x. Additional information as may be received regarding the provider's compliance with the requirements of the Manual of Requirements.

3. Statistical records, including, but not limited to:

i. The number of providers registered;

ii. The number and ages of the children served; and

iii. The number of inquiries made to the sponsoring organization by parents seeking family day care.

(b) The administrative records specified in (a)1 and 2 above shall be maintained by the sponsoring organization for two calendar years.

10:126-2.5 Complaints against a sponsoring organization

(a) Whenever the Division receives a complaint questioning the compliance of a sponsoring organization with the requirements of the Family Day Care Provider Registration Act or of the Manual of Requirements, the Division will investigate the allegation within 10 working days to determine whether the complaint is substantiated.

(b) The Division will notify the sponsoring organization and the appropriate regional office of the results of the complaint investigation within 15 working days after the report of the Division's investigation has been finalized. Such notification shall include the results of the investigation, in keeping with the State Public Records Law (N.J.S.A. 47:1A-1 to 4), with the exception of any information not permitted to be disclosed under the State Child Abuse and Neglect Law (N.J.S.A. 9:6-8 et seq.) or other State law.

(c) If the complaint is substantiated or if any violations are cited as a result of the complaint investigation, the sponsoring organization shall abate the violation(s), in accordance with the time frame established by the Bureau.

(d) Any individual filing a complaint against a sponsoring organization may do so anonymously. If the *[complaint]* ***complainant*** reveals his or her identity, the name of the complainant shall be included in the Division's records.

(e) A description of the complaint allegations and the substantiation or non-substantiation of each allegation shall be included in the Division's records and shall be available for public review upon completion of the investigation by the Division, with the exception of any information not permitted to be disclosed under the State Child Abuse and Neglect Law or other State law.

(f) The sponsoring organization shall cooperate with the Division whenever complaint investigations are conducted.

10:126-2.6 Public access to records

(a) The Division shall make the following items in its files available for public review:

1. Correspondence between the Division and the sponsoring organization or other parties in matters pertaining to the Division's review or inspection of the sponsoring organization;
2. Inspection/violation reports, where applicable, reflecting results of Division inspections/reinspections of the sponsoring organization or of providers;
3. Forms and other standard documents used to collect routine data on the sponsoring organization and its program as part of its records of compliance with the Manual of Requirements;
4. Enforcement letters from the Division requiring abatement of violations of the Manual of Requirements;
5. Completed complaint investigation reports, except for child abuse/neglect investigations or other information restricted by the requirements of the State Child Abuse and Neglect Law or other State law; and
6. Any other documents, materials, reports or correspondence that would normally be included as part of the public record.

(b) The sponsoring organization shall make the following items in its files available for public review:
1. Applications for Certificates of Registration and related materials/documentation;
2. Copies of temporary and regular Certificates of Registration;
3. Correspondence between the sponsoring organization and the provider or other parties in matters pertaining to the sponsoring organization's monitoring or registration of the provider;
4. Evaluation/monitoring reports, where applicable, reflecting the results of the sponsoring organization's evaluation/monitoring of the provider;
5. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the Manual of Requirements;
6. Enforcement letters from the sponsoring organization requiring abatement of violations of the Manual of Requirements;
7. Correspondence to the sponsoring organization from the Division regarding enforcement actions against the provider;
8. Chronological lists of events about the provider on compliance/enforcement matters;
9. Completed complaint investigation reports, except for child abuse/neglect investigations or other information restricted by the requirement*s* of the State Child Abuse and Neglect Law or any other State law; and
10. Any other documents, materials, reports, or correspondence that would normally be included as part of the public record.

(c) The Division and the sponsoring organization shall keep confidential and not part of the public record the following:
1. Records, reports or correspondence that pertain to child abuse/neglect investigations involving enrolled children that are restricted from public access under the requirements of the State Child Abuse and Neglect Law or other State law;
2. Records, reports, correspondence or forms containing names and/or any other information pertaining to children, parents or providers that are restricted from public access under the State Child Abuse and Neglect Law;
3. Records, reports, correspondence or forms containing names of enrolled children and/or their parents;
4. Confidential information with regard to specific sponsoring organization personnel;
5. Memoranda and other internal correspondence between and among public agencies, including internal communication between the Division and the Office of the Attorney General;
6. Any items that deal with reports of inspections and/or complaint investigations that are still in progress; and
7. Other material required by State law to be maintained as confidential.

SUBCHAPTER 3. STAFF REQUIREMENTS FOR SPONSORING ORGANIZATIONS

10:126-3.1 General staff requirements

(a) The executive director or administrator and every staff member of a sponsoring organization shall:
1. Be of good character and reputation;
2. Be in sufficient physical, mental and emotional health to perform his or her duties satisfactorily; and
3. Possess skills, attributes and characteristics conducive to and suitable for directing a sponsoring organization and/or providing services to parents and providers, as specified in the Manual of Requirements.

(b) Prior to the employment or utilization of the executive director/administrator or a staff member, the sponsoring organization shall require the applicant for executive director/administrator and each staff applicant to complete and sign an application for employment, indicating the applicant's:
1. Name, address and telephone number;
2. Education and work experience; and
3. Disclosure of criminal convictions, if any.

(c) Prior to the executive director/administrator's or any staff member's employment, the sponsoring organization shall obtain two references, either in writing or verbally, from former employers or other persons who have knowledge of the applicant's work experience, education, and character.

(d) The executive director/administrator and every staff member shall notify the sponsoring organization by the end of the sponsoring organization's next working day, of any criminal convictions during their employment or utilization by the sponsoring organization.

(e) Evidence of conviction for crimes of violence, anti-social behavior, child abuse/neglect or other crimes which may relate adversely to the operation of the sponsoring organization shall be among those actions that are considered in determining an individual's fitness and suitability to serve as executive director/administrator or as a staff member.

(f) Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from serving as executive director/administrator or as a staff member and shall not automatically result in the removal or termination of the executive director/administrator or a staff member from his or her position or job. Such determination shall be made on a case by case basis, in keeping with the provisions of the State Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.), which provides that a person convicted of a crime may not be disqualified or discriminated against by a licensing authority unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which a license is sought.

(g) The sponsoring organization shall maintain on file for the executive director/administrator and for each staff member:
1. A completed employment application;
2. Written documentation of references; and
3. Disclosure(s) of criminal convictions, if any.

10:126-3.2 Types and responsibilities of staff

(a) Each sponsoring organization shall have an executive director or administrator who is responsible for the overall management and administration of the sponsoring organization's family day care registration program.

(b) The sponsoring organization shall have sufficient staff to carry out the family day care registration program.

(c) The executive director/administrator may also serve as a staff member.

(d) The executive director/administrator shall ensure:
1. That the sponsoring organization operates in full compliance with all applicable requirements of the Manual of Requirements;
2. That each provider operates in full compliance with all applicable requirements of the Manual of Requirements;
3. The supervision of all staff members assigned to the sponsoring organization's family day care registration program;
4. The development and implementation of policies and procedures for the day-to-day operation of the sponsoring organization's family day care registration program;
5. The orientation of staff members to the policies and procedures of the sponsoring organization;
6. The development and maintenance of administrative, fiscal and program records;
7. The training of staff members, as specified in N.J.A.C. 10:126-3.4, and providers, as specified in N.J.A.C. 10:126-4.2; and

8. The development and implementation of a program of outreach and public relations, as specified in N.J.A.C. 10:126-4.11, and technical assistance, as specified in N.J.A.C. 10:126-4.8.

10:126-3.3 Staff qualifications

(a) The executive director/administrator designated in N.J.A.C. 10:126-3.2(a) shall possess the following:

1. A bachelor's degree; or

2. Three years of managerial and/or supervisory experience in the field of human services, child care services, child development, education, nursing, social work, or business.

(b) Staff members responsible for provider evaluation, monitoring, support, technical assistance and training shall possess the following:

1. An associate's degree in human services, child care services, child development, education, nursing or social work and one year of experience working with children; or

2. A high school diploma or General Education Development (GED) diploma and three years of experience in the field of human services, child care services, child development, education, nursing, or social work.

10:126-3.4 Staff training

(a) The executive director/administrator shall:

1. Provide staff members with access to a copy of the Manual of Requirements for Family Day Care Registration; and

2. Ensure that staff, as appropriate, are trained in:

i. Recognizing and reporting child abuse/neglect, as specified in N.J.A.C. 10:126-2.3(a);

ii. Evaluating provider applicants, as specified in N.J.A.C. 10:126-4.1;

iii. Conducting pre-service and in-service training sessions for providers, as specified in N.J.A.C. 10:126-4.2;

iv. Monitoring providers, as specified in N.J.A.C. 10:126-4.7;

v. Providing technical assistance to providers, as specified in N.J.A.C. 10:126-4.8;

vi. Procedures for identification and referral of special needs children, as specified in N.J.A.C. 10:126-4.9(b);

vii. Implementing outreach and public relations for family day care, as specified in N.J.A.C. 10:126-4.11; and

viii. The requirements of the Manual of Requirements for Family Day Care Registration.

SUBCHAPTER 4. SERVICE REQUIREMENTS FOR SPONSORING ORGANIZATIONS

10:126-4.1 Evaluation of family day care provider applicants

(a) The sponsoring organization shall provide to each applicant for a Certificate of Registration:

1. A copy of subchapters 1, 5 and 6 of the Manual of Requirements for Family Day Care Registration or the entire Manual of Requirements, if requested;

2. An application form;

3. The names and addresses of all family day care networks known to the sponsoring organization and serving the applicant's geographic area; and

4. The name, address, and telephone number of the local resource and referral agency of the New Jersey Child Care Resource and Referral System serving the applicant's area, if other than the sponsoring organization.

(b) The sponsoring organization shall evaluate each applicant prior to the issuance of a Certificate of Registration.

(c) The sponsoring organization's evaluation of each applicant shall include a review of:

1. The application form;

2. Disclosures by the provider, the provider assistant, if any, the substitute provider and all members of the provider's household of any criminal conviction(s), as specified in N.J.A.C. 10:126-5.2(a)10;

3. References submitted by the applicant, as specified in N.J.A.C. 10:126-5.2(b)3;

4. Health records submitted by the applicant, as specified in N.J.A.C. 10:126-5.2(b)1 and 2;

5. A written report of the evaluation visit to the applicant's family day care home, as specified in (d) below; and

6. Evidence showing that the applicant has completed pre-service training, as specified in N.J.A.C. 10:126-4.2.

(d) The sponsoring organization shall visit each applicant's home to evaluate the applicant's compliance with all applicable requirements of the Manual of Requirements.

10:126-4.2 Training of family day care providers

(a) The sponsoring organization shall provide *[a minimum of]* six hours of pre-service training for each applicant prior to the issuance of a Certificate of Registration.

(b) The sponsoring organization shall ensure that the pre-service training includes information regarding, but is not limited to, the following subjects:

1. Child development;
2. Discipline;
3. Safety, first aid and emergency evacuation procedures;
4. Health and sanitation;
5. Nutrition;
6. Program activities; and
7. Parent-provider communication.

(c) The pre-service training session(s) for provider applicants shall include group or individual instruction provided by persons with expertise in areas listed in (b) above, and may be supplemented by:

1. Printed materials;
2. Television broadcasts; or
3. Audio-visual materials.

(d) The sponsoring organization shall also provide in-service training for providers on a semi-annual basis by means of group or individual instruction and written material. In-service training shall include continued reinforcement of the subjects listed in (b) above. Each in-service training session shall be *[at least]* two hours in length.

(e) The sponsoring organization shall arrange each pre-service and in-service training session in an appropriate location that is accessible to the providers.

(f) The sponsoring organization shall maintain on file documentation of all pre-service and in-service training, including for each training session:

1. A description;
2. A schedule; and
3. Attendance lists.

(g) The sponsoring organization shall provide to each provider:

1. Prior to the issuance of a Certificate of Registration, a copy of appropriate informational materials supplied by the Bureau; and

2. From time to time, any other available materials that may assist the provider in operating a family day care home.

10:126-4.3 Issuance of a Certificate of Registration

If the sponsoring organization determines that the provider applicant is in full compliance with all applicable requirements of the Manual of Requirements, the sponsoring organization shall issue a regular Certificate of Registration.

10:126-4.4 Issuance of a temporary Certificate of Registration

(a) If the sponsoring organization determines that *[a]* **the*** provider **applicant*** is in substantial compliance with the applicable requirements of the Manual of Requirements, and provided that there are no serious or imminent hazards *[affecting]* ***to the health, safety and well-being of*** the children, the sponsoring organization shall issue a temporary Certificate of Registration.

(b) When a temporary Certificate of Registration is issued, the sponsoring organization shall explain in writing what the provider must do to secure a regular Certificate of Registration.

(c) In determining the expiration date of the first regular Certificate of Registration, the sponsoring organization shall compute the three-year registration period from the date of the issuance of:

1. The first temporary Certificate of Registration, if any; or

2. The regular Certificate of Registration, if no temporary Certificate of Registration has been issued.

10:126-4.5 Collection of registration fees

(a) The sponsoring organization shall collect a registration fee of $25.00 from the provider upon the issuance of an initial temporary, or initial or renewal regular Certificate of Registration.

(b) The sponsoring organization shall retain the funds generated by registration fees and shall maintain a record of the registration fees collected from the providers, in accordance with Division contract requirements.

(c) The sponsoring organization shall ensure and document that the registration fees collected are directed to the maintenance or improvement of the sponsoring organization's family day care registration program.

10:126-4.6 Complaints and violations

(a) When the sponsoring organization receives a complaint of alleged violation(s) of the Manual of Requirements by a provider, other than child abuse/neglect, the sponsoring organization shall investigate the complaint and shall require the provider to abate any violations found. The sponsoring organization's investigation shall include a visit to the home whenever such a visit is necessary to substantiate the complaint.

(b) If, during the course of investigating an allegation of child abuse/neglect, the Division determines that in order to protect the children it is necessary for the Division to remove children from a provider's home, the sponsoring organization shall suspend the Certificate of Registration, if the Division recommends such action.

(c) When the sponsoring organization proposes to deny, suspend, revoke or refuse to renew a Certificate of Registration, the sponsoring organization shall follow the procedures specified in N.J.A.C. 10:126-5.7.

(d) The sponsoring organization shall maintain on file documentation of complaints against providers and of denials, suspensions, revocations, and nonrenewals of Certificates of Registration.

10:126-4.7 Monitoring of family day care providers

(a) The sponsoring organization shall monitor each provider at least once every two years to evaluate the provider's compliance with the applicable requirements of the Manual of Requirements.

(b) The sponsoring organization shall annually monitor no less than 20 percent of the providers on a random basis.

(c) The sponsoring organization shall monitor each provider prior to renewing the provider's Certificate of Registration.

(d) The sponsoring organization shall maintain on file a written report of each monitoring visit to the provider's home.

10:126-4.8 Technical assistance

(a) The sponsoring organization shall provide technical assistance to providers and parents of enrolled children, which shall address, but not be limited to, the following areas:

1. Improving the provider's care of and service to children in the home;

2. Improving and strengthening communications between providers and parents;

3. Educating parents and providers in child care and child development; and

4. Answering providers' and parents' questions regarding family day care.

(b) The sponsoring organization shall maintain a listing of support services available in the community and shall refer providers and parents of enrolled children upon request.

(c) The sponsoring organization shall make the following information available to providers:

1. A list of reportable communicable diseases;

2. A list of physical symptoms or conditions that indicate a child may have a communicable disease;

3. Guidelines for administration of medication, if applicable;

4. Guidelines for the care of sick children, if applicable; and

5. A list of services to which a provider is entitled, including:

i. Participating in at least two provider in-service training sessions per year offered by the sponsoring organization; and

ii. Receiving technical assistance from the sponsoring organization.

10:126-4.9 Information to parents

(a) The sponsoring organization shall supply to providers sufficient copies of a written Information to Parents Statement for the parents of all enrolled children. The Information to Parents Statement shall indicate that:

1. The provider has received a Certificate of Registration;

2. The provider is required to display the Certificate of Registration in a prominent location within the family day care home during its operating hours;

3. The provider is required to comply with all applicable requirements of the Manual of Requirements;

4. Parents may receive a copy of the Manual of Requirements by contacting the sponsoring organization;

5. Parents may report alleged violations of the Manual of Requirements to the sponsoring organization or to the Bureau;

6. Any person who has reasonable cause to believe that a child enrolled in the family day care home has been or is being subjected to any kind of child abuse/neglect by any person, whether in the family day care home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control (toll-free hotline at 1-(800)-792-8610). Such reports may be made anonymously;

7. Parents of enrolled children shall be permitted to visit the family day care home at any time when enrolled children are present without having to secure the prior approval of the provider. Parents may be restricted to visit only those areas of the home designated for family day care;

8. The operation of the family day care home is subject to monitoring by the sponsoring organization at least once every two years and by the Division; and

9. Parents may request that the sponsoring organization provide technical assistance to the parent or the provider, and referrals to appropriate community resources.

(b) When an enrolled child has been identified as having a handicapping condition, or a suspected handicapping condition, the sponsoring organization shall:

1. Inform the parent of the child's right to a special education program and related services;

2. Refer the parent to the New Jersey Department of Education Project Child Find at 1-(800)-322-8174 (toll-free) for a possible comprehensive evaluation and individual service plan development for the child; and

3. Refer the parent to the New Jersey Department of Health Special Child Health Services Program at (609) 292-5676 for a possible comprehensive medical evaluation for the child.

10:126-4.10 Referral procedures

(a) The sponsoring organization shall provide to the New Jersey Child Care Resource and Referral System the names, addresses, and telephone numbers of all providers who have agreed to receive referrals through that system.

(b) The sponsoring organization shall refer requests from parents seeking family day care or other child care services to the New Jersey Child Care Resource and Referral System serving the areas(s) for which the parent is seeking child care information.

(c) The sponsoring organization may also refer parents seeking family day care services to any registered provider.

10:126-4.11 Outreach and public relations

The sponsoring organization shall provide information on family day care registration to agencies, organizations and the general public.

SUBCHAPTER 5. PROVIDER REGISTRATION AND OPERATION PROCEDURES

10:126-5.1 Provider eligibility

(a) A family day care provider, in order to be eligible for a Certificate of Registration, shall:

1. Be at least 18 years of age;

2. Be of good character and reputation, with sufficient knowledge, intelligence, stability, energy and maturity to maintain a family day care home and to care for children;

3. Be in sufficient physical, mental and emotional health to care properly for children to be placed in the home; and

4. Demonstrate to the satisfaction of the sponsoring organization and the Bureau, that he or she complies with all applicable requirements of the Manual of Requirements.

10:126-5.2 Application for registration

(a) A family day care provider applicant for a Certificate of Registration shall submit to the sponsoring organization a completed application form, which shall include, but not be limited to:

1. The provider applicant's name, address and telephone number;

2. A statement certifying:

i. The provider applicant is at least 18 years of age;

ii. The provider assistant, if any, is at least 14 years of age; and

iii. The substitute provider is at least 18 years of age;

3. A list of all adults residing in the provider applicant's household;

4. The number and ages of all children under 18 years of age residing in the provider applicant's household;

5. The number and ages of children presently in the provider applicant's care, if any;

6. The hours in which the provider applicant plans to provide child care;

7. The name, address and telephone number of the provider assistant, if any, and the substitute provider;

8. A statement from the provider indicating that all pets are domesticated, free from disease, non-aggressive, and meet all applicable State and local codes or ordinances pertaining to the keeping of pets;

9. An indication as to whether the provider wishes to be listed with the New Jersey Child Care Resource and Referral System to receive referrals; and

10. A disclosure of criminal convictions, if any, by the provider, the provider assistant, if any, the substitute provider, and all members of the provider's household who are at least 14 years old.

i. Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from serving as a provider, provider assistant, or substitute provider, and shall not automatically result in denying, revoking, suspending or refusing to renew the Certificate of Registration. Such determination shall be made on a case by case basis, in keeping with the provisions of the State Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.) which provides that a person convicted of a crime may not be disqualified or discriminated against by a licensing authority unless conviction relates adversely to the occupation, trade, vocation, profession or business for which a license is sought.

ii. The provider shall notify the sponoring organization by the end of the sponsoring organization's next business day of any criminal conviction(s) ***during the three-year registration period*** by the provider, the provider assistant, if any, the substitute provider, and all members of the provider's household *[during the three-year registration period]* ***who are at least 14 years old***.

(b) The applicant shall return the completed application form along with:

1. A physician's statement(s) for the applicant and provider assistant, if any, verifying the applicant and provider assistant are in good health, free from communicable disease and able to care for children. Such statement(s) shall be based on a medical examination conducted within the six months immediately preceding the submission of the application;

2. Written proof of the results of one of the following for the applicant, the provider assistant, if any, and all other persons who care for children in the family day care home at least 15 hours per week:

i. A Mantoux tuberculin skin test with five TU (tuberculin units) of PPD tuberculin; or

ii. A chest x-ray if the individual has had a previous positive Mantoux tuberculin test; and

3. Two letters of reference, including at least one from a person who can attest to the applicant's character, reputation and suitability to work with children.

(c) The provider applicant shall:

1. Permit and participate in an evaluation of the applicant's home by the sponsoring organization; and

2. Attend *[a minimum of]* six hours of pre-service training provided by the sponsoring organization.

(d) The sponsoring organization shall process all applications for a Certificate of Registration without regard to the applicant's race, national origin, religion, sex, age, or geographic location.

10:126-5.3 Issuance of a Certificate of Registration

(a) If the sponsoring organization determines that the provider ***applicant*** is in full compliance with *[the]* ***all applicable*** requirements of the Manual of Requirements, the sponsoring organization shall issue a regular Certificate of Registration.

(b) Each registration period shall be three years, and may include the issuance of a regular Certificate of Registration, or one or more temporary Certificates of Registration and a regular Certificate of Registration.

(c) The Certificate of Registration shall be posted in a prominent location within the family day care home during the hours enrolled children are in the home.

(d) The Certificate of Registration shall be issued to a specific provider at a specific location and shall not be transferable.

(e) If it is necessary to change any identifying information noted on the Certificate of Registration, the provider shall advise the sponsoring organization no later than 30 calendar days after the change.

(f) If the provider changes residence:

1. The provider shall permit and participate in an evaluation of the new residence; and

2. A new Certificate of Registration shall be issued by the sponsoring organization if the new residence meets all applicable requirements of the Manual of Requirements.

(g) The provider shall permit and participate in all monitoring visits by the sponsoring organization and by the Bureau. Monitoring visits shall be conducted at least once every two years.

(h) The provider shall not claim in advertising or in any written or verbal announcement to be registered with the Division or the State of New Jersey unless a Certificate of Registration is currently in effect.

10:126-5.4 Issuance of a temporary Certificate of Registration

(a) If the sponsoring organization determines that the provider ***applicant*** is in substantial compliance with the ***applicable*** requirements of the Manual of Requirements, and provided that there are no serious or imminent hazards to the health, safety, and well-being of the children, the sponsoring organization shall issue a temporary Certificate of Registration.

(b) A provider shall not operate pursuant to a temporary Certificate of Registration for more than six months.

10:126-5.5 Registration fees

(a) At the time the regular Certificate of Registration is issued, the provider shall pay a non-refundable registration fee of $25.00 in the form of a check or money order made payable to the sponsoring organization.

(b) If the provider is issued a temporary Certificate of Registration, the registration fee shall be payable at that time, with no additional registration fee required upon the issuance of a regular Certificate of Registration.

(c) An additional registration fee shall not be required if a change in information on a current Certificate of Registration occurs before the expiration date of the current Certificate of Registration.

10:126-5.6 Renewal of a Certificate of Registration

(a) The regular Certificate of Registration shall be subject to renewal upon the expiration of the three-year registration period.

(b) The sponsoring organization shall send a renewal application packet to the provider no later than 90 days prior to the expiration of the current Certificate of Registration.

(c) No later than 45 days prior to the expiration of the current Certificate of Registration, the provider shall submit to the sponsoring organization a completed application form, as specified in N.J.A.C. 10:126-5.2(a).

(d) The provider shall permit and participate in a monitoring visit prior to renewal of the Certificate of Registration.

(e) Prior to the renewal of a Certificate of Registration, the provider shall:

1. Provide documentation of attendance at *[a minimum of]* three two-hour in-service training sessions, provided or approved by the sponsoring organization, during the last three-year registration period; or

2. Repeat the six hours of pre-service training provided by the sponsoring organization.

10:126-5.7 Denials, suspensions, revocations, nonrenewals, and provider appeal procedures

(a) A provider's Certificate of Registration may be denied, suspended, revoked or refused for good cause, including, but not limited to:

1. Failure to comply with the provisions of the Family Day Care Provider Registration Act and/or the requirements of the Manual of Requirements;

2. Use of fraud or misrepresentation in obtaining a Certificate of Registration or in the subsequent operation of the family day care home;

3. Any conduct and/or activity which adversely affects or presents a serious hazard to the health, safety, and general well-being of an enrolled child, or which otherwise demonstrates unfitness by a provider to operate a family day care home;

4. Refusal to furnish the sponsoring organization with records; or

5. Refusal to permit a parent of an enrolled child or an authorized representative of the sponsoring organization or Division to gain admission to the family day care home during normal operating hours.

(b) When a provider is found to be in violation of any of the provisions of (a) above, the sponsoring organization shall notify the provider of the violation(s) in writing and shall afford the provider an opportunity to abate the violation(s). If the provider fails to abate the violation(s), or commits a subsequent violation, the sponsoring organization may propose to deny, suspend, revoke or refuse to renew the Certificate of Registration.

(c) When the sponsoring organization proposes to deny, suspend, revoke or refuse to renew a Certificate of Registration, the sponsoring organization shall give written notice to the provider, specifying the reason for such action *[to the provider]* *,* either by hand-delivery or by certified mail with return receipt requested. The notice shall afford the provider an opportunity for a review before the sponsoring organization's appeals committee. The notice shall advise the provider or provider applicant of the provisions specified in (d) to (g) below.

(d) The sponsoring organization's appeals committee shall review within 15 days each appeal presented to it and shall afford the provider an opportunity to be heard. The appeals committee shall issue a written report of its findings to the provider within five working days after completing its review.

(e) If the provider is not satisfied with the sponsoring organization's appeals committee's findings, the provider may appeal to the Bureau, which will refer the matter to the Division's Administrative Hearings Unit for transmittal to the Office of Administrative Law (OAL) for an administrative hearing pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.) and the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1).

(f) If the provider does not want the matter reviewed by the sponsoring organization's appeals committee, the provider may appeal directly to the Bureau, which will refer the matter to the Division's Administrative Hearings Unit for transmittal to the Office of Administrative Law (OAL) for an administrative hearing.

(g) If the provider is not satisfied with the decision of the Division, the provider may appeal the final decision or action of the Division within 45 days from the date of service of the decision or notice of the action taken, to the Appellate Division of the Superior Court of New Jersey.

(h) If the provider's Certificate of Registration is suspended, revoked or not renewed, the sponsoring organization shall ensure that the provider notifies the parent of each enrolled child in writing within 10 days of the action.

10:126-5.8 Court action

The Bureau may institute a civil action in a court of competent jurisdiction for injunctive relief to enjoin the operation of a family day care home for good cause, including, but not limited to, any imminent danger(s) or hazard(s) that threaten the health and safety of the children in the home.

10:126-5.9 Provider reporting requirements

(a) The provider shall verbally notify the Division of Youth and Family Services, Office of Child Abuse Control (toll-free 1-(800)-792-8610) immediately whenever there is reasonable cause to believe that a child has been or is being subjected to any kind of child abuse/neglect by any person, pursuant to the Child Abuse and Neglect Law (N.J.S.A. 9:68-9, 8.10, 8.13 and 8.14).

(b) The provider shall report the following incidents to the sponsoring organization as soon as possible but by no later than the beginning of the sponsoring organization's next working day:

1. Any injury that results in the admittance of a child to a hospital while in the provider's care;

2. The death of a child while in the provider's care;

3. Any damage to the provider's home that affects the provider's compliance with the requirements of the Manual of Requirements;

4. Any criminal conviction(s) of the provider, the provider assistant, if any, the substitute provider or any member of the provider's household, as specified in N.J.A.C. 10:126-5.2(a)10;

5. Any occurrence of a reportable disease, as specified in the list of reportable diseases provided by the sponsoring organization; or

6. The termination of all family day care services by the provider.

10:126-5.10 Provider record requirements

(a) The provider's records shall be open for inspection by authorized representatives of the sponsoring organization and of the Division.

(b) The provider shall maintain on file a signed statement from each parent, affirming receipt of the Information to Parents statement, as specified in N.J.A.C. 10:126-6.12(a).

(c) The provider shall maintain an individual record for each child in care. This record shall include:

1. The child's full name, address and birth date;

2. Name, address, and telephone number of each parent;

3. Name, address and telephone number of each parent's place of employment;

4. Name, address and telephone number of one or more persons designated by the parent(s) to be called in case of emergency when a parent cannot be reached;

5. Name, address and telephone number of the child's physician;

6. The child's allergies to medication or drugs, if applicable;

7. The name of the parent's hospitalization plan and number or medical assistance plan, if applicable;

8. The parent's signed authorization for the child's emergency medical treatment;

9. The child's date of enrollment in and date of withdrawal, when applicable, from the family day care home;

10. Results of the health examination for each child, as specified in N.J.A.C. 10:126-6.7(a);

11. An immunization record for each child, as specified in N.J.A.C. *[10:126-6.7(a)2iii]* **10:126-6.7(b)3***;

12. Authorization for a school age child to leave the provider's premises, if applicable, as specified in N.J.A.C. *[10:126-6.10(e)2]* **10:126-6.16(b)***;

13. Authorization for the provider to transport an enrolled child, if applicable, as specified in N.J.A.C. 10:126-6.6(b); and

14. A record of any accidents and injuries sustained by a child, as specified in N.J.A.C. *[10:126-6.8(d)]* **10:126-6.9(d)***.

(d) The emergency contact information listed in (c) 1 through 8 above shall be made available to a physician, hospital or emergency care unit in the event of a child's accident, illness or injury.

(e) Whenever the provider leaves the home with the child(ren), the provider shall have the emergency contact information in his or her possession.

SUBCHAPTER 6. SAFETY, HEALTH AND PROGRAM REQUIREMENTS FOR PROVIDERS

10:126-6.1 *[Requirements for maximum]**Maximum* number of children

(a) A provider shall be permitted to enroll, for a fee, no more than five children at any one time.

(b) A provider may serve additional children as part of a cooperative agreement between parents or guardians for no fee, provided that no more than eight children in total are present in the home at any one time.

(c) A provider caring for children residing in the provider's home who are under six years of age may care for up to five children for a fee, provided that no more than eight children in total are present in the home at any one time.

(d) Children residing in the provider's home who are six years of age or older shall not be counted in the total number of children being cared for in the home.

(e) The provider shall care for no more than the following maximum numbers of children without a provider assistant:

Maximum Numbers of Children Permitted in the Home Without a Provider Assistant
(No more than five children may attend for a fee)

Categories:	Infants		Toddlers		Preschoolers		School Agers
A total of:	2	and	1	and	0	and	5
A total of:	2	and	1	and	1	and	4
A total of:	2	and	1	and	2	and	3
A total of:	3	and	0	and	0	and	5
A total of:	0	and	4	and	0	and	4

Categories:	Infants		Toddlers		Preschoolers and School Agers Combined
A total of:	0	and	1	and	7
A total of:	0	and	2	and	6
A total of:	0	and	3	and	5
A total of:	0	and	0	and	8
A total of:	1	and	0	and	7
A total of:	1	and	1	and	6
A total of:	1	and	2	and	5
A total of:	2	and	0	and	6

1. Infants refers to children under 15 months of age, including children residing in the provider's home.

2. Toddlers refers to children aged 15 months to two years, including children residing in the provider's home.

3. Preschoolers refers to children aged two to six years, including children residing in the provider's home.

4. School Agers refers to children aged six to 14 years, excluding children residing in the provider's home.

(f) A provider assistant shall be present whenever the provider is caring for more children than the maximum numbers specified in each of the Infants, Toddlers, Preschoolers and School Agers categories in (e) above.

(g) Although a provider assistant may be present, the provider shall care for no more than the maximum numbers of children specified in (a) to (c) above.

10:126-6.2 Physical environment

(a) The provider shall ensure that:

1. Adequate floor space is available for the children's activities;

2. The temperature of rooms used by children is maintained at a minimum of 65 degrees Fahrenheit;

3. Floors, walls, ceilings, furniture, equipment and other surfaces are kept clean and in good repair;

4. Adequate ventilation is provided by means of open windows, fans, air conditioning or other mechanical ventilation systems;

5. Warm and cold running water are available;

6. Working indoor toilets are easily accessible to children;

7. Play equipment, materials and furniture for indoor and outdoor use are of sturdy and safe construction, non-toxic, easy to clean and free of hazards that may be injurious to young children;

8. The home contains sufficient furniture and equipment to accommodate the needs of the children in care; and

9. A working telephone is available in the home*[;]**:*

*[10.]***i.* If no working telephone is available in the home:

*[i.]***(1)* The provider shall demonstrate to the sponsoring organization that he or she is unable to afford the cost of installing and maintaining *[the]* ***a*** telephone in the home;

*[ii.]***(2)* If the provider fails to demonstrate to the sponsoring organization that he or she is unable to afford the cost of installing and maintaining a telephone in the home, the provider shall install a working telephone in the home within 90 days;

*[iii.]***(3)* The provider shall care for no more than three children under two years of age or four children at least two years of age;

*[iv.]***(4)* A working telephone shall be accessible to the provider within five minutes from the home at all times when enrolled children are present; and

*[v.]***(5)* If the provider must leave the home to use the telephone, the children shall either accompany the provider or be supervised by the substitute provider, the provider assistant, or a person at least 14 years old.

10:126-6.3 Fire safety *[requirements]*

(a) The provider shall have a written plan for the emergency evacuation of the children from the home.

(b) The provider shall ensure that:

1. At least one working smoke detector is installed on each floor of the home;

2. All interior doors that can be locked from the inside have a means to be unlocked from the outside in case of emergency;

3. All heating or cooling devices are adequately vented, protected by guards and kept clear of combustible materials;

4. Woodburning stoves have protective barriers and are not accessible to children;

5. Portable liquid fuel-burning heating appliances are not in use when children are in care;

6. Stairways, hallways and exits from rooms and from the home are unobstructed, except for safety barriers; and

7. Electrical cords are maintained in good condition.

10:126-6.4 General safety *[requirements]*

(a) The provider shall ensure that:

1. The home and its furnishings present no hazard to the health and safety of the children in care;

2. All corrosive agents, insecticides, bleaches, detergents, polishes, medicines, poisonous plants, and all toxic substances are stored out of the reach of children;
3. Non-permanent safety barriers are installed to prevent children from falling from stairs, ramps, balconies, porches or elevated play areas;
4. All electrical outlets that are accessible to the children have protective covers; and
5. A working flashlight is available for emergency lighting.

10:126-6.5 Outdoor space
(a) The provider shall ensure that:
1. An adequate, safe outdoor play area is available either adjacent to or within walking distance of the home; and
2. The provider, substitute provider, provider assistant, or a person at least 14 years old is supervising any children who use swimming pools and wading pools.

10:126-6.6 Transportation *[requirements]*
(a) Whenever the provider transports enrolled children, the provider shall comply with all applicable State laws and/or regulations regarding:
1. The use of infant seats, child passenger restraint systems, and seat belts pursuant to New Jersey Division of Motor Vehicles Law (N.J.S.A. 39:3-76.2a); and
2. The possession of a valid automobile driver's license and valid vehicle inspection sticker.
(b) The provider shall obtain the parent's written consent before transporting a child.

10:126-6.7 Health *[examination requirements]* ***examinations*** for children
(a) Each child shall have had a health examination performed by a licensed physician within:
1. Six months prior to or within one month following admission to the home for children who are 2 1/2 years of age or younger; or
2. One year prior to or within one month following admission to the home for children who are above 2 1/2 years of age.
(b) A record of the health examination shall be provided by the child's parent to the provider upon or within one month following admission to the home. The record shall include:
1. The name and address of the examining physician;
2. A statement by the examining physician indicating, when applicable:
i. Information on any condition or handicap affecting the child; and
ii. Any recommendations for needed medical treatment or special requirements as to diet, rest, allergies, avoidance of certain activities and other care; and
3. An up-to-date immunization record appropriate to the child's age or documentation that the child is under a prescribed medical program to obtain immunizations and a timetable for doing so.
(c) If immunizations are not given to a child for medical reasons, the provider shall require the parent to submit a written statement from a licensed physician attesting to:
1. The reason the immunization is medically contraindicated; and
2. The specific time period that the immunization is medically contraindicated.
(d) Any child whose parent objects to a physical examination, immunization and/or medical treatment for his or her child on grounds that it conflicts with the tenets and practice of a recognized religion of which the parent(s) or child is an adherent or member shall be exempt from complying with such requirements, provided that the parent(s) submits to the provider a signed written statement that the physical examination, immunization and/or medical treatment interferes with the free exercise of the child's religious rights.
(e) The immunization exemption may be suspended during the existence of a health emergency, as determined by the Commissioner of the State Department of Health.

10:126-6.8 Sick children
(a) The provider shall inform the sponsoring organization and the parents of enrolled children regarding the circumstances under which:
1. Sick children will be admitted to or excluded from the home; and
2. Medication will or will not be administered to children.
(b) The provider shall follow policies and procedures recommended by the sponsoring organization if the provider chooses to:
1. Care for sick children in the home; and/or
2. Administer medication to children.

10:126-6.9 Accident and injury to a child while in the provider's care
(a) When an accident or injury occurs to a child while in the provider's care, the provider shall take the necessary action to protect the child from further harm and arrange for any necessary emergency medical attention. The provider shall notify the child's parent(s):
1. Immediately in the event of a serious injury; or
2. By the end of the operating day, if the injury is not serious.
(b) Basic first aid supplies shall be in the home, and shall be stored out of children's reach but readily accessible to the provider.
(c) Telephone numbers of the nearest police department, fire department, ambulance service or rescue squad, and poison control center, the provider's address, and the telephone number through which the provider can be reached shall be posted in a readily accessible area of the home.
(d) The provider shall maintain on file a record of accidents and injuries sustained by a child while under the provider's care which require professional medical attention. The record shall include:
1. The name of the child involved in the accident or injury;
2. The date, time and location of the accident or injury;
3. A written description of the:
i. Accident;
ii. Injury to the child;
iii. Follow-up action taken by the provider, including application of first aid and consultation or treatment by a medical professional, if applicable; and
iv. Names of witnesses to the accident or injury.
(e) The provider shall provide to the child's parent a copy of the record specified in (d) above by the end of the next working day after the accident or injury.

10:126-6.10 Handwashing ***and personal hygiene***
(a) The provider shall ensure that children wash their hands with soap and running water as follows:
1. Before eating;
2. Immediately after using the toilet;
3. Immediately after coming into contact with blood, saliva and other body secretions and/or fluids; and
4. After caring for animals or their equipment or after coming in contact with an animal's body secretions.
(b) The provider shall ensure that an infant's hands are washed with soap and water immediately after a diaper change.
(c) The provider and all other adults caring for children in the home shall wash their hands with soap and running water immediately:
1. Before preparing or serving food;
2. After diapering a child;
3. After toileting;
4. After assisting a child in toileting;
5. After contact with blood, diarrhea, vomit or other body secretions and/or fluids; and
6. After caring for animals or their equipment or after coming in contact with an animal's body secretions.
(d) The provider shall ensure that each child is supplied with:
1. A clean towel and washcloth for his or her exclusive use; or
2. Disposable towels and washcloths.
(e) The provider shall ensure that:
1. A change of clothing is provided for each child;
2. A child's clothing is changed when wet or soiled; and
3. Each child's personal hygiene items, such as toothbrushes, hairbrushes, and combs, are stored separately from those of others.

10:126-6.11 Activities for children

(a) Activities for the children shall be structured to include:

1. Active and quiet play;
2. Indoor and outdoor play;
3. Rest or sleep; and
4. Meals and snacks.

(b) The provider shall supply safe toys, play equipment and creative materials to ensure each child the opportunity to participate in a variety of activities appropriate for the ages, interests and number of children present.

Programs for pre-school age children shall offer materials from the following categories:

1. Dramatic play and language development (for example, dress-up clothes, puppets, books, play telephones and unbreakable dishes);
2. Visual and small muscle development (for example, mobiles, unbreakable mirrors, blocks, rattles, puzzles, sorting and stacking toys);
3. Auditory development (for example, records, musical instruments and tapes);
4. Creative expression (for example, clay, non-toxic paint, paper and blunt scissors); and
5. Large muscle development (for example, swings, balls, bicycles, large boxes and wagons).

(c) The provider shall ensure that the majority of every child's waking hours are spent out of cribs and playpens in a safe, clean place where he or she may move and explore freely.

(d) The provider shall plan the day to allow for time to offer each child individual attention, affection and comfort.

(e) Television shall be used with discretion and shall not be used as a substitute for planned activities.

10:126-6.12 Rest and sleep

(a) The provider shall plan a daily rest or sleep period for each child in a clean, safe area, according to the child's individual needs.

(b) Children under 18 months old and any child unable to walk unassisted shall sleep in a crib, playpen, cot, or bed with siderails, or on a mat at least one inch thick placed on the floor.

(c) Crib and playpen slats shall be no more than 2 3/8 inches apart.

(d) Each child shall have sheets, blankets and other coverings for his or her exclusive use, which shall be:

1. Immediately replaced when wet, soiled or damaged; and
2. Laundered at least once a week.

(e) During rest and sleep periods, only one child shall occupy a crib, playpen, bed, cot or mat at one time.

(f) Beds not used solely for a specific child shall have linens and blankets replaced with clean linens and blankets before each use.

10:126-6.13 Food and nutrition *[requirements]*

(a) The provider shall ensure that all enrolled children receive nutritious meals that have been prepared by:

1. The provider;
2. The parent(s) of an enrolled child; or
3. Another source.

(b) The provider shall ensure the provision of:

1. Breakfast for all children who:
i. Have not eaten breakfast; and
ii. Are present during the hours of 7:00 A.M. to 10:00 A.M.;
2. Lunch for all children who:
i. Have not eaten lunch;
ii. Are present during the hours of 10:00 A.M. to 1:00 P.M.; and
iii. Are under the provider's care for at least five consecutive hours;
3. Dinner for all children who:
i. Have not eaten dinner;
ii. Are present during the hours of 5:00 P.M. to 7:00 P.M.; and
iii. Are under the provider's care for at least five consecutive hours; and
iv. A snack for all children who are under the provider's care for at least three consecutive hours, or who have arrived from school.

(c) The provider shall consult with each child's parent(s) regarding the feeding schedule, nutritional needs and introduction of new foods for each child.

(d) Drinking water shall be made available to the children at all times.

10:126-6.14 *[Feeding requirements for children under 1½ years of age]***Bottle feeding***

(a) Formula, after it has been prepared from concentrate or after the can has been opened, shall be refrigerated.

(b) Bottles shall be labeled with the individual child's name when more than one child is bottle-fed.

(c) When a child is feeding, the bottle shall not be propped at any time.

[(d) Drinking water shall be made available to children at all times.]

10:126-6.15 Toilet Training

The provider shall discuss and agree upon toilet training methods with the parent(s) of each child being toilet trained.

10:126-6.16 School age children

(a) The provider shall give each school age child opportunities to:

1. Participate in outdoor, active play;
2. Rest, relax and enjoy quiet socialization;
3. Complete homework assignments, if necessary; and
4. Participate in indoor play, table games, cooking and arts and crafts activities.

(b) A school age child shall be permitted to leave the provider's supervision only with written permission from the child's parent(s).

(c) The provider and the parent(s) shall discuss and agree upon:

1. The child's use of the telephone and television; and
2. Time allocated for the child's homework assignments.

10:126-6.17 Children with special needs

When a provider identifies or suspects an enrolled child as having a handicapping condition, the provider shall contact the sponsoring organization for technical assistance in meeting the child's needs.

10:126-6.18 Supervision

(a) The provider shall be responsible for directly supervising the children at all times.

(b) If the provider can not be present, the designated substitute, as specified in N.J.A.C. 10:126-5.2(a)7, shall assume the provider's responsibility for direct supervision of the children. The substitute provider shall be familiar with all applicable requirements of the Manual of Requirements.

(c) When the number of children in the home requires that a provider assistant be present, as specified in N.J.A.C. 10:126-6.1(f), the provider shall ensure that:

1. The provider assistant and the provider are involved in direct interaction with the children for a major portion of the day;
2. The provider assistant is familiar with all applicable requirements of the Manual of Requirements;
3. An assistant under 18 years of age is not left alone with the children except in an emergency; and
4. An assistant under 16 years of age:
i. Does not work in the home at any time when his or her school is in session;
ii. Does not work an excessive number of hours to the detriment of his or her health or schoolwork; and
iii. Obtains working papers as required by State law.

(d) Children shall be released from the home only to:

1. The child's parent(s); or
2. A person designated by the parent(s) in writing or by telephone.

10:126-6.19 Guidance and discipline

(a) The method of guidance and discipline used by the provider shall:

1. Be positive;
2. Be consistent with the age and needs of the child; and
3. Help the child maintain self control.

(b) The provider shall not subject a child to:

1. Humiliating or frightening treatment;
2. Loud, profane or abusive language;
3. Derogatory remarks about the child or the child's family;

4. Spanking, hitting, kicking, biting, or inflicting physical pain in any manner;
5. Deprivation of food, sleep, or toilet access;
6. Force feeding;
7. The withholding of emotional responses or attention; or
8. Long periods of enforced silence.

(c) Napping, toilet training or eating shall not be associated with punishment.

(d) The provider and the child's parent(s) shall discuss and agree upon positive methods of discipline, in accordance with the provisions of (a), (b), and (c) above.

10:126-6.20 Communicating with parents

(a) The provider shall supply each parent of an enrolled child with an Information to Parents statement that has been supplied to the provider by the sponsoring organization.

(b) The provider shall discuss the child's daily activities and routines with ***each*** child's parent(s) upon enrollment and periodically thereafter.

(c) The provider shall inform each child's parent(s) of the name of the substitute provider who will be called upon to care for the children when the provider is unavailable.

(d) The provider shall inform each child's parent(s) upon enrollment about the presence of pets in the home.

(e) The provider shall permit the parents of enrolled children to visit the home at any time when enrolled children are present. Parents may be restricted to visit only those areas of the home designated for family day care.

(f) The provider shall inform parents that they may request the sponsoring organization to provide technical assistance or referral to appropriate community resources.

LABOR

(a)

DIVISION OF EMPLOYMENT SECURITY

1989 Maximum Weekly Benefit Rates
1989 Taxable Wage Base under the Unemployment Compensation Law
1989 Contribution Rate of Governmental Entities and Instrumentalities
1989 Base Week
1989 Alternative Earnings Test
Adopted Amendments: N.J.A.C. 12:15-1.3, 1.4, 1.5, 1.6, and 1.7

Proposed: September 6, 1988 at 20 N.J.R. 2187(a).
Adopted: October 17, 1988 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 17, 1988 as R.1988 d.535, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e), 43:21-3(c), 43:21-4(e), 43:21-7(b)(3), 43:21-7.3(e), 43:21-19(t), 43:21-27, 43:21-40 and 43:21-41.

Effective Date: November 7, 1988.
Expiration Date: August 19, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being $258.00 per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being $241.00 per week.

(c) These maximum benefits shall be effective for the calendar year 1989 on benefit years and periods of disability commencing on or after January 1, 1989.

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first $12,800 during the calendar year 1989.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as one and one-tenth percent (1.1 percent) for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year 1989.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being $92.00 per week for benefit years and periods of disability commencing on or after January 1, 1989.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41 in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being $5,500 for benefit years and periods of disability commencing on or after January 1, 1989.

(b)

DIVISION OF WORKERS' COMPENSATION

1989 Maximum Workers' Compensation Benefit Rates
Adopted Amendment: N.J.A.C. 12:235-1.6

Proposed: September 6, 1988 at 20 N.J.R. 2188(a).
Adopted: October 17, 1988, by Charles Serraino, Commissioner, Department of Labor.
Filed: October 17, 1988 as R.1988 d.536, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e) and 34:15-12(a).

Effective Date: November 7, 1988.
Expiration Date: May 5, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being $342.00 per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year 1989.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL AMUSEMENT GAMES CONTROL BUREAU

Disciplinary Proceedings; Appeals

Adopted New Rules: N.J.A.C. 13:3-5 and 6

Proposed: August 15, 1988 at 20 N.J.R. 2032(a).
Adopted: September 20, 1988 by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control and Amusement Games Control Commissioner.
Filed: September 26, 1988 as R.1988 d.500, **without change.**

Authority: N.J.S.A. 5:8-7.9, 5:8-79.1, 5:8-85, and 5:8-107.

Effective Date: November 7, 1988.
Expiration Date: April 25, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 5. DISCIPLINARY PROCEEDINGS

13:3-5.1 Five-day notice prior to hearing; charges specified

(a) No license shall be suspended or revoked until a five-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by certified mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him.

(b) If brought by the State Commissioner of Amusement Games Control, such charges shall be signed in the name of the Commissioner or, if brought by a municipal governing body, such charges shall be signed in the name of such governing body and shall specify the section of the law or the rule and regulation alleged to have been violated and the time and place fixed for the hearing.

13:3-5.2 Uncontested disciplinary proceedings

(a) At any time prior to two days before the date fixed for hearing, the licensee may enter a written plea of guilty or non vult to said charges and, thereafter, no hearing shall be held therein.

(b) Where a written plea of guilty or non vult is received, written argument as to penalty may be submitted to the Commissioner or to the municipal governing body, as the case may be, five days after entry of the plea.

13:3-5.3 Conduct of hearing

Hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:3-5.4 Commissioner's decision changing penalty

The Commissioner may adopt, modify or reject the initial decision; provided however, that the Commissioner shall not increase any recommended penalty or change a recommended finding of not guilty without first affording the licensee an opportunity to present oral argument before the Commissioner.

13:3-5.5 Transmittal of charges and result to Commissioner

When charges have been preferred against a licensee by the governing body of any municipality, such governing body shall transmit to the Commissioner forthwith a copy of such charges and, when the charges have been finally adjudicated, a copy of the Resolution and Order shall be promptly transmitted to the Commissioner.

13:3-5.6 Proceeding not barred by license expiration

Disciplinary proceedings shall not be barred or abated by the expiration or extension of the license.

13:3-5.7 Results of proceeding affects subsequent license

Any license may be suspended or revoked for proper cause, notwithstanding that such cause arose prior to the extension of the license or during the term of a prior license held by the licensee.

13:3-5.8 Conditions for penalty carryover

(a) Where disciplinary proceedings are instituted and the license is extended or expires during the pendency thereof, such proceedings shall be carried through to completion and any order of suspension or revocation therein shall apply without further proceedings to the extended license or to any new license issued to:

1. The licensee; or
2. Any partnership of which he is a partner; or
3. Any corporation of which such individual licensee is an officer, director or stockholder; or
4. Any individual who was an officer, director or stockholder of a corporation against which such a proceeding is pending.

13:3-5.9 Hearings; Conclusions or Resolutions and Order

(a) After the hearing or upon receipt of a guilty or non vult plea upon charges by the governing body of the municipality, the governing body shall make a written determination of the licensee's guilt or innocence which shall be in the form of a Resolution and Order. The Resolution and Order shall set forth the final determination of guilt or innocence, designate the effective date of any suspension or revocation and, in the case of suspension, the term of the suspension and any conditions deemed appropriate. A copy of the Resolution and Order shall be served upon the licensee personally or by mailing by certified mail addressed to the licensee at the licensed premises.

(b) In contested cases, the Commissioner's decision shall be issued pursuant to the Administrative Procedure Act. A copy of the decision shall be served upon the licensee personally or by mailing by certified mail addressed to the licensee at the licensed premises.

SUBCHAPTER 6. APPEALS

13:3-6.1 Method of appeal to Commissioner

(a) All appeals to the State Commissioner of Amusement Games Control from any refusal to issue a license or any suspension or revocation of a license by a municipal governing body shall be taken by filing with said municipal governing body a written notice of appeal, accompanied by a petition of appeal, within 30 days after the determination or action appealed from.

(b) The notice of appeal and the petition of appeal shall be entitled in the name of the licensee as appellant and the name of the municipal governing body as respondent.

(c) The petition of appeal shall set forth the subject matter of the appeal, the action of the municipal governing body, the relief sought and the grounds therefor.

(d) The appellant shall file with the Commissioner forthwith a true copy of the notice of appeal and a true copy of the petition of appeal, together with an acknowledgment or affidavit of service of the originals thereof upon respondent.

13:3-6.2 Respondent's reply to appeal

(a) Within five days after service of the notice and petition of appeal, the respondent shall file an answer with the Commissioner and mail a copy of said answer to appellant or his attorney.

(b) The answer shall include a statement of the grounds for respondent's action.

13:3-6.3 Stay of penalty

An appeal from a suspension or revocation shall automatically act as a stay of said suspension or revocation pending final determination of the appeal, unless the Commissioner shall otherwise order in writing.

13:3-6.4 Appeals

(a) Hearings held on appeals shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) All appeals shall be heard de novo but the burden of establishing that the action of the respondent was erroneous and should be reversed shall rest with the appellant.

13:3-6.5 Commissioner's decision

(a) The decision of the Commissioner shall be issued pursuant to the Administrative Procedure Act.

(b) A copy of the opinion shall be mailed forthwith to the parties or their attorneys.

13:3-6.6 Stay or extension subject to outcome of appeal

When appeal is taken in any matter, any extension, pursuant to N.J.A.C. 13:3-1.17 (Devolution of license) of any license involved therein shall be subject to the ultimate outcome of such appeal, unless otherwise ordered by the Commissioner for proper cause.

DIVISION OF MOTOR VEHICLES

(a)

Enforcement Service
Special Registration Plates for Non-Profit Organizations
Adopted New Rules: N.J.A.C. 13:20-39.

Proposed: August 15, 1988 at 20 N.J.R. 2033(a).
Adopted: October 6, 1988 by Glenn R. Paulsen, Director, Division of Motor Vehicles.
Filed: October 17, 1988 as R.1988 d.537, **without change.**

Authority: P.L.1987 c.374, §5 (N.J.S.A. 39:3-27.39).

Effective Date: November 7, 1988.
Expiration Date: December 18, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 39. SPECIAL REGISTRATION PLATES FOR NON-PROFIT ORGANIZATIONS

13:20-39.1 Purpose

(a) P.L. 1987, c.374 (N.J.S.A. 39:3-27.35 et seq.) provides for the issuance of special motor vehicle registration plates to members of non-profit community, alumni or service organizations in this State which have been approved by the Director. This subchapter establishes the following:

1. Standards and procedures by which an organization may request approval to have special motor vehicle registration plates prepared for its members who desire to apply for them;

2. Procedures regarding the certification of membership in good standing by an organization;

3. Standards and procedures by which an organization shall submit proof of its status as a non-profit organization to the Division;

4. Procedures by which an organization shall appoint an organization liaison who will act as a coordinator between the organization and the Division with regard to special motor vehicle registration plates;

5. Procedures by which an organization shall submit the organization's proposed special motor vehicle registration plate design to the Division for review and approval;

6. Standards and procedures which an approved organization must adhere to in order for its members in good standing to be able to apply for the organization's special motor vehicle registration plates;

7. Fees to be charged by the Division for special motor vehicle registration plates; and

8. Grounds upon which the Division may refuse to issue special motor vehicle registration plates to an individual, and the circumstances under which the Division may suspend or revoke such special plates.

13:20-39.2 Definitions

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

"Alumni organization" means a non-profit organization which requires its members to be either graduates, former students or benefactors of a specific post-secondary educational institution.

"Approved organization" means an organization in this State which has received a letter of approval from the Director indicating that its members are eligible to apply for special motor vehicle registration plates pursuant to this subchapter.

"Community organization" means a non-profit organization, other than an alumni or service organization as defined in this subchapter, which performs some type of philanthropic community service and which, in the Director's discretion, qualifies for the issuance of special motor vehicle registraton plates to its members in good standing who apply for same pursuant to this subchapter.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Member" means any person who is a member in good standing of a non-profit community, alumni or service organization.

"Non-profit organization" means any community, alumni or service organization in this State that has been issued an approval letter by the United States Internal Revenue Service confirming its non-profit status.

"Organization" means any non-profit association, group or organization with a membership in good standing of at least 500 persons which qualifies as a non-profit organization.

"Organization liaison" means the representative appointed by an organization who will act as the organization's sole contact with the Division regarding special motor vehicle registration plates pursuant to this subchapter.

"Service organization" means a non-profit organization which the Director determines to have as its primary purpose the advancement of United States military veterans' causes and interests and/or the honoring of all or some veterans of any branch of the United States military service.

13:20-39.3 Qualifications for organization approval; final decision; right to suspend approval

(a) An organization seeking approval from the Division pursuant to this subchapter to have special motor vehicle registation plates prepared for its members in good standing who wish to apply for them shall:

1. Submit a written request to the Division seeking approval to have special plates prepared for its members who wish to apply for same;

2. Be composed of an active membership in good standing of at least 500 persons;

3. Be a non-profit organization; and

4. Receive written approval from the Director as qualifying for special motor vehicle registration plates for its members in good standing who apply for same.

(b) The Director shall render the final decision as to whether or not an organization is approved for the issuance of special motor vehicle registration plates for its members pursuant to this subchapter in accordance with N.J.S.A. 39:3-27.37.

(c) The Director, in his or her discretion, may suspend approval of any organization which had previously been granted permission to obtain special motor vehicle registration plates on behalf of its members pursuant to this subchapter in accordance with N.J.S.A. 39:3-27.38.

13:20-39.4 Appointment of organization liaison

(a) Each organization shall appoint an organization liaison to represent that organization in any and all communications with the Division regarding special motor vehicle registration plates.

(b) The position of organization liaison shall be established at the highest administrative level within the organization.

(c) The organization shall submit to the Director, at the time of requesting approval to have special motor vehicle registration plates prepared for its members who wish to apply for same, the name, title and address of the organization liaison.

13:20-39.5 Certification of membership

(a) Upon seeking approval to have special plates prepared for its members who wish to apply for same pursuant to this subchapter, an organization shall submit to the Division a list of the legal names, addresses and current New Jersey registration plate numbers of its 500 or more members in good standing, in alphabetical order by surname, who will be requesting the special motor vehicle registration plates if the Division approves the issuance of such plates.

(b) The certification of membership required pursuant to this section shall be provided at the organization's expense, shall be compiled and submitted on the organization's official letterhead, and shall be signed by the organization liaison.

(c) Certifications of membership submitted to the Division pursuant to this section are not public records and are not accessible for public examination pursuant to the "Right to Know Law" (N.J.S.A. 47:1A-1 et seq.).

13:20-39.6 Non-profit status

(a) Upon seeking approval to have special plates prepared for its members who wish to apply for same pursuant to this subchapter, an organization shall submit to the Division proof that it is a non-profit organization and such other information as the Division may require.

(b) To prove its non-profit status, an organization shall submit to the Division a photocopy of the approval letter issued to the organization by the United States Internal Revenue Service which confirms the organization's status as non-profit, and shall certify by affidavit that the photocopy is of the authentic document issued by the United States Internal Revenue Service to that organization.

(c) An organization shall provide a copy of its charter to the Division upon seeking approval to have special plates prepared for its members who wish to apply for same. The charter shall indicate the organization's lawful purpose.

13:20-39.7 Notification of organization approval

The Director will notify each organization by letter as to whether or not it has been approved for the issuance of special motor vehicle registration plates to its members in good standing who wish to apply for same pursuant to this subchapter.

13:20-39.8 Plate design

(a) An organization, through its designated organization liaison, shall submit to the Division a special motor vehicle registration plate prototype design which indicates the name or initials that the organization wishes to appear at the bottom of the special motor vehicle registration plate and the logotype, if any, that the organization wishes to appear on the special motor vehicle registration plate.

(b) The Director shall make the final determination pursuant to this subchapter as to:

1. The use, arrangement and size of an approved organization's name on the special motor vehicle registration plates;

2. Any initials that are to appear at the bottom of the special motor vehicle registration plates; and

3. The use, arrangement and size of an approved organization's desired logotype on the special motor vehicle registration plates.

(c) An approved organization will be notified whether its plate design has been approved through a letter from the Director to the organization liaison.

13:20-39.9 Fees; plate ordering; authenticity of membership

(a) Fees for special motor vehicle registration plates pursuant to this subchapter shall be as follows:

1. For members of an approved non-profit community organization, $25.00 per each set of plates;

2. For members of an approved non-profit alumni organization, $50.00 per each set of plates; and

3. For members of an approved non-profit service organization, $15.00 per each set of plates.

(b) The initial order for special motor vehicle registration plates submitted to the Division by an approved organization on behalf of its members applying for such plates pursuant to this subchapter shall be for no less than 500 members of the organization in good standing. The initial order shall be accompanied by a non-refundable fee representing the total cost of the initial order, which shall be determined by multiplying the number of sets of plates being ordered by the applicable fee for each set of such plates set forth in (a) above.

(c) Once an approved organization has an approved plate design, each organization member who wishes to apply for special motor vehicle registration plates shall be furnished an application by the organization liaison. The applicant shall complete the application in its entirety, and submit it, together with the applicable fee set forth in (a) above, to the organization liaison.

(d) The organization liaison shall authenticate each member's application for that organization's special motor vehicle registration plates by certifying on the application that the applicant is a member in good standing of the organization.

(e) The organization liaison shall thereafter submit the special plate applications to the Division together with the applicable fee for each set of such plates set forth in (a) above. The initial order of special motor vehicle registration plates pursuant to this subchapter shall be in accordance with (b) above.

(f) The Division, upon approval of an individual member's application, will mail the special motor vehicle registration plates and replacement certificate of registration bearing the new registration plate number to the applicable member.

(g) Upon receipt of the special motor vehicle registration plates and replacement certificate of registration by an organization member, that member must surrender his or her replaced license plates within 10 days to the Division at any motor vehicle agency or State operated motor vehicle inspection station or by mail to:

Division of Motor Vehicles
Bureau of Office Services
CN-016
Trenton, New Jersey 08666-0016

13:20-39.10 Denial, suspension or revocation

(a) Special motor vehicle registration plates shall not be issued pursuant to this subchapter to any person who:

1. Has been convicted of a violation of either N.J.S.A. 39:4-50 or N.J.S.A. 39:4-96;

2. Has been convicted of a violation of N.J.S.A. 2C:11-5;

3. Has had a suspension or revocation of driving privileges in effect in this State at any time within the two year period next preceding the date of application for such plates.

(b) Special motor vehicle registration plates shall not be issued pursuant to this subchapter for any motorcycle or commercially registered vehicle, nor for any vehicle which is not registered in the State of New Jersey.

(c) Any cause for which issuance of special motor vehicle registration plates pursuant to this subchapter may be denied which arises subsequent to the issuance of such plates shall also be cause for the suspension or revocation of such plates.

(d) A material misstatement of fact on an application for special motor vehicle registration plates submitted pursuant to this subchapter shall be cause for suspension or revocation of such plates.

(e) Any person who has been issued special motor vehicle registration plates pursuant to this subchapter which identify that person as a member of an approved organization shall surrender such plates to the Division together with the corresponding registration certificate within 30 days of that person's resignation, removal or termination from membership in such organization. The failure to so surrender such plates shall be cause for the suspension or revocation of such plates.

(f) The organization liaison shall notify the Division of Motor Vehicles in writing of any person who has been issued special motor vehicle registration plates pursuant to this subchapter and who subsequently resigns or is removed or terminated from membership in the approved organization. The notification required by this subsection shall be supplied to the Division within 30 days of the former organization member's resignation, removal or termination of membership in the approved organization, and shall specify the date of the former member's resignation, removal or termination.

(a)

Transportation of Bulk Commodities
Adopted Readoption: N.J.A.C. 13:26

Proposed: August 15, 1988 at 20 N.J.R. 2035(a).
Adopted: September 26, 1988 by Glenn R. Paulsen, Director, Division of Motor Vehicles.
Filed: September 26, 1988 as R.1988 d.502, **without change.**

Authority: N.J.S.A. 39:5E-5.

Effective Date: September 26, 1988.
Expiration Date: September 26, 1993.

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. 13:26.

(b)

DIVISION OF CONSUMER AFFAIRS
Sellers of Health Club Services; Registration
Adopted New Rules: N.J.A.C. 13:45A-25.1 through 25.6
Adopted Repeal: N.J.A.C. 13:45A-25.1

Proposed: August 15, 1988 at 20 N.J.R. 2036(a).
Adopted: September 28, 1988 by James J. Barry, Jr., Director, Division of Consumer Affairs.
Filed: October 5, 1988 as R.1988 d.520, **without change.**

Authority: P.L. 1987 c.238 (N.J.S.A. 56:8-39 et seq., specifically 56:8-48).

Effective Date: November 7, 1988.
Expiration Date: December 16, 1990.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:45A-25.1 through 25.6, relating to sellers of health club services. The official comment period ended on September 14, 1988. Announcement of the opportunity to respond to the Division appeared in the New Jersey Register on August 15, 1988 at 20 N.J.R. 2036. Announcements were also forwarded to approximately 60 daily and 75 weekly newspapers including the Star Ledger and Trenton Times newspapers of general circulation; the Racquet and Fitness Association of New Jersey; the American Association of Physical Fitness Centers; health clubs throughout the state and several other interested parties.

A full record of this opportunity to be heard can be inspected by contacting Division of Consumer Affairs, Room 504, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

One comment was received during the official comment period.

COMMENT: The competitive position of a full service health and fitness center would be seriously impacted if these rules are adopted. Single focus facilities, which have been exempted, could, with significantly less state-imposed overhead burden, compete with multi-service facilities by selling contract memberships to consumers.

RESPONSE: The Act Regulating Sellers of Health Club Services (P.L. 1987 c.238, effective December 10, 1987) was enacted in response to numerous complaints regarding the loss of millions of consumer dollars due to the bankruptcies of many multi-service health club facilities, commonly known as health clubs or health spas. Single focus establishments devoted to developing a particular skill or talent (such as martial arts or dance) and single focus establishments which do not emphasize physical exercise to accomplish their primary goals (such as tanning salons and nutrition centers) are not within the Legislature's intent; the Act is clearly directed toward multi-service establishments.

Full text of the adoption follows.

SUBCHAPTER 25. SELLERS OF HEALTH CLUB SERVICES

13:45A-25.1 "Health club" defined

(a) The term "health club" shall include any establishment which:

1. Devotes at least 40 percent of its facility to the preservation, maintenance, encouragement or basic development of physical fitness or physical well-being through physical exercise; and

2. Where patron use is predominantly at will (that is, usage is permitted whenever the establishment is open or during specified time periods, such as "weekends", "weekdays", "mornings", etc.)

(b) The term "health club" shall not include a single focus establishment/facility that is devoted to the development of one particular physical skill, or activity or enjoyment of one specific sport. The following facilities are not subject to the Act Regulating Sellers of Health Club Services, P.L. 1987, c. 238 ("Act"):

1. Basic aerobic and "dance exercise" centers operating on a scheduled lesson or hourly basis;

2. Children's gyms (commercial play-spaces with trampolines and other gymnastic equipment) operating on a scheduled lesson or hourly basis;

3. Martial arts schools (for example, karate institutes);

4. Dancing schools (for example, ballet and jazz);

5. Gymnastic schools operating on a scheduled lesson or hourly basis;

6. Tanning salons ("sun studios");

7. Weight control centers;

8. Metabolic and nutrition centers;

9. Other single sport centers (for example, swim clubs, tennis clubs and racquetball clubs).

(c) Health club facilities located in hotels, motels, condominiums, cooperatives, corporate offices or other business facilities and which charge fees comparable to other for-profit health clubs are subject to the Act unless usage is limited to guests, residents or employees at no charge or at nominal cost, in which event the facilities are not within the scope of the Act.

13:45A-25.2 Registration; fees

(a) Applicant(s) shall request information from the Health Club Coordinator, Office of Consumer Protection, 1100 Raymond Boulevard, Room 405, Newark, New Jersey 07102 regarding the initial registration of a facility; thereafter an application shall be forwarded to the applicant, along with a copy of the Act and a copy of all current rules.

(b) Any person who offers for sale or sells health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of $100.00 every two years for each health club facility operated, $50.00 if paid during the second half of the biennial period.

(c) Upon verification of the information submitted in the application, payment of the registration fee and posting of a security, if not exempt from that requirement pursuant to N.J.A.C. 13:45A-25.4, a Certificate of Registration and the Notice described in (e) below shall be issued to the facility. The Certificate of Registration and Notice shall be displayed in a prominent place at the main entrance of each health club facility.

(d) Each contract for health club services shall contain, in the upper right-hand corner, the facility's Certificate of Registration number.

(e) The following shall be the text of the Notice to be provided by the Division to each registered facility:

NOTICE

This facility is registered as a seller of health club services by the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, 1100 Raymond Boulevard, Newark, New Jersey 07102. Such registration does not mean that this facility has been approved or endorsed by that agency. Patrons are advised that under New Jersey law, facilities offering contracts for health club services for longer than a three-month period must post with the Division of Consumer Affairs security against failure to provide such services.

(f) A registrant may note in advertising that it is a registered health club; however, a registrant shall not state or imply that the facility has been approved or endorsed by the Division.

(g) All registrations shall expire every two years on the 10th day of February. The initial expiration date will be February 10, 1990.

13:45A-25.3 Exemption from registration

(a) Where a facility claims exemption from registration because less than 40 percent of its square footage is devoted to health club services, the facility shall calculate the 40 percent square footage on the basis of the total indoor square footage of the establishment including the exercise equipment area(s), sauna(s), swimming pool(s), locker facilities and shower areas. The facility shall return a completed application form to the Division of Consumer Affairs along with documentation of the "less than 40 percent" claim, which shall include:

1. A schematic drawing noting the dimensions and use of each area of the facility;
2. A list of the various rooms/spaces with the total square footage of each room/space;
3. A statement of the total square footage of the facility; and
4. Two sample advertisements or brochures if any have been published by the facility within a three month period prior to the date documentation is filed.

(b) If, after the filing of the claim of exemption from registration, a facility makes an internal or external change in space allocation which changes the relationship of the health club services area to the total premises, the facility shall file a revised schematic diagram with the Division. This filing shall be made no later than 90 days after the date when the change in space allocation is completed.

(c) A claim of exemption from registration because less than 40 percent of the facility's square footage is devoted to health club services shall be subject to on-site verification at the discretion of the Director of the Division.

13:45A-25.4 Exemption from security requirement

A separate Declaration of Exemption from Security Requirement shall be filed for each facility claiming exemption from the bond/letter of credit/security requirement of N.J.S.A. 56:8-41 because its membership contracts are for a period no longer than three months. When the Declaration of Exemption from Security Requirement is filed, it must be accompanied by a copy of a written contract as proof that the contract duration is for a period of no longer than three months. The Declaration of Exemption from Security Requirement shall be available upon request from the Health Club Coordinator, Office of Consumer Protection, Room 405, 1100 Raymond Boulevard, Newark, NJ 07102.

13:45A-25.5 Documentation of maintenance of security

Each establishment which has posted a bond as security shall maintain complete and accurate records relating to the bond and premium payments made thereon. Each establishment which has posted a letter of credit or provided other security acceptable to the Director of the Division shall maintain complete and accurate records relating to those items. These records shall be available on the premises of the establishment for review by the Director or his or her designated representative on any operating day.

13:45A-25.6 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

TRANSPORTATION

NEW JERSEY TRANSIT CORPORATION

(a)

Section 16(b)(2) Capital Assistance Program
Adopted New Rules: N.J.A.C. 16:80

Proposed: August 15, 1988 at 20 N.J.R. 2044(b).
Adopted: September 26, 1988 by New Jersey Transit Corporation, Jerome C. Premo, Executive Director.
Filed: October 4, 1988 as R.1988 d.515, **without change.**

Authority: N.J.S.A. 27:25-5(e), (g), and (h).

Effective Date: November 7, 1988.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 80
SECTION 16(b)(2) CAPITAL ASSISTANCE PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

16:80-1.1 Purpose

(a) Section 16(b)(2) of the Urban Mass Transportation Act of 1964, 49 U.S.C. §§1601 et seq., as amended, authorizes the Secretary of Transportation to make grants and loans to private non-profit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and handicapped persons for whom mass transportation services are unavailable, insufficient, or inappropriate. Such grants and loans are subject to such terms, conditions, requirements, and provisions as the Secretary of Transportation may deem necessary or appropriate.

(b) The Section 16(b)(2) program is designed to supplement other capital assistance programs by funding transportation projects for the elderly and handicapped in all areas—urbanized, small urban, and rural. Although recipients are private non-profit organizations which usually have specific clientele, transportation services funded under this program may be open to all elderly and handicapped persons once the immediate transportation needs of the recipients are satisfied.

(c) The principal responsibility and authority for administering the program is with the Governor through the New Jersey Transit Corporation (NJ TRANSIT), the designated State agency which acts as grantee for all Section 16(b)(2) funds within the State of New Jersey. NJ TRANSIT is responsible for:

i. Notifying private non-profit organizations of the availability of the program;
ii. Applying to the Urban Mass Transportation Authority for these funds on behalf of private non-profit agencies within the State;
iii. Developing project selection criteria;
iv. Determining applicant eligibility;
v. Selecting projects for funding;
vi. Monitoring local projects; and
vii. Overseeing project audit and closeout.

(d) Each eligible private non-profit organization shall apply directly to NJ TRANSIT for assistance under the program.

16:80-1.2 Definitions

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

"Applicant" means any private non-profit organization which applies for financial assistance under the Section 16(b)(2) Capital Assistance Program.

"Elderly person" means any individual who is 60 years of age or older.

"Handicapped person" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or

temporary incapacity or disability, including any person who uses a wheelchair or has semi-ambulatory capabilities, is unable without special facilities to utilize public transportation facilities and services effectively.

"Non-profit organization" means a corporation or association determined by the Secretary of the Treasury to be an organization described by 26 U.S.C. §501(c) which is exempt from taxation under 26 U.S.C. §501(2) or §101, or one which has been determined under State law to be non-profit, and for which NJ TRANSIT has received documentation certifying the status of the non-profit organization.

"Private" means non-public bodies which are not municipalities or other political subdivisions of the State; are not Indian tribes (except private non-profit corporations formed by Indian tribes); are not public corporations, boards, or commissions established under State law; or are not subject to control by public authority, State or municipal.

"Recipient" means an applicant which has been awarded financial assistance under the Section 16(b)(2) Capital Assistance Program.

SUBCHAPTER 2. ALLOCATION

16:80-2.1 General

Section 16(b)(2) funds are allocated among the states by an administrative formula which is based on the percentage of elderly and handicapped population in each state. The annual fiscal year funding level for each state is announced in a letter from the Administrator of the Urban Mass Transportation Administration to the governor. Notification of the fiscal year allocations are made on or about October 1.

16:80-2.2 Formula

(a) The Federal share of eligible capital and program administrative costs is not to exceed 80 percent of the net cost of the program. The local match of eligible capital and administrative costs shall be no less than 20 percent of the net cost of the program. NJ TRANSIT provides the 20 percent match requirement for New Jersey's Section 16(b)(2) Program.

(b) All of the local share must be provided from sources other than Federal funds. The only exceptions are Federal revenue sharing funds, Appalachian Regional Commission funds, and Housing and Urban Development (HUD), Community Development Block Grant funds, which may be treated as local funds.

(c) Up to $25,000 or 10 percent of the State's total fiscal year 16(b)(2) allocation, whichever is greater, may be used as the Federal share of program administrative costs.

16:80-2.3 Fund availability

Section 16(b)(2) funds are available to the states only for the fiscal year in which they were allocated. Any funds remaining unobligated at the end of the fiscal year will be redistributed to the states by formula in the succeeding fiscal year.

SUBCHAPTER 3. ELIGIBILITY

16:80-3.1 Eligible applicants

Only private non-profit organizations are eligible to apply to NJ TRANSIT for funding under the Section 16(b)(2) program.

16:80-3.2 Eligible capital expenses

(a) Funds for the Section 16(b)(2) program are available for capital expenses to support the provision of transportation services to meet the special needs of elderly and handicapped persons. Examples of capital expenses include, but are not limited to the following:

1. Buses;
2. Vans or other paratransit vehicles;
3. Radios and communication equipment;
4. Vehicle shelters;
5. Wheelchair lifts and restraints;
6. Vehicle rehabilitation;
7. Microcomputer hardware and software;
8. Spare parts with a unit cost over $300.00 and a useful life of more than one year;
9. Initial installation costs; and
10. Vehicle procurement, testing, inspection, and acceptance costs.

16:80-3.3 Eligible NJ TRANSIT administrative expenses

(a) Eligible program administration costs consist of those costs incurred in implementing and managing the entire Section 16(b)(2) program, including previously funded projects, if necessary.

(b) Eligible program administration costs included but are not limited to:

1. General, administrative, and overhead costs such as salaries of the program director, secretary and bookkeeper;
2. Office supplies; and
3. Development of specifications for vehicles and equipment.

16:80-3.4 Private enterprise coordination requirements

(a) To the maximum extent feasible, NJ TRANSIT shall ensure that private-for-profit mass transportation operators have been given a fair and timely opportunity to participate in the local planning for the project, and have been afforded every feasible opportunity to provide the proposed special service for elderly and handicapped persons. To ensure that all private-for-profit and public transit operators have been notified of the non-profit organization's intention to provide special services, and that they have had adequate opportunity to comment, two options are available:

1. The private non-profit applicant should have a public notice describing the services it intends to offer to meet the special needs of elderly and handicapped persons within a stated service area. The notice should invite any interested public or private-for-profit transit or paratransit operators within the stated service area to comment on the proposed service by sending a written notice to NJ TRANSIT and/or the local applicant. A minimum of 15 days response time shall be provided; or

2. The non-profit applicant should request individual sign-offs from public or private-for-profit transit and paratransit operators in the service area stating that the services that the private-for-profit operator is providing or is prepared to provide are not designed to meet the special needs of elderly and handicapped persons within the service area.

SUBCHAPTER 4. APPLICATION PROCESS

16:80-4.1 Program advertisement

NJ TRANSIT shall advertise the program early enough to allow sufficient time for any interested, private, non-profit corporation to obtain, complete, and return the preliminary application before an established deadline. The program shall be advertised by means of a local notice in three or more newspapers of general circulation published in New Jersey.

16:80-4.2 Preliminary application

(a) The preliminary application must be obtained from and submitted to:

The Section 16(b)(2) Program
NJ TRANSIT
c/o Office of Special Services
P.O. Box 10009
Newark, NJ 07101

(b) The private non-profit corporation shall submit the following information in the completion of the preliminary application:

1. General information about the corporation or association;
2. Description of the transportation project;
3. Project justification;
4. Documentation of the corporation's or association's fiscal and managerial capability;
5. Vehicle inventory;
6. Project evaluation questionnaire; and
7. Operating plan.

16:80-4.3 County coordinating committee review

(a) NJ TRANSIT packages all completed preliminary applications by county and forwards them to the appropriate county coordinating committees for review and evaluation.

(b) To assist in the review, NJ TRANSIT provides each county coordinating committee with project evaluation criteria. Upon completion of the review, the applications are returned to NJ TRANSIT where a final review and selection is accomplished.

16:80-4.4 Final application

If a preliminary application has been selected for inclusion in the State application to the Federal government, a final application is mailed to the applicants for completion. The final application consists of information regarding procedural requirements, minimum eligibility requirements, provisions for the protection of private industry, and the use of vehicles leased under the Section 16(b)(2) program. Additionally, the final application consists of various certifications and notifications required under the Federal program guidelines.

16:80-4.5 Selection of final applications

(a) NJ TRANSIT evaluates and selects the final applications to be used based on the following criteria approved by the Urban Mass Transportation Administration:

1. The applicant's ability to provide designated service as determined by information from the applicant's operating statement;
2. The experience of the applicant organization in providing transportation to its clientele group;
3. The degree of coordination among applicant organizations submitting a proposal in attempting to provide transportation services to elderly and/or handicapped people; and
4. The compatibility and relevance of proposed service with other government programs and policies.

(b) NJ TRANSIT will then submit a final program of projects listing the names of agencies completing applications to the capital assistance branch of the Urban Mass Transportation Administration.

(c) NJ TRANSIT will notify each county of the agency or organization within that county whose application has been selected to be included in the grant application NJ TRANSIT submits to the Urban Mass Transportation Administration.

16:80-4.6 Notification of grant award

NJ TRANSIT will notify the governing body of each county once it receives notification the Urban Mass Transportation Administration of grant award. The county will then notify the local agencies or organization of the funding availability.

SUBCHAPTER 5. AGREEMENTS

16:80-5.1 Lease agreements

(a) After program approval, NJ TRANSIT will enter into a lease agreement with the selected private, non-profit corporations for the purposes of leasing vehicles.

(b) Each recipient will be required to enter into a contract with NJ TRANSIT which governs the leasing and use of the capital items during the useful life of the items. The contract will specify requirements for reporting, coordination, and other items regarding the use of the equipment.

(c) The vehicle will be owned and title retained by NJ TRANSIT and may not be sub-leased during its useful life without prior written approval of NJ TRANSIT.

(d) Disposal of the equipment during the project period will require NJ TRANSIT's approval.

16:80-5.2 Reporting requirements

The recipient will be required to submit quarterly reports regarding the utilization of the capital items. Such reports will include the number of people benefitting from transportation services, trip purposes for which service is used, and the cost of providing service. Reporting forms will be attached to the contract which the recipient and NJ TRANSIT will enter into prior to the delivery of any vehicle.

(a)

Small Urban and Rural Area Public Transportation Program

Adopted New Rules: N.J.A.C. 16:81

Proposed: August 15, 1988 at 20 N.J.R. 2046(a).
Adopted: September 26, 1988 by New Jersey Transit Corporation, Jerome C. Premo, Executive Director.
Filed: October 4, 1988 as R.1988 d.514, **without change.**

Authority: N.J.S.A. 27:25-5(e), (g), and (h).

Effective Date: November 7, 1988.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 81
SMALL URBAN AND RURAL AREA
PUBLIC TRANSPORTATION PROGRAM

SUBCHAPTER 1. GENERAL OVERVIEW

16:81-1.1 Purpose

(a) Section 18 of the Urban Mass Transportation Act of 1964, 49 U.S.C. §§ 1601 et seq., as amended, authorizes the Secretary of Transportation to apportion funds to the governor of each state for public transportation projects in non-urbanized areas.

(b) The funds, appropriated annually, are made available on population-based formulas and may be used for all projects included in the Section 18 Statewide program of projects submitted annually for approval to the Urban Mass Transportation Administration by NJ TRANSIT.

(c) The program of projects shall provide for fair and equitable distribution of funds within the State, including Indian reservations, and shall provide for maximum feasible coordination with transportation services assisted by other Federal sources.

(d) Section 18 program funds may be used for planning, capital, operating, and administrative assistance to State agencies, local public bodies, non-profit organizations, Indian tribes and groups, and operators of public transit services.

(e) The principal responsibility and authority for administering the program is with NJ TRANSIT, the State agency designated as the grantee for all Section 18 funds within the State of New Jersey. NJ TRANSIT is responsible for:

1. Notifying eligible local applicants of the availability of the program;
2. Developing project selection criteria;
3. Soliciting and reviewing applications;
4. Certifying eligibility of applicants and project activities;
5. Submitting a Statewide program of projects to the Urban Mass Transportation Administration for approval;
6. Ensuring a fair and equitable distribution of program funds;
7. Ensuring the maximum feasible coordination of public transportation resources at both the State and local level;
8. Ensuring a process whereby private transit and paratransit operators are provided an opportunity to participate in the program to the maximum extent feasible;
9. Ensure compliance with Federal requirements and program guidelines;
10. Monitor local projects; and
11. Oversee project audit and closeout.

16:81-1.2 Definitions

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

"Applicant" means any State agency, local public body, non-profit organization, Indian tribe and group, and operator of public transportation services that applies for financial assistance under the Section 18 Small Urban and Rural Area Public Transportation Program.

"Non-urbanized area" and "small urban and rural area" are used synonymously to mean any area outside an urbanized area, as designated by the Bureau of the Census. An urbanized area consists of a core area and the surrounding density populated area with a population of 50,000 or more, with boundaries fixed by the Census Bureau or extended by State and local officials.

"Recipient" means an applicant which has been awarded financial assistance under the Section 18 Small Urban and Rural Area Public Transportation Program.

SUBCHAPTER 2. APPORTIONMENT

16:81-2.1 General

Formal notification of the fiscal year apportionment to each state will be made through publication in the Federal Register after the enactment of the annual Department of Transportation Appropriation Act or a continuing resolution.

16:81-2.2 Formula

Section 18 funds are apportioned to the state by a legislatively mandated formula based on the ratio of the non-urbanized population of each state to the non-urbanized population of all the states, according to the latest U.S. Census.

16:81-2.3 Fund availability

Section 18 funds are available for obligation for two years after the fiscal year for which they were apportioned. Funds unobligated at the end of the two-year period will lapse to the State unless they are obligated for Section 18 projects or transferred to the Section 9 program to be obligated that year in areas having a population of between 50,000 and 200,000. Unobligated funds which have lapsed will be reapportioned among the states according to formula.

SUBCHAPTER 3. ELIGIBILITY

16:81-3.1 Local recipients

Eligible recipients include local public bodies and agencies thereof, private non-profit organizations, Indian tribes and groups, and operators of public transportation services. Private, for-profit operators of transit or paratransit services may participate in the program through contracts with NJ TRANSIT. NJ TRANSIT may further define recipient eligibility requirements in order to comply with State laws or to further program goals.

16:81-3.2 Eligible services and areas

(a) Section 18 funds are available for expenditures for public transportation projects in areas other than urbanized areas. Public transportation is defined to mean mass transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides service to the general public (not including charter or sight-seeing or exclusive school bus) on a regular and continuing basis.

(b) Section 18 projects may include the transportation of non-urbanized area residents to and from urbanized areas. If Section 18 funds are used in a joint urbanized/non-urbanized project, Section 18 funds should be used primarily to assist the non-urbanized portion. NJ TRANSIT establishes the criteria for such joint projects.

SUBCHAPTER 4. ELIGIBLE ASSISTANCE CATEGORIES

16:81-4.1 Administration and technical assistance

(a) NJ TRANSIT may apply for an amount not to exceed 15 percent of its apportioned funds to administer the program and to provide technical assistance to local recipients. Such technical assistance may include the following:

1. Project planning;
2. Program development;
3. Development of vehicle and equipment specifications;
4. Management development;
5. Coordination of public transportation programs (public and private); and
6. Such research as NJ TRANSIT deems appropriate to promote the effective means of delivering public transportation service in non-urbanized areas. These expenses are funded at a 100 percent Federal share. NJ TRANSIT may pass any portion of the funds on to local recipients for the same purpose, and may impose a local share requirement.

16:81-4.2 Capital expenses

(a) Capital expenses include the acquisition, construction and improvement of public transit facilities and equipment needed for an efficient and coordinated public transportation system. The Federal share of eligible facilities and equipment shall not exceed 80 percent of the net capital cost. Examples of eligible capital expenditures include, but are not limited to the following:

1. Buses;
2. Vans or other paratransit vehicles;
3. Radios and communications equipment;
4. Passenger shelters;
5. Wheelchair lifts and restraints;
6. Vehicle rehabilitation;
7. Operational support such as computer hardware/software;
8. Spare parts with a unit cost over $300.00 and a useful life of more than one year;
9. Initial installation costs;
10. Vehicle procurement, testing, inspection, and acceptance costs; and
11. Construction or rehabilitation of transit facilities including design, engineering and land acquisition.

16:81-4.3 Operating expenses

(a) Operating expenses are considered those costs directly related to system operations. As defined for the Section 18 program, eligible expenses may be limited, at the option of NJ TRANSIT, to include only the following:

1. Fuel;
2. Oil;
3. Replacement tires;
4. Certain replacement parts;
5. Drivers' and mechanics' salaries;
6. Fringe benefits;
7. Dispatcher salaries; and
8. Licenses.

(b) Net operating expenses are those expenses that remain after operating revenues are subtracted from eligible operating expense. At a minimum, operating revenues include fare box revenues. Fare box revenues include fares paid by riders who are later reimbursed by a human service agency. The Federal share of net operating expenses may not exceed 50 percent.

(c) NJ TRANSIT provides one half the local match or 25 percent of the total operating expense. The local recipient provides the other 25 percent match for operating expenses.

16:81-4.4 Project administrative expenses

(a) Under the Section 18 program, project administrative expenses incurred by a local recipient can be viewed as a separate cost category from either capital or operating expenses.

(b) Eligible project administrative costs may include, but are not limited to, general, administrative and overhead costs such as:

1. Salaries;
2. Facilities and equipment rental;
3. Insurance; and
4. Marketing.

(c) Administrative costs for promoting and coordinating ridesharing may be eligible if the activity is part of a coordinated public transportation program.

(d) Interest on short-term loans for operating assistance may be an eligible administrative expense if approved by NJ TRANSIT.

(e) The Federal share of project administrative expenses may not exceed 80 percent. NJ TRANSIT provides the 10 percent match of the administrative expenses, and the local recipient provides the remaining 10 percent match.

SUBCHAPTER 5. APPLICATION PROCESS

16:81-5.1 Application process

(a) The application package for Section 18 eligible recipients shall be obtained from, and returned to:

The Section 18 Program
NJ TRANSIT
c/o Office of Special Services
P.O. Box 10009
Newark, NJ 07101

(b) Each local recipient of Section 18 funds shall submit the application to NJ TRANSIT for funds apportioned to the State of New Jersey during the current fiscal year. The application shall be complete and have appropriate authorizing signatures where appropriate.

(c) The following information must be included in the application:

1. A project description;
2. A project coordination statement;
3. Public involvement verification;
4. Private enterprise involvement verification, including the information required under IV-1 Notifications, IV-2 Agreement Documentation, and IV-3 Grievance Procedures of the application;
5. A labor warranty;
6. Civil rights assurances, including the information required under application sections VI-1 Title VI, VI-2 Equal Employment Opportunity (EEO), VII-3 Disadvantaged Business Enterprises (DBE) and Women's Business Enterprises (WBE), and VI-4 Provisions for the Elderly and Handicapped;
7. Charter and school bus provisions;
8. A protection of the environment statement;
9. An opinion of counsel;
10. Application resolutions;
11. State assurances;
12. Standard assurances; and
13. An Appendix A, a list of statutes, regulations, executive orders, and administrative requirements applicable to the Section 18 program.

SUBCHAPTER 6. NOTIFICATION PROCESS

16:81-6.1 Notification process

(a) NJ TRANSIT will notify applicants of the selection of their projects to be included in the application to be submitted to the Urban Mass Transportation Administration once the NJ TRANSIT Board of Directors has reviewed and approved the Section 18 program of projects.

(b) NJ TRANSIT will also notify applicants of the Section 18 grant award.

TREASURY-GENERAL

(a)

STATE LOTTERY COMMISSION

Lottery Commission Rules

Adopted Readoption: N.J.A.C. 17:20

Proposed: August 15, 1988 at 20 N.J.R. 2048(a).
Adopted: September 22, 1988 by New Jersey State Lottery Commission, Barbara A. Marrow, Secretary.
Filed: September 26, 1988 as R.1988 d.501, **without change.**

Authority: N.J.S.A. 5:9-7(a) and (b).

Effective Date: September 26, 1988.
Expiration Date: September 26, 1993.

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. 17:20.

(b)

AFFIRMATIVE ACTION OFFICE (PUBLIC CONTRACTS)

Affirmative Action Rules

Readoption with Amendments: N.J.A.C. 17:27.

Proposed: August 1, 1988 at 20 N.J.R. 1780(a).
Adopted: October 7, 1988 by Feather O'Connor, State Treasurer.
Filed: October 7, 1988 as R.1988 d.522, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 10:5-31 et. seq., especially N.J.S.A. 10:5-36K.

Effective Date: November 7, 1988, Amendments; October 7, 1988, Readoption.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:

The Department received four comment letters concerning the proposed readoption and two telephone calls. One letter and the telephone calls were in support of the proposed amendments; one letter expressed opposition to the proposed amendments; and the remaining two letters sought clarification an noted and error in the text.

COMMENT: The State Department of Transportation expressed support for the proposed amendments and welcomed the addition of the separate goal for females on construction contracts. They did, however, note significant and unusual changes in the revised goals for construction contractors and requested an explanation. They also noted an error in the source of the 6.9 percent female employment goal for construction contractors.

RESPONSE: The goal charts in N.J.A.C. 17:27-5.2 and 7.3 were incorrect due to typographical errors. As the figures for the goals are not discretionary with the Department, but are as provided by the Department of Labor through demographic analysis, the changes are not as substantive as to require reproposal. The source of the 6.9 percent female employment goal for construction contractors was erroneously stated Stanwick Associates. The female employment goal for construction was promulgated by the Office of Federal Contract Compliance Programs (OFCCP) and is currently used for Federally aided projects. Corrections are shown in the revised text which follows.

COMMENT: The Department of Transportation also requested that the readopted rules specify that compliance with the goals is measured in hours worked on construction projects.

RESPONSE: The Department of Treasury has always measured construction goal compliance by work hours. The suggestion that the clarification be incorporated in the readoption was acted upon and is contained in the adopted text of N.J.A.C. 17:27-7.3(a).

COMMENT: The Department of Transportation requested clarification of "Federally approved or sanctioned affirmative action program" as used in N.J.A.C. 17:27-3.3(b). Specifically, they requested to know if that language meant that any DOT contractor who works on Federally aided projects could be automatically exempt from the language requirements for wholly funded State construction projects.

RESPONSE: The phrase "Federally approved or sanctioned affirmative action program" does not relate to construction. Prior to January 1982, there were Home Town Plans sanctioned by the Federal government. Home Town Plans were voluntary attempts by unions to address affirmative action concerns expressed by the Federal government. Many of the union construction contractors were signatory to these plans which were monitored by the OFCCP. Due to the lack of compliance, OFCCP decertified these programs. Federally approved or sanctioned affirmative action plan applies to procurement and service contractors operating under a current affirmative action plan approved by the Federal government. Any company with such Federal approval is exempt from N.J.A.C. 17:27-3.1.

COMMENT: The Department of Transportation requested that Treasury consider instituting a waiver procedure for N.J.A.C. 17:27-7.5, Financing minority worker outreach and training programs, because of the difficulty experienced in implementing this provision.

RESPONSE: The provision that one half of one percent of the total project cost on construction projects over $1,000,000 funded by certain public agencies has always been subject to waiver. The public agency has

the responsibility for making the determination and requesting such waiver.

COMMENT: The Utility and Transportation Contractors Association of New Jersey expressed support for the State's affirmative action program, called attention to the error previously mentioned in the source of the 6.9 percent female goal for construction contracts, and suggested that a more realistic goal of two percent be adopted. The City of Hackensack also expressed concern that the treatment of females as targeted minority workers would have an impact on local government.

RESPONSE: When adopting the goal for female employment on construction projects, the Department was aware that the availability of females in construction trades would make reaching this goal very difficult. However, in determining compliance with this and all other goals established by this chapter, contractor's good faith efforts are considered if the goal is not attained. The other issues considered in adopting this goal were uniformity with other public agencies in New Jersey subject to this goal on Federally assisted contracts, increasing the emphasis on females in construction related jobs, and stimulating contractors and unions to recruit and train females. Because local governments do not have the responsibility of enforcing the employment goals of contractors, the Department disagrees with the assertion that this change impacts local government.

COMMENT: The City of Hackensack indicated that the proposed changes affecting procurement and service contractors with less than 50 employees represented a substantive change relating to small businesses that would discourage numerous businesses in the State from participating in local projects.

RESPONSE: N.J.A.C. 17:27 applies to all public contracts; therefore, the rule always included businesses with 50 or less employees. These small firms were required to submit a notarized affidavit for each contract awarded. The change means that small businesses receiving several contracts from the same or more than one agency need only complete one form per year not one per contract. Agencies were required to provide the affidavit forms and to ensure that they were notarized. The affirmative action office supplies the forms now required and is responsible for their review. Any company doing business with an agency under its delegated purchasing authority continues to be exempt from this requirement. In addition to reducing the paperwork for small businesses who do a great deal of business with government, the requirement streamlines the compliance procedure for agencies who no longer have to determine the size of the firm and the appropriate document to require.

COMMENT: The City of Hackensack had a comment similar to the preceding, regarding the proposed change regarding construction contracts under $50,000.

RESPONSE: This change was proposed to eliminate the confusion experienced by agencies in awarding more than one prime contract on a project and the difficulties experienced between contractors on these multi prime projects. Although the submission of the initial project manning report is now required for construction contracts in excess of the bidding threshold, it does not mean that the workforce on small contracts will be monitored by the field staff.

COMMENT: The City of Hackensack interpreted the proposed rules as exceeding the agreed upon role of municipalities in enforcement. "Now it is proposed that the Compliance Officer be responsible for ensuring his agency's compliance."

RESPONSE: The responsibilities of the Public Agency Compliance Officer have not been expanded in any way under the changes. The agency has always been responsible for ensuring that the required statement appears in any requests for bid, the appropriate mandatory language is included in each contract, and the correct form is obtained from the contractor. The public agency is in no way responsible for the workforce monitoring of its contractors. The agency's compliance officer's responsibilities have been streamlined in that no choice of language for each type of contract needs to be made and no choice of appropriate form needs to be made. In administering these rules, the greatest singular difficulty reported by numerous agency compliance officers during the past eight years has been making the choices no longer required.

COMMENT: The Purchase Bureau found no problem with the proposed rules.

Summary of changes between proposal and adoption: Changes are being made to N.J.A.C. 17:27-5.2, 6.1 and 7.3 for clarification; to correct errors in the proposed amendments; and to make explicit the existing method of determining compliance with goals on construction contracts.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 17:27.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisk *[thus]*).

17:27-2.1 Definitions

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

. . .

"Minority worker" means a worker who is Black, Hispanic, Asian, American Indian, Portuguese, or Alaskan Native defined as follows:

1. Black American means a person having origins in any of the black racial groups of Africa.

2. Hispanic Americans means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

3. Asian American means a person having origins in any of the original people of the Far East, southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.

4. American Indian or Alaskan native means a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition.

5. Portuguese means a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.

. . .

"Public works contract" means any contract to be performed for on behalf of the State or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing, for the construction, alteration or repair of any building or public work for the acquisition of materials, equipment, supplies, or services. Contracts qualifying for a waiver or an exemption from bidding requirements are included in this definition.

. . .

"Treasurer" means the Treasurer of the State of New Jersey or his or her designee.

17:27-3.3 Mandatory bid specification language

(a) A public agency shall include in any bid specifications for a public works contract the language required by N.J.A.C. 17:27-3.4(a). Also, for procurement and service contracts which are not subject to a Federally approved or sanctioned affirmative action program, the public agency bid specifications shall include the language required by N.J.A.C. 17:27-5.3, and the following language:

1. All bidders and all contractors who are negotiating for a contract as a precondition to entering into a valid and binding procurement or service contract with the public agency, are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127), one of the following three documents:

i. (No change in text.)

ii. A certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4;

iii. An initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with N.J.A.C. 17:27-4.

(b) For construction contracts which are not subject to a Federally approved or sanctioned affirmative action program, the public agency bid specifications shall include the language required by N.J.A.C. 17:27-7.4 and the following language:

1. No later than three (3) days after signing a construction contract said bidders or contractors are required to submit to the public agency compliance officer and the affirmative action office an initial project manning table consisting of forms provided by the affirmative action office and completed by the contractor in accordance with N.J.A.C. 17:27-7.

(c) (No change in text.)

17:27-3.4 Mandatory contract language and additional mandatory bid specification language

(a) Public agencies shall include in all public works contracts, and in all bid specifications and in statements to certain contractors

negotiating contracts, as prescribed in, N.J.A.C. 17:27-3.3 the following language:

1. During the performance of this contract, the contractor agrees as follows:

Redesignate (1)-(4) as i.-iv. (No change in text.)

(b) (No change in text)

(c) A public works contract for a subcontractor with a total work force of four or fewer employees or for a contractor or subcontractor performing under an existing Federally approved or sanctioned affirmative action program shall contain as mandatory language required by P.L. 1975, c.127, all of the language of (a) above, except for the language contained in (a)1iv above, and said contract shall not contain any other mandatory language prescribed by these rules.

17:27-3.5 Designation of public agency compliance officers

Each public agency shall annually designate an office or employee, who may be an existing officer or employee, to serve as its public agency compliance officer and shall notify the Department of the Treasury, State Affirmative Action Office, of the designation by January 10. The officer shall perform the duties prescribed in these rules, shall be responsible for ensuring the agencies' compliance with these rules and may perform any other liaison and assistance functions as may be requested by the affirmative action office.

17:27-4.2 Elements of an affirmative action plan for procurement and service contractors and subcontractors

(a) An affirmative action plan for procurement and service contractors and subcontractors shall consist of the following elements.

1. Generally:

i. Provisions in the procurement or service contract, containing the language required by N.J.A.C. 17:27-3.4(a) and 17:27-5.3; and

ii. An initial employee information report, submitted in accordance with N.J.A.C. 17:27-1.3 or a certificate of employee information report issued in accordance with N.J.A.C. 17:27-4.5; or

2. (No change.)

17:27-4.3 Procedure for establishing an approved affirmative action plan by contract

(a) Upon designating a procurement or service contractor as the lowest responsible bidder, the public agency shall submit to the contractor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.4(a) and 17:27-5.3. As a precondition to entering into a valid and binding contract, said contractor shall submit to the public agency either appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program; or a certificate of employee information report issued in accordance with this subchapter; or an initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with this subchapter; provided, however, that if the contractor submits appropriate evidence of an existing Federally approved or sanctioned affirmative action program, the contract shall not include the mandatory language required by N.J.A.C. 17:27-3.4(a)1iv and by N.J.A.C. 17:27-5.3; and further provided that a contractor shall not be eligible to submit an initial employee information report unless the contractor, in an additional provision to the public works contract, is able to certify and agrees as follows: "The contractor, or subcontractor, where appropriate, certifies that he or she has never before applied for a certificate of employee information report in accordance with rules promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time; and agrees to submit immediately to the affirmative action office a copy of the initial employee information report."

(b) (No change.)

17:27-4.4 Affirmative action plan requirement for procurement and service subcontractors

A procurement or service contractor operating under a public works contract pursuant to the provisions of this chapter shall not enter into a subcontract with a procurement or service subcontractor, unless the subcontractor has submitted to said contractor one of the three documents which is also required from contractors in accordance with all provisions of N.J.A.C. 17:27-4.3; provided, however, that any subcontractor located outside of the State of New Jersey and subcontractors with four or fewer employees shall be exempt from the requirements of N.J.A.C. 17:27-4.

17:27-4.5 Procedures for the issuance and renewal of a certificate of employee information report

(a) A contractor that has submitted an initial employee information report to a public agency pursuant to N.J.A.C. 17:27-4.3 and any subcontractor that has submitted an initial employee information report pursuant to N.J.A.C. 17:27-4.4 shall immediately provide a copy of said report to the affirmative action office.

(b) The affirmative action office shall approve or reject an initial employee information report within 40 days of its submission, provided, however, that such a rejection, if it is independent of a noncompliance determination pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of a contract for which said initial employee information report was presented to satisfy the precondition required by N.J.A.C. 17:27-4.3. Failure of the affirmative action office to so act within 40 days shall constitute approval of the employee information report. If an initial employee information report submitted by a contractor is rejected, a contractor or subcontractor may submit a corrected initial employee information report to the affirmative action office. Upon approval of an initial employee information report submitted by a procurement or service contractor or subcontractor who, prior to its submission, had never received a certificate of employee information report, the affirmative action office shall issue to said contractor or subcontractor an initial certificate of employee information report which shall be valid for one year from the date it is issued by the affirmative action office.

(c) Additional procedures are as follows.

1. As early as 90 days prior to the expiration of a certificate of employee information report, a procurement or service contractor may submit an application for renewal of the certificate of employee information report to the affirmative action office. Said renewal application, in the form specified by the affirmative action office, shall be made available to procurement and service contractors by the affirmative action office.

2. In accordance with the form specified by the affirmative action office, the procurement or service contractor shall submit along with his or her application for renewal an updated employee information report which shall contain current employee data, the employee data contained in the prior employee information report approved by the affirmative action office, the employment goals under which the contractor or subcontractor has been operating during the period covered by the certificate or employee information report approval for which renewal is requested, any additional information requested by the affirmative action office; if necessary, an explanation of why the hiring and other personnel procedures employed by the contractor have failed to achieve the employment goals established pursuant to N.J.A.C. 17:27-5.2; and an explanation of changes in hiring and personnel practices, if any, which the contractor plans to implement expeditiously to increase minority employment opportunities in pursuit of the applicable employment goals. Notwithstanding the content and scope of said procedures which a contractor states in an employee information report that he will implement in pursuit of the applicable employment goals, said contractor is obligated to implement and comply with any hiring procedures and personnel practices required by this chapter including, but not limited to, procedures required by the affirmative action office pursuant to this chapter.

3. The affirmative action office shall approve or reject an application for renewal of a certificate of employee information report within 60 days of its submission, and the failure of the affirmative action office to so act within 60 days shall constitute approval of the renewal application. If a renewal application submitted by a contractor is rejected, the affirmative action office shall state in writing reasons for the rejection and allow the contractor or subcontractor who submitted the rejected application to respond in writing, or if the affirmative action office agrees, to meet with an official of the affirmative action office. Said contractor or subcontractor also may resubmit a renewal application accompanied by a revised, cur-

rent employee information report pursuant to the same procedures and conditions applicable to the original submission, provided, however, that any such resubmission shall serve to terminate any reconsideration by the affirmative action office of a rejection of a renewal application, which reconsideration has been commenced by the affirmative action office on the basis of a contractor's or subcontractor's response to its rejection of a renewal application. Upon approval of a renewal application, the affirmative action office shall issue to the contractor a certificate of employee information report which shall be valid for two years from the date it is issued by the affirmative action office. Any rejection of a renewal application, if it is independent of a noncompliance determination pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of an existing contract which has already been signed in accordance with N.J.A.C. 17:27-4.3.

(d) Where necessary to manage an exceptionally difficult administrative schedule, the affirmtive action office may issue a temporary certificate of employee information report, valid for a time period less than the authorized time period, but at the time the temporary certificate expires, the affirmative action office shall either issue a certificate of employee information report which is valid for the appropriate time period as authorized by (b) and (c) above, or reject said application, provided however, that any rejection of a renewal application, if it is independent of a noncompliance determination pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of an existing contract which has already been signed in accordance with N.J.A.C. 17:27-4.3.

17:27-4.7 Emergency purchases

A public agency may award a public contract without an approved affirmative action plan in an emergency situation. In such a situation, the public agency shall document that an actual or imminent emergency exists, which requires the agency immediately to award a contract for the delivery of an article or performance of a service, and that to delay the award of the contract would endanger public health, safety, welfare or property. The contractor shall be required to comply with the affirmative action rules no later than 14 days after the award.

SUBCHAPTER 5. MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

17:27-5.1 Exemptions

The requirements of this subchapter shall not apply to any procurement or service contractor or subcontractors performing under an existing Federally approved or sanctioned affirmative action program or to any subcontractor which is exempted under N.J.A.C. 17:27-4.1 from the affirmative action plan requirements of N.J.A.C. 17:27-4.

17:27-5.2 Establishment of goals

The employment goals for any procurement or service contractor or subcontractor shall be the employment goals for the county in which the procurement or service contractor's or subcontractor's plant, distribution center, or service area is primarily located. If the procurement or service contractor has plants, distribution centers, and service areas located in more than one county, goals for each plant, distribution center, and service area workforce shall be the goals of the county in which it is located. In cases in which a public agency, contractor, subcontractor, or affected minority or female worker in writing submits a request to the affirmative action office for a determination of what employment goals should apply for a procurement or service contractor or subcontractor, the affirmative action office shall determine the proper employment goals. Any such employment goal determination by the affirmative action office shall be binding. *[The employment goals for each county, which goals are based on county workforce characteristics and data and analysis provided by the New Jersey Department of Labor, Division of Research and Planning are as follows:]* ***A minimum five percent goal has been established for each county. All goals in excess of the minimum are based on data and analysis of the workforce provided by the New Jersey Department of Labor, Division of Planning and Research. Figures have been rounded to the nearest whole number. The county goals are as follows:***

MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

County	Minority Percentage	Female Percentage
Atlantic	20	45
Bergen	10	43
Burlington	16	40
Camden	16	42
Cape May	8	42
Cumberland	21	45
Essex	42	46
Gloucester	10	40
Hudson	38	44
Hunterdon	*[2]**5*	*[46]**40*
Mercer	*[20]**19*	*[43]**46*
Middlesex	12	*[41]**43*
Monmouth	11	42
Morris	*[5]**7*	*[40]**42*
Ocean	6	40
Passaic	24	43
Salem	15	40
Somerset	8	42
Sussex	*[3]**5*	40
Union	24	43
Warren	*[3]**5*	40

17:27-5.3 Mandatory contract language for employment goal compliance

(a) Public agencies shall include in all contracts the following language:

1. The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

Redesignate (2)-(4) as 2.-4. (No change in text.)

17:27-5.5 Contractor and subcontractor compliance obligations

A procurement or service contractor or subcontractor shall be deemed to be in compliance with the employment goals prescribed in accordance with this subchapter if the contractor or subcontractor is employing minority and female workers in the percentages established as employment goals pursuant to this subchapter, and achievement of said employment percentages shall constitute compliance for purposes of this Chapter, regardless of any other percentages established by a public agency, or the contractor or subcontractor has acted and continues to act in good faith, including the use of the procedures required by the mandatory language prescribed by N.J.A.C. 17:27-5.3 to achieve the minority and female employment goal percentages established in accordance with this subchapter; provided, however, that nothing provided in this chapter shall prevent a municipality or other unit of local government from enforcing municipal or local government enforcement goal obligations involving employment goals which are higher than those applied under this chapter.

17:27-5.6 Criteria for determining good faith

(a) When compliance challenges are initiated pursuant to N.J.A.C. 17:27-10, the affirmative action office shall consider the following factors in its determination of whether a contractor or subcontractor has acted in good faith.

1. The general availability of minorities and women having requisite skills in the immediate labor area;

2. The percentages of minority and female workers in the total workforce in the immediate labor area;
3. The availability of promotable minority and women employees within the contractor's or subcontractor's organization;
4. The anticipated expansion, contraction and turnover of the contractor's or subcontractor's workforce;
5. The existence of training institutions capable of training minorities and women in the requisite skills;
6. The degree of training which the contractor or subcontractor is reasonably able to undertake as a means of making all job classifications available to minorities and women;
7. The availability and use of recruitment resources to attract minorities and women; and
8. The contractor's documentation of attempts to attain the goals.

SUBCHAPTER 6. AFFIRMATIVE ACTION PLAN FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

17:27-6.1 Construction contracts subject to affirmative action plan requirements

All construction contractors bidding for public agency public works contracts and all contractors entering into negotiated public works contracts subject to the requirements of N.J.A.C. 17:27-3.3 shall satisfy the affirmative action plan requirements of this chapter, with the exception of construction subcontractors with a total workforce of four or fewer employees, which shall be exempt from said requirements.

17:27-6.2 Elements of an affirmative action plan for construction contractors and subcontractors

(a) An affirmative action plan for construction contractors and subcontractors shall consist of the following elements.

1. Provisions in the construction contract containing language required by N.J.A.C. 17:27-3.4(a)and N.J.A.C. 17:27-7.4; or
2. Any existing Federally approved or sanctioned affirmative action program.

17:27-6.3 Procedure for establishing an approved affirmative action plan by contract

(a) Upon designating a construction contractor as the lowest responsible bidder, the public agency shall submit to the contractor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.4(a) and 17:27-7.4, except that the language required by N.J.A.C. 17:27-3.4(a) and by liv and by N.J.A.C. 17:27-7.4 shall not be included in a contract with a contractor which submits to the public agency, prior to or at the time the contract is submitted by the public agency for signing, appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program.

(b) If a contractor refuses to sign said contract when it is submitted for signing by the public agency, then the public agency shall reject the contractor's bid as non-responsive, and these requirements shall apply to any other contractor which the public agency selects in accordance with applicable contracting laws and procedures.

17:27-6.4 Affirmative action plan requirement for construction subcontractors

A construction contractor operating under a public works contract pursuant to the provisions of this chapter shall not enter into a subcontract with a construction subcontractor, unless the contract contains the language required by N.J.A.C. 17:27-6.3; provided, however, that subcontractors with a total workforce of four or fewer employees shall be exempt from the requirements of this subchapter.

17:27-6.5 State-approved public agency affirmative action construction programs

(a) (No change.)

(b) The affirmative action office may designate a public agency's affirmative action construction program as State-approved only if the program requires the public agency's construction contracts to conform to the mandatory contract language requirements of N.J.A.C. 17:27-3.4(a), except for the language contained in N.J.A.C. 17:27-3.4(a)liv; said program requires the public agency's advertisement and solicitation of construction contract bids to contain the following language: "Bidders are required to comply with requirements of P.L. 1975, c.127,"; and said program establishes an employment goal which is not lower that the applicable goal established by N.J.A.C. 17:27-7.

17:27-7.2 (Reserved)

17:27-7.3 Establishment of goals

[(a) The minority employment goal for any construction contractor or subcontractor shall be the employment goal for the county in which the construction project is located and minority females within the workforce shall be considered when determining compliance. The minority employment goals for each county, subject to the provisions of N.J.A.C. 17:27-7.4, are based on county workforce characteristics and data and analysis provided by the New Jersey Department of Labor, Division of Planning and Research. The female goal is a Statewide goal based on a February 1988 study made by Stanwick Associates, a public policy research firm, commissioned by the New Jersey Department of Transportation.] ***The minority and female employment goals for any construction contractor or subcontractor shall be the employment goals for the county in which the construction project is located. In determining compliance with the goals, work hours per trade are used to judge performance. The method of establishing minority goals differ from that used to establish the female goal. A minimum five percent minority goal has been established for each county. All goals in excess of the minimum are based on data and analysis of the county workforce provided by the New Jersey Department of Labor, Division of Planning and Research. Figures have been rounded to the nearest whole number. The female county goals are the same Statewide. This goal has been established based on the Federal construction goals for females that is applied nationwide on Federally assisted projects.*** The affirmative action office may, in appropriate cases, designate a regional goal for minority and female membership in a union which has regional jurisdiction. In cases in which a public agency, contractor, subcontractor, or affected minority or female worker submits a request in writing to the affirmative action office for a determination of what employment goal or goals should apply for a construction contractor or subcontractor, the affirmative action office shall determine the proper employment goal or goals.

MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

County	Female Percentage	Minority Percentage
Atlantic	6.9	*[19]**20*
Bergen	6.9	*[20]**10*
Burlington	6.9	*[10]**16*
Camden	6.9	16
Cape May	6.9	*[16]** 8*
Cumberland	6.9	*[10]**21*
Essex	6.9	*[21]**42*
Gloucester	6.9	*[42]**10*
Hudson	6.9	*[10]**38*
Hunterdon	6.9	*[38]** 5*
Mercer	6.9	*[10]**19*
Middlesex	6.9	*[19]**12*
Monmouth	6.9	*[10]**11*
Morris	6.9	*[12]** 7*
Ocean	6.9	*[11]** 6*
Passaic	6.9	*[10]**24*
Salem	6.9	*[24]**15*
Somerset	6.9	*[15]** 8*
Sussex	6.9	*[10]** 5*
Union	6.9	24
Warren	6.9	*[10]** 5*

17:27-7.4 Mandatory language for employment goal compliance

(a) Public agencies shall include in all construction contracts the language set forth in (b) through (e) below.

(b) When hiring workers in each construction trade, the contractor or subcontractor agrees to attempt in good faith to employ minority and female workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the affirmative action office may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by 1, 2 and 3 below, as long as the affirmative action office is satisfied that the contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the affirmative action office, that its percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

1. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to P.L. 1975, c.127, as supplemented and amended from time to time. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire minority and female workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire minority and female workers directly, consistent with the applicable employment goal, by complying with the hiring procedures prescribed under (c) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the affirmative action office that the union is not referring minority and female workers consistent with the applicable employment goal.

(c) If the hiring of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (b) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

1. To notify the public agency compliance officer, affirmative action office, and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers;

2. To notify any minority and female workers who have been listed with it as awaiting available vacancies;

3. Prior to commencement of work, to request the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings;

4. To leave standing requests for additional referral to minority and female workers with the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State training and employment service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;

5. If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the contractor or any other construction site in the area on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing P.L. 1975, c.127;

6. To adhere to the following procedure when minority and female workers apply or are referred to the contractor or subcontractor:

i. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a contractor or subcontractor shall determine that the individual at least possesses the skills and experience recognized by any worker skills and experience classification determination which may have been made by a public agency compliance officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to the affirmative action office and provided further, that, if necessary, the contractor or subcontractor shall hire minority and female workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (d) below.

ii. If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

iii. If, for any reason, said contractor or subcontractor determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the public agency compliance officer and to the affirmative action office.

7. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the affirmative action office and submitted promptly to that office upon request.

(d) The contractor or subcontractor agrees that nothing contained in (c) above shall preclude the contractor or subcontractor from complying with the hiring hall or apprenticeship provisions in any applicable collective bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females or the failure to refer minorities and females consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (c) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ female and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (c) above, it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.

(e) The contractor agrees to complete an Initial Project Manning Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form no later than three days after signing a construction contract; provided, however, that the Public Agency may extend in a particular case the allowable time for submitting the form to no more than 14 days; and to submit a copy of the Monthly Project Manning Report once a month thereafter for the duration of this contract to the Affirmative Action Office and to the Public Agency

Compliance Officer. The contractor agrees to cooperate with the Public Agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.

17:27-7.5 Financing minority worker outreach and training programs

When the total cost of a construction project by any public agency except a municipality, county, or school district, is equal to or greater than $1,000,000, or when the total cost of a construction project by a municipality, county, or school district is equal to or greater than $2,500,000, the authorized appropriation of the public agency or the total project development cost recognized by the public agency shall include one half of one percent of the total project cost from which amount the public agency shall pay out to an approved training agency or to an affected contractor or subcontractor for payment to an approved training agency, during the course of the construction project, as much of said amount as is necessary for on-the-job and off-the-job programs for outreach and training programs for minority and female trainees employed on the construction project, provided that said funds shall not be used to pay the salary for any trainees. Whenever the Affirmative Action Office determines that an amount less than one half of one percent of the total program cost is sufficient for funding said outreach and training programs, the public agency may reallocate such residual funds as appropriate. If said allocation would impose an extraordinary burden on the feasibility of a construction project and it was not possible to take advance action to avoid extraordinary feasibility problems, the affirmative action office, in response to a request from a public agency, may take said factors into account to grant a waiver from some or all of said requirements to allocate funds for minority and female outreach and training programs. Off-the-job training programs eligible for this funding include programs designed to increase the skills of trainees in a particular trade or craft, skills relating to contracting work, related academic or remedial education programs; and eligible agencies for these funds include State, regional or local public or private training institutions, agencies or organizations as approved by the affirmative action office. A public agency may apply to the affirmative action office for funds to use to satisfy the training program requirements of this section; and the affirmative action office, from such funds which may be available for said purpose, may allocate said funds among such applicants. Failure to receive such funds from the affirmative action office shall in no way relieve a public agency of its training program obligations under this section.

17:27-10.2 Alert notices

A public agency operating under a State approved affirmative action construction program may issue a written alert notice to a contractor or subcontractor or the affirmative action office, acting on its own initiative or in response to a written statement from an interested party, may issue a written alert notice to a contractor or subcontractor whenever, in the agency's or office's opinion, the contractor or subcontractor has violated this chapter or the applicable affirmative action plan. The alert notice shall explain in sufficient detail the facts of the alleged violation.

17:27-10.4 Written statements; violations

Upon either receiving a copy of a notice of violation from a public agency compliance officer or after issuing a notice on its own, the affirmative action office shall notify the alleged violator that it shall submit within four days after it is received by the contractor or subcontractor a written statement explaining why it is not in violation of this chapter or the affirmative action plan or any explanation of how it will correct any such violation. If the affirmative action office determines there is a substantial probability that a violation is occurring, it may direct the withholding of some or all of the contract payments then due and owing pending a determination pursuant to N.J.A.C. 17:27-10.6 and 10.7.

17:27-10.6 Determination of violations

Upon completion of the procedures required and authorized pursuant to N.J.A.C. 17:27-10.3, but no later than 30 days after a violation notice has been submitted to the affirmative action office, the affirmative action office shall issue a determination of whether the contractor or subcontractor is in violation of this chapter or an affirmative action plan; and if the affirmative action office determines that there is a current violation, it shall prescribe, where appropriate, corrective measures.

17:27-10.7 Enforcement; violations

(a) If the affirmative action office determines that a contractor or subcontractor is in violation of this chapter or the affirmative action plan, it may enforce the obligations of P.L. 1975, c.127, as implemented by this chapter and the requirement of the affirmative action plan by ordering or taking part in any or all of the following remedial actions:

1. (No change.)

2. Debarment of the contractor from all public contracts for a period of up to five years and/or until the contractor complies with the required obligations or agrees to adhere to a compliance schedule approved by the affirmative action office; provided, however, that a debarment may only be ordered after a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1;

3.-5. (No change.)

(b) If at the end of the 30-day period prescribed in N.J.A.C. 17:27-10.6, the affirmative action office has not determined that a contractor or subcontractor is in violation of this chapter or an affirmative action plan, the public agency shall immediately pay to said contractor or subcontractor all payments then due and owing.

OTHER AGENCIES

CASINO CONTROL COMMISSION

(a)

Hearings
Exclusion of Persons Hearings
Adopted Amendments: N.J.A.C. 19:42-4.2 and 4.3
Adopted Recodification with Amendments: N.J.A.C. 19:42-4.4, 4.5, 4.6, and 4.7

Proposed: September 6, 1988 at 20 N.J.R. 2250(a).
Adopted: October 13, 1988 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: October 13, 1988 as R.1988 d.526, **without change.**

Authority: N.J.S.A. 5:12-69(a) and 5:12-71.

Effective Date: November 7, 1988.
Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:42-4.2 Commencement; petition

Any proceeding to place an individual on the exclusion list initiated under N.J.S.A. 5:12-71, N.J.A.C. 19:48 and this subchapter shall commence by written petition, which shall include a statement setting forth in ordinary and concise language the grounds for exclusion.

19:42-4.3 Service of petition

(a) Whenever the Division, pursuant to section 71 of the Act, N.J.A.C. 19:48 and this subchapter, petitions to place a candidate on the exclusion list, the Commission or Division shall serve such petition on the candidate by:

1. Personal service; or

2. Certified mail at the last known address of the candidate; or

3. Publication daily for one week in a newspaper of general circulation in Atlantic City, New Jersey.

19:42-4.4 Right to a plenary hearing; time; waiver

(a) A candidate for placement on the exclusion list shall be advised at the time of service of the petition for exclusion of his or her right to demand a plenary hearing.

(b) A demand for a plenary hearing shall be in writing and must be received by the Commission within 30 days after service of the petition for exclusion.

(c) The Commission shall, upon receipt of a timely and sufficient demand for a plenary hearing, set a time and place for such hearing. If a candidate for exclusion has been placed on the exclusion list by preliminary order of the Commission in accordance with the provisions of N.J.A.C. 19:42-4.6 and 19:48-1.5A, a plenary hearing shall be initiated no later than 30 days after the receipt by the Commission of a timely and sufficient written demand for a plenary hearing or the date of issuance of the preliminary order, whichever is later, unless otherwise agreed by the Commission and the excluded person.

(d) Any candidate for exclusion who fails to demand a plenary hearing within the allotted time period shall be deemed to have admitted all matters and facts alleged in the petition, shall be precluded from having a plenary hearing before the Commission, and shall be subject to the issuance of a final order directing that the candidate be placed on the list or, if the candidate has been placed on the list by preliminary order of the Commission, shall remain on the list until further order of the Commission; provided, however, that the Commission, in its discretion, may nevertheless order a hearing; and provided further, that such preclusion shall in no way affect the right of any excluded person to judicial review as provided in the Act and rules of the Commission.

19:42-4.5 Plenary hearing: nature of proceeding; burden of proof; service of order

(a) A plenary hearing shall be a full evidentiary proceeding conducted in accordance with the provisions of section 107 of the Act, N.J.A.C. 19:42-2, and, to the extent that they are not inconsistent with these provisions, the Administrative Procedure Act and the UAPR. The purpose of a plenary hearing is to determine if a candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Act and N.J.A.C. 19:48.

(b) The Division shall have the affirmative obligation to demonstrate by a fair preponderance of the evidence that the candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Act and N.J.A.C. 19:48.

(c) The Commission shall render a decision and issue a final order as soon as is practicable after the completion of the plenary hearing. A final order directing that the candidate for exclusion shall be placed on the list or, if the candidate has been placed on the list by preliminary order of the Commission, shall either remain on the list or be removed from the list shall, within five days of its entry, be served upon the candidate, by regular mail at his or her last known address, and upon the Division and all casino licensees.

(d) A final order of the Commission shall be subject to review by the Superior Court in accordance with the rules of court.

19:42-4.6 Preliminary placement on the list; commencement; notice; service; postponement

(a) In accordance with the provisions of N.J.A.C. 19:48-1.5A, the Division may request the Commission to place a candidate on the exclusion list pending completion of the plenary hearing on the petition for exclusion by filing an application for preliminary placement of the candidate on the list. Timely notice of a preliminary exclusion hearing shall be served upon the candidate for exclusion by regular mail at his or her last known address. The notice shall include:

1. A statement advising the candidate of his or her right to appear before the Commission at the preliminary exclusion hearing; and

2. The time, place and nature of the preliminary exclusion hearing.

(b) The preliminary exclusion hearing shall be scheduled no earlier than 15 days from the mailing of notice of the hearing.

(c) Unless otherwise approved by the Commission for good cause shown, a preliminary exclusion hearing scheduled in accordance with this subchapter shall not be postponed at the request of any party.

19:42-4.7 Preliminary exclusion hearing; nature of hearing; burden of proof; service of order

(a) A preliminary exclusion hearing shall be a limited pre-exclusion proceeding. The purpose of the preliminary exclusion hearing is to determine if there is a reasonable possibility that a candidate satisfies the criteria for exclusion established by section 71 of the Act and N.J.A.C. 19:48.

(b) A preliminary exclusion hearing shall be decided on the basis of the reliable documentary or other supporting evidence of the Division and the oral arguments of the parties. Candidates may be represented by counsel.

(c) The Division shall have the affirmative obligation to establish that there is a reasonable possibility that the candidate satisfies the criteria for exclusion established by section 71 of the Act and N.J.A.C. 19:48.

(d) A preliminary order of the Commission designating a candidate as an excluded person shall, within five days of its entry, be served upon the candidate, the Division and all casino licensees.

(e) A Commission order denying an application for preliminary placement of a candidate on the list shall be served upon the candidate and the Division.

(f) Any order served upon a candidate and issued pursuant to (d) and (e) above, shall be served by regular mail at the candidate's last known address.

(a)

Gaming Schools
Readoption: N.J.A.C. 19:44

Proposed: August 15, 1988 at 20 N.J.R. 2050(a).
Adopted: September 28, 1988 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: September 29, 1988 as R.1988 d.508, **without change.**

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

Effective Date: September 29, 1988.
Expiration Date: September 29, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:44.

(b)

Exclusion of Persons
Readoption with Amendments: N.J.A.C. 19:48.
Adopted Repeal and New Rule: N.J.A.C. 19:48-1.5.
Adopted New Rule: N.J.A.C. 19:48-1.5A.

Proposed: September 6, 1988 at 20 N.J.R. 2252(a).
Adopted: October 13, 1988 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: October 13, 1988 as R.1988 d.525, **without change.**

Authority: N.J.S.A. 5:12-69(a) and 5:12-71.

Effective Date: October 13, 1988 for Readoption; November 7, 1988 for Amendments and New Rule.
Expiration Date: October 13, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:48.

Full text of the adopted amendments and new rule follows.

19:48-1.4 Duties of the Division of Gaming Enforcement

(a) The Division shall, on its own initiative, or upon the request of the Chairman, investigate any individual who would appear to be an appropriate candidate for placement on the exclusion list.

(b) If, upon completion of an investigation, the Division determines that an individual should be placed on the exclusion list, the Division shall file a petition for exclusion with the Commission identifying the candidate and setting forth a factual basis why the

Division believes the candidate satisfies the criteria for exclusion established by section 71 of the Act and this chapter.

(c) (No change.)

19:48-1.5 Procedure for entry of names

(a) Upon receipt of a Division petition naming a candidate for placement on the exclusion list, the Commission shall notify the candidate of his or her right to request a plenary hearing in accordance with the provisions of N.J.A.C. 19:42-4.4 and 4.5.

(b) If, upon completion of a plenary hearing, or in the absence of a plenary hearing, upon the expiration of the time for requesting such a hearing, the Commission determines that a candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a final order directing that the candidate be placed on the exclusion list until further order of the Commission. A final order directing that a candidate be placed on the list shall be effective as to a particular casino licensee upon its service upon that casino licensee.

(c) The placement of a candidate on the exclusion list pursuant to section 71 of the Act, N.J.A.C. 19:42-4.5 and this chapter shall have the effect of requiring the exclusion or ejectment of the excluded person from any casino hotel facility.

(d) If, upon completion of a plenary hearing, the Commission determines that a candidate for exclusion does not satisfy the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a final order denying the petition for exclusion. A final order denying a petition for exclusion shall be served on the candidate and the Division. If the candidate had been previously placed upon the list by preliminary order of the Commission in accordance with the provisions of N.J.A.C. 19:48-1.5A, the Commission shall issue a final order directing that the excluded person be removed from the list, which order shall be served on the excluded person, the Division and all casino licensees. A final order directing the removal of an excluded person from the list shall be effective as to a particular casino licensee upon its service upon that casino licensee.

19:48-1.5A Application for preliminary placement of candidate on list

(a) In addition to filing a petition for exclusion, the Division may, in its discretion, file an application with the Commission seeking preliminary placement of the candidate on the exclusion list pending completion of the plenary hearing on the petition for exclusion. An application for preliminary placement on the list shall be supported by reliable documentary or other evidence. Upon receipt of an application for preliminary placement on the list, the Commission shall schedule a preliminary exclusion hearing and notify the candidate in accordance with the provisions of N.J.A.C. 19:42-4.6 and 4.7.

(b) If, upon completion of the preliminary exclusion hearing, the Commission determines that the reliable documentary or other supporting evidence establishes a reasonable possibility that the candidate satisfies the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a preliminary order placing the candidate on the exclusion list pending the issuance of a final order in accordance with the provisions of N.J.A.C. 19:48-1.5. A preliminary order designating a candidate as an excluded person shall be effective as to a particular casino licensee upon its service upon that casino licensee.

(c) The preliminary placement of a candidate on the exclusion list pursuant to section 71 of the Act, N.J.A.C. 19:42-4.7 and this chapter shall have the effect of requiring the exclusion or ejectment of the excluded person from any casino hotel facility.

19:48-1.8 Petition to remove name from exclusion list

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

(d) A hearing to determine if an excluded person placed on the list by final order of the Commission should be removed from the list shall be conducted as if it were a plenary hearing pursuant to the provisions of N.J.A.C. 19:48-1.5 and N.J.A.C. 19:42-4.5. Notwithstanding the foregoing, an excluded person shall have the affirmative obligation to show cause why he or she should be removed from the list.

(e) (No change).

(a)

DELAWARE RIVER BASIN COMMISSION

Amendments to Comprehensive Plan and Water Code of the Delaware River Basin

Adopted: October 5, 1988 by the Delaware River Basin Commission, Susan M. Weisman, Secretary.

Filed: October 11, 1988 as R.1988 d.428.

Effective Date: November 7, 1988.

Full text of the adoption follows:

NO. 87-6 (Revised)

A RESOLUTION to amend the Comprehensive Plan and Water Code of the Delaware River Basin in relation to leak detection and repair.

WHEREAS, leak detection and repair of public water supply systems is an effective water conservation technique; it can significantly improve water supply system efficiency and can lead to substantial decreases in unaccounted-for water and the costs associated with lost water; and

WHEREAS, there is a significant cost to owners of water supply systems serving the public (purveyors) for treating and delivering unaccounted-for water in the Basin; and

WHEREAS, the Commission recommends that the signatory states should provide incentives to promote leak detection, and to facilitate water system renewal and rehabilitation; and

WHEREAS, the Water Conservation Advisory Committee recommended on September 26, 1986 that the Commission adopt regulations requiring purveyors in the Basin to undertake leak detection and repair programs; and

WHEREAS, the Commission held a public hearing on February 25, 1987 regarding this proposed regulation and has received and considered testimony from purveyors and other interested parties; and

WHEREAS, the Water Conservation Advisory Committee met on April 10, 1987 and revised the proposed amendment in response to the comments and testimony received; and the committee recommends that the revised proposal be adopted by the Commission; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Comprehensive Plan and Article 2 of the Water Code are hereby amended by the addition of a new subsection 2.1.6, to read as follows:

2.1.6 Leak detection and repair

(1) Owners of water supply systems serving the public (purveyors) in the Delaware River Basin that distribute water supplies in excess of an average of 100,000 gallons per day (gpd) during any 30-day period shall develop and undertake a systematic program to monitor and control leakage within their water supply system. Such a program shall at a minimum include: periodic surveys to monitor leakage, enumerate unaccounted-for water, and determine the current status of system infrastructure; recommendations to monitor and control leakage; and a schedule for the implementation of such recommendations. Each purveyor's program shall be subject to review and approval by the designated agency in the state where the system is located.

"Unaccounted-for water" is defined as the difference between the "metered ratio" and 100 percent. The metered ratio is the amount of water delivered through service meters divided by the amount of water entering the distribution system. The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection; New York Department of Health, and Pennsylvania Department of Environmental Resources.

(2) Each purveyor that distributes in excess of one million gallons per day (mgd) shall submit its initial program to monitor and control leakage to the appropriate designated agency within two years and each purveyor that distributes between 100,000 gpd and 1 mgd shall submit its initial program to monitor and control leakage to the appropriate designated agency within five years of the effective date

of this regulation or at such earlier date as shall be fixed by the designated state agency. Each purveyor shall prepare and submit a revised and updated program to monitor and control leakage every three years thereafter or at such earlier date as shall be required by the designated state agency. The designated state agency may require more frequent program submission from purveyors with unaccounted-for water that is in excess of 15 percent.

(3) Any project approvals hereafter granted pursuant to Section 3.8 of the DRBC Compact or any renewal of a project approval shall be subject to the provisions of this regulation.

(4) To avoid duplication of effort and to insure proper enforcement of this regulation, the Executive Director shall enter into administrative agreements with each of the designated agencies authorizing such agencies to administer and enforce the provisions of this regulation to the extent practicable and to adopt such rules and regulations of procedure as may be necessary to insure the proper administration and enforcement of this regulation.

(5) This regulation shall be effective immediately.

NO. 87-7 (Revised)

A RESOLUTION to amend the Comprehensive Plan and Water Code of the Delaware River Basin in relation to service metering.

WHEREAS, the Delaware River Basin Commission adopted on June 25, 1986, a resolution that requires source metering and recording of large surface and groundwater withdrawals; and

WHEREAS, both source and service metering are needed to determine unaccounted-for water in a public water supply system, which is necessary for leak detection and repair; and

WHEREAS, current Commission policy on service metering applies only to new public water supply systems and extensions of existing public water supply systems; and

WHEREAS, the Water Conservation Advisory Committee, recognizing that complete and accurate metering of water withdrawn and delivered by a public water system is integral to prudent water supply management, recommended on September 26, 1986 that the Commission expand its policy on service metering to ultimately require universal service metering; and

WHEREAS, the Commission held a public hearing on February 25, 1987 regarding this proposed amendment and has received and considered testimony from water purveyors and other interested parties; and

WHEREAS, the Water Conservation Advisory Committee met on April 10, 1987 and revised the proposed amendment in response to the comments and testimony received; and the committee recommends that the revised proposal be adopted by the Commission; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin are hereby amended by the revision of subsection 2.50.1, to read as follows:

2.50.1 Service metering

(1) Owners of water supply systems serving the public (purveyors) in the Basin that distribute water supplies in excess of an average of 100,000 gallons per day during any 30-day period shall install, or require to be installed, water meters incident to the provision or maintenance of service at the retail level.

(2)(a) Meters shall be installed so as to record water use at all service connections. (b) Water furnished for fire suppression purposes shall be exempt from metering provided that fire suppression (sprinkler) systems are equipped with detector check or flow detection devices. (c) Water removed from fire hydrants shall be exempt from metering unless otherwise required by a purveyor, or state or local government.

(3) Water use shall be recorded or measured by means of a metering device that conforms to the performance specifications of the American Water Works Association. Purveyors shall adopt and implement a program for periodic maintenance, calibration, and replacement of meters to ensure meter accuracy.

(4) Water charges collected by purveyors shall be based in part on metered usage.

(5) It is recommended that, at least once a year, each purveyor: (a) provide each metered residential customer with information on savings available through water conservation; and (b) explain different methods of residential water conservation and their cost-effectiveness, and the availability of water conservation devices.

(6) Installation of meters at existing unmetered connections shall be completed within ten years of the effective date of this regulation.

(7) To avoid duplication of effort and to insure proper enforcement of this regulation, the Executive Director shall enter into administrative agreements with the Delaware Department of Natural Resources and Environmental Control, New Jersey Department of Environmental Protection, New York Department of Health, Pennsylvania Department of Environmental Resources, and other state agencies where appropriate, authorizing such agencies to administer and enforce the provisions of this regulation to the extent practicable and to adopt such rules and regulations of procedure as may be necessary to insure the proper administration and enforcement of this regulation.

(8) This regulation shall be effective immediately.

NO. 88-22 (Revised)

A RESOLUTION to amend the Comprehensive Plan relating to criteria and operations formulae for emergency operations during a lower basin drought warning and drought.

WHEREAS, the Governors of the four Basin States and the Mayor of New York City have unanimously agreed to the Interstate Water Management Recommendations of the Parties to the U.S. Supreme Court Decree of 1954 to the Delaware River Basin Commission Pursuant to Commission Resolution No. 78-20; and

WHEREAS, Recommendation 4 of these Interstate Water Management Recommendations declares in pertinent part that:

"Criteria for defining a lower Basin[1] drought warning and drought should be prepared and made part of the plan"; and

[1]For the purposes of this resolution, the lower basin is defined as the drainage area of the Delaware River and Bay below the stream flow gauging station at Montague, N.J.

WHEREAS, the Commission, in June 1983 directed its Flow Management Technical Advisory Committee to develop alternative operating plans using the criteria in Recommendation 4 of the Interstate Water Management Recommendations; and

WHEREAS, the Delaware River Basin Commission's Flow Management Technical Advisory Committee has conducted a study and made recommendations to the Commission; and

WHEREAS, the Commission held a public hearing on March 23 and April 27, 1988 on this recommended plan and has reviewed and considered testimony from water users and other interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

I. The Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin are hereby amended by the addition of a new Section 2.5.6 to read as follows:

2.5.6 Coordinated operation of reservoirs during a lower basin drought warning and drought

A. Banking and Use of Excess Release Quantity: New York City Reservoirs. Prior to June 15 of each year and at any time the hydrologic conditions so warrant, the parties to the 1954 Supreme Court Decree, the Delaware River Basin Commission and the Delaware River Master will review existing conditions in the basin and shall determine whether or not to bank the "excess release quantity" provided pursuant to Section III, B.1.C of the Decree, as calculated for the seasonal period beginning June 15 and ending the following March 15, for possible use to help prevent lower basin "drought" or to provide lower basin "drought" assistance. Relevant factors to be considered include precipitation in the basin, climatic predictions, streamflows, groundwater levels, soil moisture and other hydrologic data in making the determination with respect to the banking and use of the "excess release quantity". The "excess release quantity" shall be reserved and placed in an "excess release bank" if the parties to the 1954 Decree, Delaware River Basin Commission and the River Master determine that "drought" conditions in the lower basin are

expected or threatening. If the "excess release quantity" is reserved and banked, the excess release provisions set forth in Section III.B.1.d of the Supreme Court Decree shall be deemed suspended for the balance of that water year beginning June 1 and ending May 31. The "excess release bank" shall be used, during that water year, to provide lower basin "drought" assistance releases to the Delaware River designed to assist in meeting the Trenton flow objective for lower basin "normal" conditions, or 3,000 cfs. Such lower basin "drought" assistance releases shall be made in quantities and at such times as determined by the Delaware River Basin Commission, and directed by the Delaware River Master. The lower basin "drought" assistance releases shall be made provided that the total combined storage available in the New York City Delaware River Basin reservoirs exceed the "drought warning" criteria set forth in Figure 1 of Section 2.5.3. The total lower basin releases made from the New York City Delaware Basin reservoirs during any water operations year under the provision of this section shall not exceed the total quantity available in the "excess release bank" available during that same period. If, while banking excess releases, augmented conservation releases from the New York City Delaware River Basin reservoirs are made that would have been credited towards the "excess release quantity" in the absence of banking, then that amount of augmented conservation release shall be deducted from the "excess release bank".

B. Operations During Lower Basin "Normal" Conditions. When basinwide conditions are "normal" and lower basin conditions are "normal" (as defined by Beltzville Reservoir storage above Elevation 615 m.s.l. and Blue Marsh Reservoir storage above Elevation 283 m.s.l.), the following provisions shall govern lower basin operations:

1. New Jersey Diversion—Diversions by the State of New Jersey during "normal" periods, shall be computed as provided in Section V.B. of the amended Decree of the U.S. Supreme Court in New Jersey v. New York, 347 U.S. 995 (1954) and its total diversion without compensating releases shall not exceed 100 million gallons per day (mgd) as a monthly average, with the diversion on any day not to exceed 120 million gallons, and its total diversion without compensating releases shall not exceed an average of 100 mgd during any calendar year.

2. Trenton Flow Objective—The minimum streamflow objective at the U.S.G.S gauging station located at Trenton, NJ, shall be 3,000 cfs.

3. Priority of Releases—Releases shall be made from storage to maintain the minimum Trenton streamflow objective of 3,000 cfs in such quantities and at such times as determined by the Delaware River Basin Commission, and, in the case of the New York City reservoirs, as directed by the Delaware River Master, in the following order of priority:

(a) Releases from the "excess release bank" in the New York City Delaware Basin reservoirs, if available as provided under Section A of this plan.

(b) Releases from Beltzville Reservoir from storage between elevations 628 and 615 m.s.l. (73.7% of storage remaining), and/or releases from Blue Marsh Reservoir from storage between elevations 290 and 283 m.s.l. (68.9% of storage remaining). Releases may be made from either or both reservoirs considering water quality needs in the Lehigh and Schuylkill Rivers.

C. Operations During Lower Basin "Drought Warning" Conditions. When the storage in Beltzville Reservoir falls below elevation 615 m.s.l. (73.7% of storage capacity) and the storage in Blue Marsh Reservoir falls below elevation 283 m.s.l. (68.9% of storage capacity) the Delaware River Basin Commission shall declare a "drought warning" condition in the lower basin, and the following operating provisions and actions shall automatically be placed in effect:

1. New Jersey Diversion—The total diversion by the State of New Jersey during lower basin "drought warning" conditions in the lower basin shall be computed as a daily running average, commencing on the day such "drought warning" becomes effective. The total diversion by New Jersey shall not exceed a running average of 70 mgd with the diversion on any day not to exceed 120 million gallons per day. If the allowable diversion for any condition period following entry into "drought warning" operations is not fully used, the unused portions may not be credited or used during subsequent periods.

2. Trenton Flow Objective—During lower basin "drought warning" periods, the minimum streamflow objective at the U.S.G.S. gaging station located at Trenton, NJ, shall be established as set forth in Table 2 of Section 2.5.3, in accordance with the seven-day average location of the 250-mg/l isochlor (the "salt front") in the Delaware Estuary.

3. Priority of Releases—Releases shall be made from storage to maintain the minimum streamflow objectives set forth in Table 2 of Section 2.5.3, in such quantities and at such times as determined by the Delaware River Basin Commission, and in the case of the New York City Reservoirs, as directed by the Delaware River Master, in the following order of priority:

(a) Releases from the "excess release bank" in the New York City Delaware River Basin Reservoirs, if available, as provided under Section A. Because the "excess release bank" will have been used under lower basin "normal" conditions, it would only be available in the second or a subsequent year of a lower basin "drought" or lower basin "drought warning".

(b) Releases from Beltzville Reservoir from storage between elevations 615 to 590 m.s.l. (38% of storage remaining), and/or releases from Blue Marsh Reservoir from storage between elevations 283 and 273 m.s.l. (36.8% of storage remaining). Releases may be made from either or both reservoirs, considering water quality needs in the Lehigh and Schuylkill Rivers.

4. Reduction of Conservation Releases—In order to conserve storage, conservation releases from the listed lower basin reservoirs shall be modified as set forth in Table 4 of Section 2.5.5 commencing with the declaration of a lower basin "drought warning" condition.

5. Conservation Measures—The Delaware River Basin Commission and the lower basin states will implement and encourage concerted voluntary water conservation measures and programs during the lower basin "drought warning" condition.

6. Consultation by Decree Parties, the Delaware River Basin Commission, and Delaware River Master—Within 30 days following triggering of lower basin "drought warning" conditions, the Delaware River Basin Commission shall convene the authorized representatives of the States of Delaware, New Jersey and New York, Commonwealth of Pennsylvania, City of New York and the Delaware River Master to review current conditions and to consider and determine actions to be implemented in the event of lower basin "drought" emergency conditions declared pursuant to Article 10.4 of the Compact.

7. Ending Lower Basin "Drought Warning"—When the storage levels in Beltzville and Blue Marsh Reservoirs simultaneously exceed their respective lower basin "drought warning" storage levels for 30 consecutive days, or when either of those reservoirs spills, the lower basin "drought warning" operation shall automatically terminate and "normal" operations shall be resumed, unless the Commission unanimously agrees otherwise.

D. Operations During Lower Basin "Drought" Conditions. When storage in Beltzville Reservoir falls below elevation 590 m.s.l. (38.0% of storage capacity) and storage in Blue Marsh Reservoir falls below elevation 273 m.s.l. (36.8% of capacity) and remains below such levels for three consecutive days, the Delaware River Basin Commission shall, pursuant to Article 10.4 of the Compact, declare a lower basin "drought" emergency condition in the lower basin and the following provisions shall automatically be placed in effect:

1. New Jersey Diversion—The total diversion by New Jersey during lower basin drought conditions shall not exceed a running average of 65 mgd, for the continuous period commencing on the first day following declaration of the lower basin "drought", with the diversion on any day not to exceed 120 mgd.

2. Trenton Flow Objective—During lower basin "drought" conditions, the minimum streamflow objective at the U.S.G.S. gaging station located at Trenton, NJ shall be established as set forth in Table 2 of Section 2.5.3 in accordance with the seven-day average location of the 250 mgl isochlor (the "salt front") in the Delaware Estuary.

3. Reservoir Operations

(a) If not previously agreed to, within three days following the triggering of lower basin "drought" conditions, the parties to the 1954 Decree in consultation with the Delaware River Basin Com-

mission, shall consider and unanimously select, and the Delaware River Basin Commission shall implement, one of the six lower basin "drought" reservoir operations plans set forth in Section E, or any other plan designed to meet then existing conditions. The parties may by unanimous agreement modify and adjust any such operations plan or plans as necessary and appropriate to reflect actual conditions and needs.

(b) The lower basin "drought" reservoir operations plans shall consider and include provision of staged releases, as appropriate, from the following storage:

(1) Beltzville Reservoir storage between elevations 590 and 537 m.s.l. (4.65 billion gallons).

(2) Blue Marsh Reservoir storage between elevations 273 and 261 m.s.l. (1.77 billion gallons).

(3) Lake Nockamixon storage between elevations 395 and 325.5 m.s.l. (12.97 billion gallons).

(4) Storage in Lake Wallenpaupack and Mongaup facilities (29.81 and 15.38 billion gallons respectively), subject to the conditions set forth in subsection D3(e).

(5) Any water from storage in the New York City Delaware Basin Reservoirs in excess of 80 billion gallons above "drought warning" criteria as set forth in Figure 1 of Section 2.5.3, without compensation.

(6) Any water from storage in the New York City Delaware Basin Reservoirs between 65 billion gallons and 80 billion gallons above "drought warning" criteria as set forth in Figure 1 of Section 2.5.3, with compensation for the use of storage between 65 billion gallons and 80 billion gallons at the rate of 50% of actual releases made for lower basin "drought" assistance only if storage drops below the level of 65 billion gallons above "drought warning". Credits will be added to the lower basin Drought Assistance Releases Credit Bank as defined in Subsection D3(d)(2) and compensated for as provided in Subsection D3(d)(3).

(7) Up to 30 billion gallons from storage in the New York City Delaware Basin Reservoirs between 30 billion gallons and 65 billion gallons above "drought warning" criteria as set forth in Figure 1 of Section 2.5.3, subject to the conditions set forth in subsection D3(d).

(8) Available storage in Lake Hopatcong (1.9 to 4.3 billion gallons) subject to the considerations set forth in Subsection D3(f).

(c) The Delaware River Basin Commission, in consultation with the parties to the 1954 Decree, shall consider requesting the temporary storage of water in Francis E. Walter and Pompton Reservoirs for future use.

(d) New York City Delaware Basin Reservoirs Operations. During a lower basin "drought" condition, an amount not to exceed 30 billion gallons of storage between 30 billion gallons and 65 billion gallons above the "drought warning" line in the New York City Delaware Basin Reservoirs may be considered for inclusion in the lower basin "drought" reservoir operations plan to provide lower basin "drought" assistance releases to the Delaware River (in addition to such releases as may be needed to meet the Montague flow objective), in order to assist in meeting the Trenton flow objectives, subject to the following conditions and limitations:

(1) Lower basin "drought" assistance releases may be made under this provision provided that the total combined storage available in the New York City Delaware Basin Reservoirs exceeds by 30 billion gallons the "drought warning" criteria set forth in Figure 1 of Section 2.5.3.

(2) The total quantity of supplemental releases made from the New York City Delaware River Basin reservoirs from storage between 30 billion gallons and 65 billion gallons above "drought warning" criteria in any water year shall be credited to the City in a lower basin "Drought Assistance Releases Credit Bank" at the rate of 100% of actual releases made.

(3) Except as provided in (iii) and (iv), credits accumulated in the lower basin "Drought Assistance Releases Credit Bank" shall be carried forward to the following water years, and compensated for as follows:

(i) Credits shall first be used to reduce the "excess release quantity" for the water year beginning the following June as provided under Section III.B.1.c of the 1954 Decree.

(ii) Any remaining credits shall be compensated by a proportionate reduction in the basic Montague flow objective provided under the 1954 Supreme Court Decree and Section 2.5.3. The amount and timing of such reductions shall be determined by the Delaware River Master, in consultation with the Commission and parties to the 1954 Decree. To the maximum extent possible and considering the hydrological condition of the New York City Delaware River Basin reservoirs and upper basin streamflows, such credits will be worked off on days when releases are required to meet Montague flow objectives, and Trenton flows exceed the applicable flow objective without augmentation from lower basin storage as ordered by the Delaware River Basin Commission.

(iii) Should any credits still remain at the end of the following water year, the procedure as outlined in D3(d)(3)(i) and D3(d)(3)(ii) shall be repeated for subsequent years as necessary to totally deplete the lower basin "Drought Assistance Releases Credit Bank", except as provided in (iv).

(iv) In the event that any New York City Delaware Basin Reservoir refills and spills, all credits accumulated in the lower basin "Drought Assistance Releases Credit Bank" shall be cancelled.

(e) Power Reservoir Releases—During lower basin "drought" condition, the Delaware River Basin Commission may direct releases from storage in Lake Wallenpaupack and the Mongaup facilities according to D.3(a) through (d). The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission. In order to conserve the waters of the basin, releases from Wallenpaupack and Mongaup shall be made only when water is needed to meet Trenton flow objectives.

(1) Releases from Lake Wallenpaupack may be directed as needed to meet Trenton flow objectives, provided that elevations do not drop below the elevations listed for the following month according to Table 2 of Section 2.5.5 of the Water Code.

(2) Releases from the Mongaup reservoir system may be directed, as needed to meet Trenton flow objectives, following an operations rule curve based upon maximum available storage of 15.38 billion gallons for the total system and providing for refilling the system during the worst hydrologic year of record, maintaining a minimum release and maintaining minimum operating levels. In the absence of an operations rule curve for the Mongaup system, releases shall be made from Mongaup facilities at a ratio of approximately 1 to 2 to the quantity of releases directed from Lake Wallenpaupack.

(3) If the Montague flow objective exceeds the sum of the New York City Delaware River Basin reservoir conservation releases plus uncontrolled flow at Montague by 350 cfs or more, then 350 cfs from the total Wallenpaupack and Mongaup directed releases shall be credited toward the Montague flow objective, and any additional releases required to meet the Montague flow objective shall be made from the New York City Delaware River Basin reservoirs.

(4) If the Montague flow objective exceeds the sum of New York City Delaware Basin reservoir conservation releases plus uncontrolled flow at Montague by less than 350 cfs, then an amount from the total Wallenpaupack and Mongaup directed releases, which is equal to the difference between the Montague flow objective and the sum of New York City conservation releases plus uncontrolled flow at Montague, shall be credited toward the Montague flow objective, and no additional releases shall be required from the New York City Delaware Basin reservoirs to meet the Montague flow objective.

(f) In selecting the reservoir operations plan and release schedules to be implemented, the parties will consider the following factors:

(1) Lake Hopatcong is a privately-owned non-utility lake.

(2) The water in any reservoir or lake may not be available if under the provisions of a declaration of a drought emergency either within or outside of the basin by the Governor of New York, New Jersey, or Pennsylvania, such facility has been identified to provide supplies for essential health and safety purposes.

(3) There are flow constraints imposed by the outlet works.

(4) There are release limitations due to potential flooding conditions downstream.

(5) The season and seasonal hydrologic conditions.

(6) The status of storage and probability of refill or drawdown for each reservoir.
(7) The status of demands upon each reservoir.
(8) The impact of drought operations upon the authorized uses of each reservoir.
(9) The condition of other water supplies, storage or sources available to the owners or operators of each reservoir.
(10 The variable impact of observed and expected drought conditions in the drainage areas for each reservoir.
(11) Salinity intrusion in the Delaware Estuary.
(12) Releases shall be made from storage to maintain the minimum Trenton streamflow objectives set forth in Table 2, of Section 2.5.3, in such quantities and at such times as determined by the Delaware River Basin Commission, and, in the case of the New York City reservoirs, as directed by the Delaware River Master, in accordance with the schedules and priorities set forth in the operating plan selected or modified by the parties under this section.

E. Operations Alternatives for Lower Basin "Drought" When Basinwide Conditions are "Normal". When storage in Beltzville Reservoir falls below elevation 590 m.s.l. (38.0% of storage capacity) and storage in Blue Marsh Reservoir falls below elevation 273 m.s.l. (36.8% of capacity) and remains below such levels for three consecutive days, the Delaware River Basin Commission shall, pursuant to Article 10.4 of the Compact, declare a lower basin "drought" emergency condition in the lower basin and the following provisions shall automatically be placed in effect:

1. New Jersey Diversion—The total diversion by New Jersey during lower basin "drought" conditions shall not exceed a running average of 65 mgd, for the continuous period commencing on the first day following declaration of the lower basin "drought", with the diversion on any day not to exceed 120 mgd.
2. Trenton Flow Objective—During lower basin "drought" conditions, the minimum streamflow objective at the U.S.G.S. gaging station located at Trenton, N.J. shall be established as set forth in Table 2 of Section 2.5.3 in accordance with the seven-day average location of the 250 mgl isochlor (the "salt front") in the Delaware Estuary.
3. Operations Alternatives—The alternatives for lower basin "drought" operations presented herein vary considerably and were specifically designed to be able to address the wide range of conditions which may occur. For example, if a lower basin "drought" triggers and the upper basin reservoirs are nearly full, then upper basin reservoirs may play a more significant role in helping to solve the lower basin crisis. On the other hand, if the lower basin is in a "drought" condition and the basin as a whole is about to enter a "drought warning" condition, then it would be appropriate to look to other sources such as power dams or recreation reservoirs for assistance. In that case, early mobilization of these additional sources would significantly reduce the severity of basinwide "drought" conditions should they occur. A schematic guide for selecting alternatives for lower basin "drought" operations is presented in Figure *1*-a.

(a) Factors which would indicate the most favorable conditions for each alternative are presented below in the column entitled **Indications**. The corresponding operations alternatives each present the order of priority* of augmented reservoir releases to maintain Trenton flow objectives and are located in the column entitled **Operations.**

(1) Alternative 1

Indications

Application of Alternative 1 is indicated if the general hydrologic condition of the upper basin is much better than the lower basin, based on various drought indicators, including precipitation, streamflow, groundwater levels and reservoir storage. Under these conditions storage in the New York City Delaware River Basin reservoirs would be high (i.e., 65 bg above the "drought warning" line), with a low projected demand on the reservoirs. Storage in the New York City non-Delaware reservoirs would also be high.

Under these conditions, Alternative 1 calls for New York City Delaware storage to be used heavily because there would not be a significant risk of drawdown triggering a basinwide "drought" condition. This alternative would use water which would otherwise likely spill later during the water year.

Operations

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Make additional releases from New York City Delaware Reservoir storage in excess of 80 bg above "drought warning" without compensation, and in excess of 65 bg above "drought warning" with 50% compensation if storage subsequently drops below 65 bg above "drought warning", to augment Delaware River flow.
3. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
4. Make 10 bg of additional releases from New York City Delaware Reservoirs*** to augment Delaware River flow.
5. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.

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*To be followed after the "excess release bank" has been exhausted. Order of priority would be reversed for coming out of a drought condition.
**Loss of recreation below this level.
***New York City would be credited this water against the following year's "excess release quantity" unless there is an intervening spill condition. In addition, these releases would only be made when New York City Delaware reservoir storage is more than 30 billion gallons above the "drought warning" curve. The maximum cumulative amount of these releases is 30 bg.
****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.
*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).

Alternative 1

Operations

6. Make 10 bg of additional releases from New York City Delaware Reservoirs*** to augment Delaware River flow.
7. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.
8. Make 10 bg of additional releases from New York City Delaware Reservoirs*** to augment Delaware River flow.
9. Make releases from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from Mongaup storage****** subject to minimum operating levels.
10. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

***New York City would be credited this water against the following year's "excess release quantity" unless there is an intervening spill condition. In addition, these releases would only be made when New York City Delaware reservoir storage is more than 30 billion gallons above the "drought warning" curve. The maximum cumulative amount of these releases is 30 bg.

****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.

*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).

******Releases will be made from Lake Wallenpaupack and the Mongaup Power Reservoir System simultaneously and approximately in a two to one ratio, respectively.

(2) Alternative 2

Indications

Use of Alternative 2 is indicated if the general condition in the upper basin is moderately favorable (i.e., storage at least 30 bg above "drought warning" and less than 65 bg above "drought warning"). This plan involves extra releases from the New York City reservoirs to assist lower basin conditions. In the event that the City reservoirs drop to less than 30 bg above "drought warning", then releases from the power dams would be used instead. Because such releases would tend to increase the risk of the basin entering "drought warning", this option should only be considered if it triggers after September 1, when the risk of drawing the basin into "drought warning" conditions is reduced. This would limit the amount of time water would be needed as well as increase the probability of refill before serious drawdown occurred.

Operations

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make 10 bg of additional releases from New York City Delaware reservoirs to augment Delaware River flow. To the extent New York City Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon at maximum total releases rate of 200 cfs, and release from Lake Hopatcong***** to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.
5. Make 10 bg of additional releases from New York City Delaware Reservoirs*** to augment Delaware River flow. To the extent New York City Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.

**Loss of recreation below this level.

***New York City would be credited this water against the following year's "excess release quantity" unless there is an intervening spill condition. In addition, these releases would only be made when New York City Delaware reservoir storage is more than 30 billion gallons above the "drought warning" curve. The maximum cumulative amount of these releases is 30 bg.

****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.

*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).

******Releases will be made from Lake Wallenpaupack and the Mongaup Power Reservoir System simultaneously and approximately in a two to one ratio, respectively.

Alternative 2

Operations

6. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.
7. Make 10 bg of additional releases from New York City Delaware Reservoirs*** to augment Delaware River flow. To the extent New York City Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
8. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

***New York City would be credited this water against the following year's "excess release quantity" unless there is an intervening spill condition. In addition, these releases would only be made when New York City Delaware reservoir storage is more than 30 billion gallons above the "drought warning" curve. The maximum cumulative amount of these releases is 30 bg.

****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.

*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).

******Releases will be made from Lake Wallenpaupack and the Mongaup Power Reservoir System simultaneously and approximately in a two to one ratio, respectively.

(3) Alternative 3

Indications

This alternative uses only lower basin reservoirs (i.e., located below Montague) and does not involve the use of New York City or upper basin power reservoirs. This alternative provides the least amount of storage with which to work. Two conditions combined would indicate that application of Alternative 3 is appropriate—(1) the New York City Delaware River Basin reservoirs are very close to entering a "drought warning" condition (i.e., storage in New York City Delaware reservoirs is less than 30 bg above the "drought warning" line when lower basin "drought" triggers) and the non-Delaware River Basin New York City supplies are low; and (2) the lower basin "drought" occurs very late in the season (i.e., after November 1). Under these seasonal conditions, the likelihood of the lower basin reservoirs emptying before the natural refill period is low, and the required releases most likely can be made from the limited remaining contents of the lower basin reservoirs.

Operations

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)** and release from Lake Hopatcong to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.
3. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261, and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

**Loss of recreation below this level.

****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.

*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).

(4) Alternative 4

Indications

This alternative calls upon the upper basin power company reservoirs for assistance. This alternative would be indicated when the New York City Delaware River Basin reservoirs are less than 30 bg above the "drought warning" line and the lower basin triggers before November 1, thereby increasing the probable need for additional water. In this case, the basin would have a high probability of entering a "drought warning" condition, thus the City storage should be conserved.

Operations

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.
5. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
6. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

**Loss of recreation below this level.
****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.
*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).
******Releases will be made from Lake Wallenpaupack and the Mongaup Power Reservoir System simultaneously and approximately in a two to one ratio, respectively.

(5) Alternative 5

Indications

This option proposes the early use of upper basin power company reservoirs followed much later by the use of New York City storage. If a lower basin "drought" triggered early in the year (i.e., before September 1) and City storage were only 30 to 65 bg above "drought warning" then there would be a distinct risk of the basin entering "drought warning" later and a strong chance that the lower basin reservoirs could be exhausted. This option, using upper basin power company storage to conserve lower basin and New York City storage for later use, addresses these possibilities.

Operations

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from Elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make releases from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.
5. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.

**Loss of recreation below this level.
****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.
*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).
******Releases will be made from Lake Wallenpaupack and the Mongaup Power Reservoir System simultaneously and approximately in a two to one ratio, respectively.

Alternative 5

Operations

6. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.
7. Make additional releases from New York City Delaware Reservoirs*** to augment Delaware River flow.
8. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

***New York City would be credited this water against the following year's "excess release quantity" unless there is an intervening spill condition. In addition, these releases would only be made when New York City Delaware reservoir storage is more than 30 billion gallons above the "drought warning" curve. The maximum cumulative amount of these releases is 30 bg.

****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.

*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).

(6) Alternative 6

Indications

This option is similar to Alternative 2 except that New York City releases would be made concurrently with releases from lower basin storage on a 50-50 basis. The conditions under which it would be most appropriate would be similar to those for Alternative 2.

Operations

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**. Make additional releases from New York City Delaware Reservoirs*** to augment Delaware River flow, equal to and simultaneous with releases from Nockamixon; to the extent New York City storage is unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
3. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and releases from Lake Hopatcong to elev. 915.2 at a maximum release rate of 75 cfs. Make additional releases from New York City Delaware Reservoirs*** to augment Delaware River flow, equal to and simultaneous with releases from Beltzville, Blue Marsh, Nockamixon and Hopatcong; to the extent New York City storage is unavailable. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.

**Loss of recreation below this level.

***New York City would be credited this water against the following year's "excess release quantity" unless there is an intervening spill condition. In addition, these releases would only be made when New York City Delaware reservoir storage is more than 30 billion gallons above the "drought warning" curve. The maximum cumulative amount of these releases is 30 bg.

****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.

******Releases will be made from Lake Wallenpaupack and the Mongaup Power Reservoir System simultaneously and approximately in a two to one ratio, respectively.

4. Reduction of Conservation Releases—In order to conserve storage, conservation releases from the listed lower basin reservoirs shall continue to be modified in accordance with Table 4 of Section 2.5.5 for the duration of a lower basin "drought" condition.

5. Conservation Measures—Upon the declaration of a lower basin "drought" emergency, the lower basin states shall adopt and implement within the basin drainage area below Montague comparable mandatory conservation measures, including restrictions on non-essential water uses, and shall implement other provisions of "drought" contingency plans designed to achieve a target of 15 percent reduction in depletive water use. The following water uses shall be deemed non-essential:

(a) Serving of water to any patron of a restaurant, club or other eating place unless specifically requested by such patron.

(b) The use of water for ornamental purposes.

(c) The use of water for washing paved surfaces such as streets, sidewalks, outdoor plazas, driveways, garages, parking areas and patios.

(d) The use of water for non-commercial washing or cleaning of vehicles except for the windshields and windows and except for emergency vehicles.

(e) The use of water for watering of established lawns (i.e., those not newly seeded, sodded or fertilized).

(f) The use of water for watering or sprinkling any part of a golf course except for tees, greens, and aprons.

(g) The use of water for watering non-commercial outdoor gardens, landscaped areas, trees, shrubs and other outdoor plants except: water may be applied with a bucket, can or hand-held hose equipped with automatic shut-off valve.

6. Ending "Drought"—When the storage levels in Beltzville and Blue Marsh Reservoirs simultaneously exceed their respective lower basin "drought" storage levels for 30 consecutive days or either one of those reservoirs spills, the lower basin "drought" operation shall automatically terminate and either lower basin "drought warning" or normal operations shall be resumed in accordance with Section B or C, unless the Decree parties unanimously agree otherwise.

F. Operations During Basinwide Drought Warning or Drought Following Lower Basin Drought Warning or Drought.

1. Selection of Alternate Plans—If, following the triggering of a lower basin "drought" or lower basin "drought warning" under this plan, the combined storage in the New York City Delaware Basin Reservoirs declines to basinwide "drought warning" or "drought" conditions as defined in Section 2.5.3, the parties to the 1954 Decree shall select and agree to, and the Delaware River Basin Commission shall implement, the provisions of either Section F2 or F3 of this Plan. In the absence of unanimous agreement, the operating rules set forth in Section 2.5.3 shall govern. The parties may by unanimous agreement modify and adjust either plan as necessary and appropriate to respond to actual conditions. In selecting between the alternative plans, and any modification thereto, the parties will consider the following factors:

(a) The extent and severity of drought conditions in various parts of the basin.

(b) The season, and seasonal variation of hydrologic conditions.

(c) The status of storage in all affected reservoirs, and the probability of refill or drawdown for each reservoir.

(d) The status of demands upon each reservoir.

(e) The lead time needed to effect conservation measures and to reduce demand.

(f) The prior availability of time and notice to provide for adequate warning and preparation for drought response actions.

(g) The need and ability to take expedited steps to conserve storage in the New York City and other basin reservoirs.

2. Combined Drought Operations Plan 1

(a) The schedules of phased reductions governing the maximum allowable rates of diversion of waters of the Delaware Basin by New York City, the minimum compensating releases to be made by the City of New York Delaware Basin Reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, NJ, shall be as prescribed in Section 2.5.3.

(b) The operation of Lake Wallenpaupack and the Mongaup System Reservoirs shall be governed by the storage and release schedules prescribed in the operating plan for basinwide "drought" conditions. The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission.

(c) So long as lower basin "drought warning" or lower basin "drought" conditions prevail simultaneously with basinwide "drought warning" and "drought" conditions, the maximum allowable rates of diversion of Delaware Basin waters by New Jersey, the streamflow objectives at the U.S.G.S. gaging station located at Trenton, NJ, and the operation of storage in Beltzville Reservoir, Blue Marsh Reservoir, Lake Nockamixon, Lake Hopatcong, and any storage made available in the F.E. Walter and Prompton Reservoirs shall be governed by the stricter of the provisions of Sections C and D of the Lower Delaware Basin Operating Plan, or the provisions of Section 2.5.3, which permit lesser New Jersey diversions and lower Trenton Flow Objectives.

3. Combined Drought Operations Plan 2

(a) If during the period May 1 to November 30, the combined storage in the New York City Delaware River Basin Reservoirs is in the upper half of the "drought warning" condition identified in Figure 1 of Section 2.5.3, the maximum allowable rates of diversion of waters of the Delaware by New York City, the minimum compensating releases to be made by the New York City Delaware River Basin Reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, NJ, shall be as prescribed for lower half "drought warning" in Tables 1 and 2 of Section 2.5.3. If the combined storage in the New York City Delaware River Basin reservoirs subsequently enters the lower half of the "drought warning" condition identified in Figure 1 of Section 2.5.3, the maximum allowable rate of diversions of the Delaware Basin by New York City, the minimum compensating releases to be made by the New York City Delaware River Basin reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, NJ, shall be as prescribed for "drought" in Tables 1 and 2 of Section 2.5.3.

(b) If during the period December 1 to April 30, the combined storage in the New York City Delaware Basin Reservoirs falls within the "drought warning" levels identified in Figure 1 of Section 2.5.3, the maximum rates of New York City diversions, the minimum compensating releases made by the New York City Delaware River Basin Reservoirs, and the Montague streamflow objectives shall be as prescribed for the applicable "drought warning" upper and lower half conditions set forth in Tables 1 and 2 of Section 2.5.3. Any subsequent triggering of basinwide "drought" conditions shall be governed by Figure 1 of Section 2.5.3.

(c) So long as lower basin "drought warning" or lower basin "drought" conditions prevail simultaneous with a basinwide "drought warning" condition, the maximum rate of diversion by New Jersey, the minimum streamflow objectives at Trenton, and the operation of available storage in Beltzville Reservoir, Blue Marsh Reservoir, Lake Nockamixon, Lake Hopatcong, and the F.E. Walter and Prompton Reservoirs shall be governed by the provisions of Sections C and D of the Lower Delaware Basin Drought Operating Plan.

(d) In the event that following the triggering of a lower basin "drought warning" or lower basin "drought", the combined storage in the New York City Delaware River Basin Reservoirs is in the "drought" levels identified in F.3.a. and b., whichever is applicable, the maximum rate of diversions by New York City and New Jersey, the minimum rates of compensating releases, and the minimum streamflow objectives at Montague, NJ and Trenton, NJ shall be those set forth in Tables 1 and 2 of Section 2.5.3. The operation of all basin reservoirs shall be as prescribed in the plans for basinwide drought reservoir operation.

(e) The operation of Lake Wallenpaupack and the Mongaup System Reservoirs shall be governed by the storage and release schedules prescribed in the operating plan for basinwide "drought" conditions. The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission.

II. This operating plan will be reviewed by the Commission and the Parties periodically or when additional water storage projects become operational and revised as appropriate.

III. This amendment shall take effect upon approval by the Commission and the Parties to the U.S. Supreme Court Decree in *New Jersey v. New York,* 347 U.S. 995 (1954).

OFFICE OF ADMINISTRATIVE LAW NOTE: Figure 1, Operation Curves for Cannonsville, Pepaction and Neversink Reservoirs, filed with OAL as part of this adoption, was not reproducible in the New Jersey Register. A copy can be obtained from or inspected at the Delaware River Basin Commission, P.O. Box 7360, 25 State Police Drive, West Trenton, New Jersey, 08625, or the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN-301, Trenton, New Jersey 08625.

TABLE 1.—INTERSTATE OPERATION FORMULA FOR REDUCTIONS IN DIVERSIONS, RELEASES, AND FLOW OBJECTIVES DURING PERIODS OF DROUGHT

NYC storage condition	NYC Div. mgi	NJ Div. mgi	Montague flow objective cfs	Trenton flow objective cfs
Normal	800	100	1750	3000
Upper Half-Drought Warning	680	85	1655	2700
Lower Half-Drought Warning	560	70	1550	2700
Drought	520	65	1100-1650*	2500-2900*
Severe Drought (to be negotiated based on conditions)				

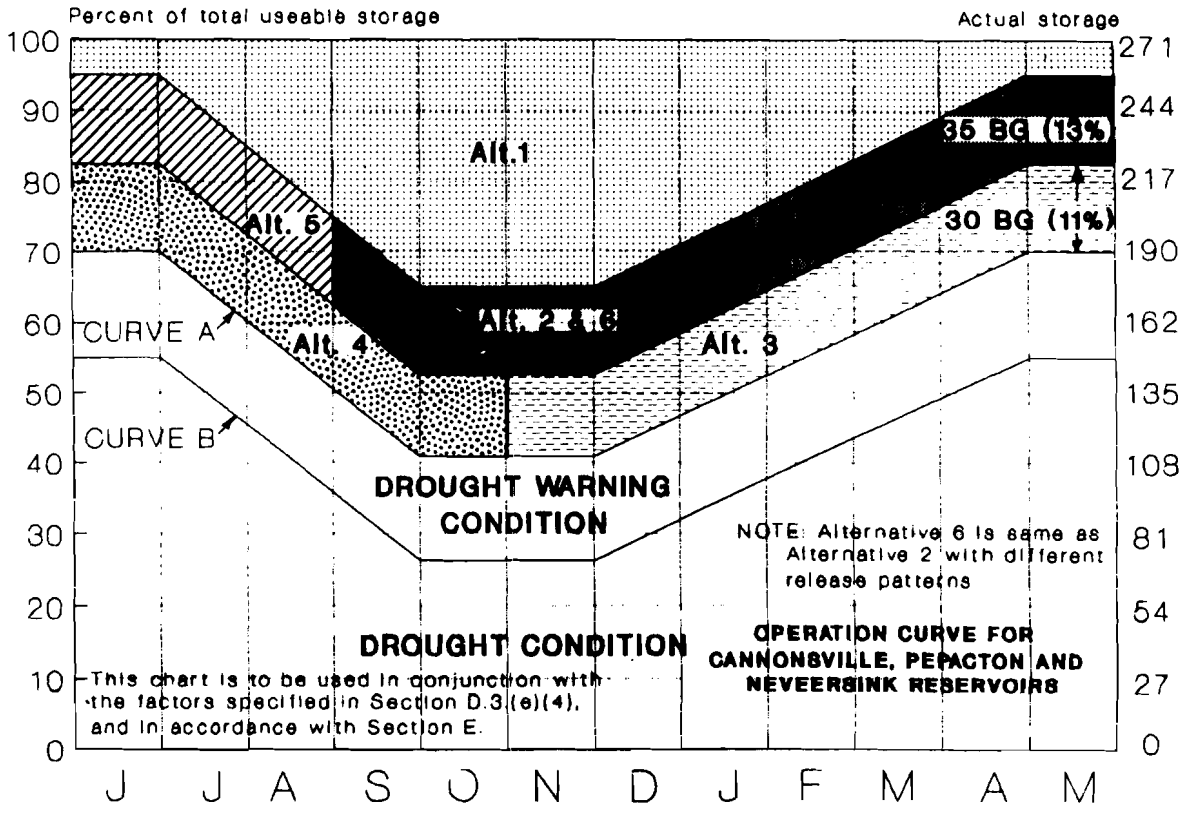
*Varies with time of year and location of salt front as shown on Table 2.

TABLE 2.—FLOW OBJECTIVES FOR SALINITY CONTROL DURING DROUGHT PERIODS

7-day average location of "Salt Front", River-mile*	Flow objective, cubic feet per second at: Montague, N.J. Dec.-Apr.	May-Aug.	Sept.-Nov.	Trenton, N.J. Dec.-Apr.	May-Aug.	Sept.-Nov.
Upstream of R.M. 92.5	1,600	1,650	1,650	2,700	2,900	2,900
Between R.M. 87.0 and R.M. 92.5	1,350	1,600	1,500	2,700	2,700	2,700
Between R.M. 82.9 and R.M. 87.0	1,350	1,600	1,500	2,500	2,500	2,500
Downstream of R.M. 82.9	1,100	1,100	1,100	2,500	2,500	2,500

*Measured in statute miles along the navigation channel from the mouth of Delaware Bay.

Figure 1a. A GUIDE FOR SELECTING ALTERNATIVES FOR LOWER BASIN DROUGHT PLAN OPTIONS



Glossary of Terms

Banking of Excess Release Quantity—The temporary holding back of water releases from an excess release quantity set aside in the three Delaware Basin New York City Reservoirs under terms of the 1954 Supreme Court Decree to provide drought assistance to the lower basin.

Basinwide Drought Warning and Drought—Defined in Section 2.5.3 of the Water Code. For further information concerning basinwide drought warning and drought conditions, see Figure 1, Operation Curves for Cannonsville, Pepacton and Neversink Reservoirs; Table 1 for Interstate Operation Formula and Table 2 for Flow Objectives.

Excess Release Quantity—Under terms of the 1954 Supreme Court Decree, it is a quantity of water equal to 83 percent of the amount by which the estimated consumption during such year is less than New York City's estimate of the continuous safe yield during such year of all its sources obtainable without pumping. The safe yield shall be estimated at not less than 1665 mgd.

Excess Release Requirement—Defined in 1954 U.S. Supreme Court Decree.

Lower Basin Area—The drainage area of the Delaware River and Bay below the streamflow gaging station at Montague, New Jersey.

Lower Basin "Drought Assistance Releases Credit Bank" is defined in Section D3(d)(2) of this resolution.

Lower Bain "Normal", "Drought Warning" and "Drought" are defined in Sections B., C. and D. respectively, of this resolution.

Upper Basin Area—The drainage area of the Delaware River in New York, Pennsylvania and New Jersey above the streamflow gaging station at Montague, New Jersey.

OAL NOTE: These rules are not subject to codification and will not appear in the New Jersey Administrative Code.

EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program Rules
Waterfront Development

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 7:7-2.3

Emergency Amendment Adopted: October 3, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): October 3, 1988.

Emergency Amendment Filed: October 4, 1988 as R.1988 d.518.

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq., 13:19-1 et seq., 13:9A-1 et seq., and 12:5-1 et seq.

Emergency Amendment Effective Date: October 4, 1988.

Emergency Amendment Expiration Date: December 3, 1988.

DEP Docket Number: 038-88-10.

Concurrent Proposal Number: PRN 1988-556.

A **public hearing** concerning the concurrent proposal will be held on:
November 22, 1988 at 11:00 A.M.
Dover Township Municipal Building
Council Chambers
33 Washington Street
Toms River, New Jersey 08754

Submit written comments by December 7, 1988 to:
Michael P. Marotta, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendment becomes effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

The Waterfront Development Law of 1914, N.J.S.A. 12:5-1 et seq. (the Law), is one of three coastal construction permit laws administered by the Department of Environmental Protection. Prior to 1980, the Law was applied generally to developments in the water. Rules in place since 1980 provide for regulation of an upland area adjacent to all tidal waters outside of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. (CAFRA), area but only to projects at or below the mean high water line within the CAFRA area. The subject emergency amendment responds to insufficient control on continued development in land areas within the CAFRA area proximate to tidal water.

In recognition of the intervening special areas in the CAFRA area, that is, the prevalent beach, dune, and wetlands areas, this amendment affords additional protection landward of the mean high water line of tidal waters in the CAFRA area. First, the regulated waterfront area under the Law will now extend through the most inland beach, dune, or wetland. Second, the regulated waterfront will now extend therefrom to the greater of one hundred feet or the inland limit of the first property associated with the first residential, commercial, or industrial use that involves a permanent building based on property lines existing on October 3, 1988 or property lines associated with buildings permitted in the waterfront area after October 3, 1988. It should be noted that the baseline to be used in the aforementioned inland delineations (the most inland beach, dune, or wetland) may be substantially different from the baseline used in the non-CAFRA areas (the mean high water line of tidal waters). A baseline limited in the CAFRA area to the mean high water line would frustrate necessary State controls on the first developable land in the CAFRA area. The rule change will result in an upland waterfront area of variable width that is subject to the permitting requirements of the Law. The inland limit of jurisdiction will be a dynamic line which will change as a function of permitted uses within the waterfront area.

Social Impact

This amendment will result in a positive social impact upon the coastal area of the State by imposing upon this delicately balanced natural environmental resource a comprehensive system of State land use regulation which will reduce the degradation resulting from uncoordinated development that does not address the regional nature of the coastal area and the problems beyond the boundaries and control of any individual coastal community. The types of problems unaddressed include, but are not necessarily limited to, water and air quality, loss of natural and aesthetic resources, and incompatible land uses.

Significant portions of the coastal area are now suffering serious adverse environmental effects resulting from countless incidents of waterfront construction to which the provisions of the CAFRA do not apply. The result has been that much of this construction has occurred in a piecemeal fashion without regard to cumulative impacts upon the special nature of the coastal area. Absent the adoption, the State will continue to suffer serious and cumulative adverse social and aesthetic effects.

Economic Impact

The amendment will impose increased economic burden upon the shorefront building community. On a larger scale, however, the amendment will result in a positive economic impact. The amended rule will encourage the development of compatible land uses, development that is sensitive to environmental constraints, and comprehensive implementation of best management practices. This encouragement will protect and enhance the coastal land and water resources thereby economically benefitting tourism, commercial fisheries, and other water-dependent industries.

The fragile coastal ecosystem is characterized by a combination of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, streams and stream corridors, vegetation communities and wildlife habitats. These natural features make the area a desirable place to visit, which in turn fosters the State's tourist industry. The same features make the coastal region a productive area for commercial and recreational fishing. If the ecosystem were not protected, not only would natural resources and processes be harmed, but the economy of the area and of the State would suffer.

Enviromental Impact

The amendment will extend the requirements of the Law in the CAFRA area upon waterfront development which has, heretofore, occurred without such requirements. The State's coastal permit review process will assure the preservation of the most ecologically sensitive and fragile areas along the coast from inappropriate development and will provide adequate environmental safeguards for any construction within that area.

The amendment will enable the Department to regulate housing developments of less than 25 units, commercial facilities with less than 300 parking spaces, and shore protection structures built above the mean high water line. With this jurisdiction, the Department would be able to control the first development inland from the ocean, rivers and bays, to:

1. Insure that both quantity and quality of runoff is controlled using best stormwater management practices;
2. Provide comprehensive non-point source pollution management for new development proximate to tidal waters (that is, complement objectives of the Governor's 14 point plan and recent legislative funding initiatives);
3. Insure that designated beneficial uses of the State's surface waters, such as swimming, fishing and boating, are maintained in accordance with goals of State Surface Water Quality Standards and the Federal Clean Water Act;
4. Require that oceanfront development be set back sufficiently to protect dunes and provide a greater buffer from the ocean in the event of catastrophic storms, to anticipate future sea level rise, and to mitigate the potential loss of life and property in high hazard areas;

5. Insure that shore protection structures (for example, groins, bulkheads, etc.) built above the mean high water line follow the same policies of those built below the mean high water line to insure that these structures do not adversely affect sand transport such that one beach area is benefitted at the expense of another;

6. Better protect existing and potential future marinas by controlling runoff and restricting the water's edge for water dependent activities. No longer would developers be able to continue to buy up marinas and automatically construct 24 townhouses;

7. Insure that new coastal development does not unreasonably block or limit public access to the waterfront; and

8. Insure that other coastal resources such as critical wildlife habitat, beaches, dunes, and wild and scenic river corridors are better protected.

Regulatory Flexibility Statement

The amendment will apply to most development in an upland area of variable width adjacent to tidal waters, beaches, dunes, and wetlands in the "coastal area" defined by section 4 of CAFRA. It is estimated that of the total number of building permits impacted by this rule change, most will be in the residential category. Since residential developments of 25 units or more are already subject to regulation pursuant to CAFRA and N.J.A.C. 7:7-2.1, the amendment, by its very nature, will encompass smaller projects. In this way, it will impact "small businesses" that specialize in waterfront development below the CAFRA regulatory thresholds. In order to comply with this amendment, small businesses will have to obtain a Waterfront Development Permit and comply with the permitting standards contained at N.J.A.C. 7:7E. In so doing, it is likely that small businesses will need to engage professional legal and/or environmental services. It is expected that State permit fees and compliance costs for each small business proposing a development in the subject waterfront area could range from $1,000 to $5,000. In developing this amendment, the Department has balanced the need to protect the environment against the economic impact of the proposed rule and has determined that to minimize the impact of the amendment would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

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

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into [two] **three** sections, and will vary in width in accordance with the following rules:

1. Within [the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:19-4) or within] any part of the Hackensack Meadowland Development District delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to the mean high water line.

2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:19-4), the regulated waterfront area shall consist of the area described in (a)1 above, and extend inland to include an adjacent upland area measured from the most inland beach, dune, wetland or other water area, as these terms are defined in N.J.A.C. 7:7E, to the greater of:

i. One hundred feet; or

ii. The inland limit of the first property associated with residential, commercial or industrial use that involves a permanent building based on property lines existing on October 3, 1988; provided, however, should the Division issue a Waterfront Development Permit after October 3, 1988 for a use involving a permanent building, upon project completion the inland limit for purposes of this subparagraph shall be the inland property boundary associated with this permit.

[2.]**3.** (No change in text.)

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

(d) A permit [will] **shall** be required in the waterfront area for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filing of any area with the exceptions listed below:

1. **In the waterfront area defined in a(3) above,** [The] **the** construction, alteration, expansion or reconstruction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet inland from the mean high water line;

2. **In the waterfront area defined in a(3) above,** [The] **the** reconstruction, conversion, alteration or enlargement of any existing structure located more than 100 feet inland from the mean high water line, provided that no change in land use results, and that enlargements do not exceed 5000 square feet;

3. In the area defined at (a)2 above, in the event of damage or destruction, in whole or part, by fire, storms, natural hazards, or other acts of God, reconstruction of any existing building not resulting in a greater footprint or total area than that of the damaged or destroyed building;

4. In the area defined at (a)2 above, the expansion or enlargement of any existing structure, conducted in one or more phases on or after October 3, 1988, such that the total area of all phases of expansion or enlargement is less than 1500 square feet;

Renumber existing 3.-5. as **5.-7.** (No change in text.)

(e) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed facility does not require a permit under (d) above.

1. The requesting party shall provide the Division with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) and a project description. When the applicability determination request is based on a proposed facility's location in accordance with paragraphs (a)2 **and 3 above**, the map shall depict that property line as it is depicted on the official local tax map as of Septembr 26, 1980, **for the area defined in (a)3 above, and October 3, 1988, for the area defined in (a)2 above**, shall delineate the mean high water line, and shall graphically depict the proposed project.

2. (No change.)

(f) (No change.)

(g) This subchapter shall not apply to any development or activity in the upland area **defined in (a)3 above** and in man-made waterways and lagoons for which on-site construction, including site preparation, was in progress on or prior to September 26, 1980 **or to any development or activity in the upland area defined in (a)2 above for which on-site construction, excluding site preparation, was in progress on or prior to October 3, 1988.**

1. (No change.)

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Division to determine that **the** physical work **specified in (g) above** necessary to begin the construction of the proposed facility[,] was actually performed prior to September 26, 1980, **for the area defined in (a)3 above, and prior to October 3, 1988, for the area defined in (a)2 above**, the effective [date] **dates** of these [rules] **provisions.**

i. Any interruption in the process of construction and completion of the facility in excess of one year may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Division.

ii. A finding that a proposed facility is exempt from the requirements of this subchapter shall apply only to the facility as conceived and designed prior to September 26, 1980, **for the area defined in (a)3 above, and prior to October 3, 1988, for the area defined in (a)2 above.** Any modification which expands or substantially changes the exempted facility, and which would not be classified as a minor modification under N.J.A.C. 7:7-4.10, shall require a permit.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Facility Permit Exemptions for Vegetative Waste Composting Facilities and Leaf Composting Facilities

Adopted Emergency New Rules and Concurrent Proposed New Rules: N.J.A.C. 7:26-1.11, 1.12.

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 7:26-1.4, 1.7, 2.1, 2.4, 2.8 and 2.13.

Emergency New Rules Adopted: October 17, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): October 25, 1988.

Emergency Rule Filed: October 26, 1988 as R.1988, d.547.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-1 et seq., particularly 13:1E-4, 13:1E-6 and 13:1E-99.11, 58:10A-1 et seq., particularly 58:10A-4.

Concurrent Proposal Number: PRN 1988-596.

Emergency Adoption Effective Date: October 26, 1988.

Emergency Adoption Expiration Date: December 25, 1988.

A public hearing concerning this proposal will be held on:
November 22, 1988, 10:00 A.M.
War Memorial Building
Vet Room (Basement)
Lafayette Street
Trenton, New Jersey

Submit written comments on the concurrent proposal by December 7, 1988 to:
Mary L. Gillespie, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

These new rules were adopted on an emergency basis and became effective upon filing with the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) and N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rule are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The agency adoption and concurrent proposal follows:

Summary

The New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq. (the "Recycling Act"), provides that from September 1 to December 31 of each year, a municipality shall require its residents to source separate leaves from solid waste (see N.J.S.A. 13:1E-99.22). A municipality is prohibited, during this time frame, from disposing of leaves in a sanitary landfill. The leaves must be recycled at a leaf composting facility (see N.J.S.A. 13:1E-99.21).

Presently, in accordance with N.J.S.A. 7:26-2.4, a leaf composting facility must receive a solid waste facility permit prior to operation. Approximately 43 facility applications are currently awaiting Department review under this permit process. This process takes considerable time due to the in-depth technical review that must be undertaken of the engineering site plans, environmental and health impact statements and operational narratives. Therefore, these facilities cannot be permitted in time for operation during the mandatory leaf collecting and recycling period of September 1 to December 31, 1988. Moreover, a valuable resource, composted leaves, will be lost if there are no available composting facilities.

Because 35 percent of the State's municipalities are without leaf composting facilities which would enable them to comply with the mandate of the Recycling Act described above, the Department is proposing several methods of exemption from full solid waste facility permitting for leaf composting facilities, leaf mulching operations, and vegetative waste composting facilities which can meet the requirements for those exemptions as set forth more fully in the proposed amendments and new rules.

N.J.A.C. 7:26-1.7 allows the Commissioner of the New Jersey Department of Environmental Protection to exempt certain classes of solid waste facilities from Solid Waste Facility permitting (SWF permitting). This amendment to N.J.A.C. 7:26-1.7 expands the types of facilities for which such exemption is available by providing specific criteria for exempting vegetative waste composting facilities. A vegetative waste composting facility, for the purposes of this exemption, is limited to a solid waste facility which accepts greater than 20,000 cubic yards of leaves annually or that in addition to accepting leaves, accepts other non-crop residues such as grass clippings, tree parts, shrubbery and garden wastes.

The specific criteria for exemption of vegetative waste composting facilities require that the applicant demonstrate sufficient integrity, expertise and competence to operate the facility; that a major disruption in the provision of solid waste facility services would result if the exemption is not obtained; that the facility is consistent with the appropriate district solid waste management plan; and that the facility will be designed, constructed and operated in a manner consistent with the public health, safety, and welfare which shall be reflected in conditions specified in the Temporary Certificate of Authority to Operate (TCAO). In addition, the Department requires that the applicant pursue full solid waste facility permitting at the earliest practicable date, which necessitates the inclusion in the TCAO of a schedule for the permitting of the facility or a replacement facility within the duration of the TCAO.

The amendment also details the application requirements for a TCAO which include the submission of a disclosure statement, where applicable; an emergency environmental impact statement, the specific requirements of which are provided; an engineering design or site plan specifying a number of detailed items; and an operational narrative.

The amendment specifies that a vegetative waste composting facility is not eligible for this exemption if it is located on property purchased with Green Acres Bond Act money or is otherwise encumbered by Green Acres restrictions unless approval of the Department and State House Commission has been received. Compliance with any conditions of such approvals and submission of a copy of such approvals as part of the application package are required.

Finally, all TCAO applicants must file copies of their applications, except for the disclosure statement, with the municipality and county in which the facility is proposed to be located and shall publish notice of the application within five days of application. The Department may require that a public comment period be provided if emergent time constraints allow.

In addition, the department is proposing new rule N.J.A.C. 7:26-1.11. The proposed rule exempts from the Department's solid waste facility permitting process leaf composting facilities designed and operated to accept solely leaves at a rate not to exceed 20,000 cubic yards annually. Any facility which proposes to accept 20,000 cubic yards or less of leaves in addition to other vegetative wastes must obtain Departmental approval through N.J.A.C. 7:26-1.7(g) or 2.4. The exemption will remain in effect as long as the facility is operated in accordance with the requirements in the rule, and as long as annual operational statements and certifications are submitted. If it is determined that the rules are not being followed, eligibility for exemption from solid waste facility permitting shall terminate and the facility shall cease operation.

New rule N.J.A.C. 7:26-1.12 exempts from the Department's solid waste facility permitting process leaf composting facilities that engage in leaf mulching operations on agricultural or horticultural lands. The leaf mulching operation shall consist of spreading leaves, no higher than six inches, over the land and incorporating these leaves into the soil for natural decomposition prior to the next tillage season. In addition, the Department has set forth specific standards which mulching operations must meet in order to qualify for this exemption. Owners or operators of agricultural or horticultural lands may also compost leaves in accordance with the requirements of N.J.A.C. 7:26-1.7 or 1.11.

In order to carry out the mandate of the Recycling Act at N.J.S.A. 13:1E-99.11 and in response to the unprecedented increases in disposal costs associated with decreasing New Jersey landfill availability, provisions must be made to allow for rapid expansion of legitimate leaf composting activities in an environmentally sound manner. These rules will provide the mechanisms for that expansion.

The impact of the emergency rule on the 43 applications for leaf composting permits currently before the Department will be handled in the following manner: the Department will issue a letter to each applicant

referencing the new rules and requiring each applicant to submit a letter requesting the Department to consider the application under the new rules. At the same time, the applicant must review the requirements of the rules and submit to the Department all materials needed to satisfy the applicable requirements.

The Department has reviewed the 43 in-house applications and has concluded that five of those applications are potentially eligible for the TCAO set forth at N.J.A.C. 7:26-1.7, while 38 of the applications are potentially eligible for exemptions from solid waste facility permitting pursuant to N.J.A.C. 7:26-1.11. However, it appears that 14 of the in-house applications may come under the jurisdiction of the Green Acres program either directly or because the site is adjacent to Green Acres property.

Social Impact

In allowing for the issuance of TCAO's to vegetative waste composting facilities, the public will benefit from the immediate availability of vegetative waste composting facilities in light of the prohibition of landfilling of leaves in N.J.S.A. 13:1E-99.21. The new TCAO provisions will allow the Department to respond to disposal shortfalls within a solid waste management district by quickly authorizing the construction and operation of vegetative waste composting facilities. This amendment will therefore provide the Department with a mechanism to insure that major solid waste disposal disruptions will be resolved quickly and in an environmentally sound manner.

In addition, N.J.A.C. 7:26-1.11 will encourage the development of leaf composting facilities, thus lessening the State's solid waste crisis, by providing an expedited process for Departmental authorization of leaf composting facilities. By providing performance standards in rule form, persons proposing to engage in leaf composting will be able to do so without unnecessary delay provided that those performance standards can be met.

Individuals at large will remain largely unaffected by these amendments and rules, as the pickup and removal of leaves will remain unchanged. Only individuals residing in proximity to leaf composting sites will be cognizant of any change in the disposition of the collected leaves, and every effort has been made to minimize these effects. The valuable compost end-product which will be produced by these facilities and actitivities may be available for use by interested parties and the benefit of diverting waste from landfills through recycling will be realized.

The overall social impact of the amendments and new rules will be positive. The Department, however, recognizes that in some situations vegetative waste composting facilities and leaf composting facilities could possibly be sited in open space areas or recreational sites causing adverse social impacts.

To protect open space and recreational sites, the rules provide that facilities are not eligible for exemptions if they are located on Green Acres land or land encumbered with Green Acres restrictions unless specific approval for such facilities is received from the Department and the State House Commission. The conditions of such approval must be strictly observed. The exemption is also not available for facilities located on lands which are located on county or municipally owned parks, wildlife sanctuaries, recreational facilities or other open public spaces.

It is anticipated that leaf mulching operations will not cause any adverse social impacts because they are strictly limited to land deemed actively devoted to agricultural or horticultural use. Leaf mulching operations have been a part of agricultural and horticultural farming in New Jersey for many years. The Department recognizes that these operations are a valuable asset to the State. They provide municipalities with a place to recycle leaves. Mulching also aids in weed prevention and control of moisture and temperature.

Economic Impact

The present shortfall of permitted vegetative waste composting facilities has provided a narrow market for proper disposal of leaves to municipalities, counties, and businesses. This narrow market has resulted in price increases charged to dispose of vegetative waste at these permitted facilities, a trend which should accelerate as the fall leaf season approaches. These price increases unduly strain municipal, county, and industrial budgets. However, by issuing TCAO's to vegetative waste composting facilities which meet the specific criteria provided herein, the Department seeks to avoid major disruptions in access to disposal facilities and the far higher costs associated with such disruptions. It is not expected that compliance with the public notice and comment requirements will impose significant economic burdens on applicants or the Department.

In addition, the adoption of N.J.A.C. 7:26-1.11 and 1.12 will result in benefits ranging from a reduction in the amount of land used for landfilling, reduction of capacity needed for waste-to-energy facilities, and reductions in user fees paid at all solid waste facilities.

The Department recognizes that in some situations vegetative waste composting facilities and leaf composting facilities may detract from the scenic beauty of the land causing a decline in value to the surrounding land. However, the proper adherence to the performance criteria of these new rules will ensure that surrounding areas are not degraded.

The overall economic impact of these new rules will be positive. Revenue may be provided to the public and private sector from the sale of compost material, and additional employment opportunities may be created for citizens of the State.

Environmental Impact

The TCAO rules require the Department to find that an exemption will not violate the intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and will not pose a threat to the public health or the environment. Therefore, the extension of TCAO to vegetative waste composting facilities in N.J.A.C. 7:26-1.7(g) will not pose an adverse environmental impact. The use of a TCAO to allow the expedited construction and operation of vegetative waste composting facilities provides a positive environmental impact by quickly providing a means for compliance with the mandate of N.J.S.A. 13:1E-99.21, which alleviates reliance on landfills in favor of more environmentally sound alternatives.

Utilization of composting facilities and mulching operations accepting solely leaves, as provided at N.J.A.C. 7:26-1.11 and 1.12, as a preferred method of solid waste disposal, has a positive environmental impact. The proposed performance standards for facility operation are designed to protect the environment from potential adverse impacts by addressing leachate run-off and odor control, and by controlling the volume of leaves composted and methods of composting or mulching utilized even with an exemption. In addition, eliminating landfilling or incineration of leaves saves valuable landfill space and decreases the potentially adverse impact on the air quality of the State caused by incineration.

The overall environmental impact of these amendments and new rules is positive. The Department recognizes that in some situations vegetative waste composting facilities and leaf composting facilities may detract from the scenic or visual quality of their location, encroach on previously undisturbed areas, require construction of additional roads for access to the site, or introduce additional sources of pollution to the host environment. However, in balancing the need to protect the environment by controlling the leachate and odor problems caused by improper, unregulated decomposition of vegetative wastes, the danger to the environment, to pedestrians and to vehicles caused by leaves left in the street and on sidewalks, and the potential result of leaves illegally going to sanitary landfills near capacity, the environmental benefits of these amendments and new rules outweighs these negative aspects. Leaf mulching activities will not cause any of these negative environmental effects, as these activities will be conducted on existing facilities.

Regulatory Flexibility Statement

N.J.A.C. 7:26-1.7(g) would apply to proposed vegetative waste composting facility applicants for TACOs. In order to comply with this amendment, the applicants will have to meet the specific criteria for exemption as well as submit an application containing an emergency environmental impact statement, engineering designs and a disclosure statement as required pursuant to N.J.S.A. 13:1E-126 et seq., to the Department. The applicant must also file its application (except for the disclosure statement) in the municipality and county where the proposed facility is to be located. In preparing the application, it is likely that the services of a professional engineer will be required.

The proposed exemption from SWF permitting at N.J.A.C. 7:26-1.11 requires a site plan submittal and certification by a licensed New Jersey Professional Engineer, a certification by the owner or operator and an annual operational statement. The services of a professional engineer will be required to prepare the site plan, the certification, and the annual update certification.

The proposed exemption from SWF permitting at N.J.A.C. 7:26-1.12 requires that the standards listed in that section be met. The services of professionals will not be required to comply with this section.

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that of the 43 leaf composting applications currently before the Department, approximately six have been submitted by "small businesses" as defined in the New Jersey Regulatory Flexibility Act and will therefore be impacted by these amendments and new rules. As described

above for the individual categories of exemptions, the services of a professional engineer will be required for a vegetative waste composting facility TCAO and for an exemption from permitting for leaf composting facilities (leaves only). However, it is important to note that in complying with the requirements of these rule, small businesses will experience no greater impact than they would have experienced through the full solid waste facility permitting process and should, in fact, experience less impact with these exemption procedures.

The Department cannot predict the capital cost which will result from compliance with these rules since any engineering and consulting costs incurred will vary measurably depending upon the particular site selected for the facility. In addition, the Department cannot predict the number of small businesses that may be impacted by the amendments and new rules as new applicants since applicants may be counties or municipalities along with private companies.

Full text of the emergency adoption and concurrent proposal follows (additions shown in bold face **thus**; deletions indicated in brackets [thus]).

7:26-1.4 Definitions

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

. . .

"Leaf composting facility" means a solid waste facility which is designed and operated for the purpose of composting leaves [, either] exclusively [or in combination with other type ID 23 wastes as identified in N.J.A.C. 7:26-2.13] **and shall also include leaf mulching operations on land deemed actively devoted to agricultural or horticultural use as described in N.J.S.A. 54:4-23.5.**

. . .

"Vegetative waste composting facility" means a solid waste facility which is designed and operated for the purpose of composting leaves, either exclusively or in combination with other type ID 23 wastes, as described in N.J.A.C. 7:26-2.13.

. . .

7:26-1.7 Exemption from SWF permitting

(a) Pursuant to N.J.S.A. 13:1E-4a, the Commissioner may exempt, from the requirement of [registration] **Solid Waste Facility permitting** as set forth in N.J.A.C. 7:26-2, and may grant a permanent or temporary certificate of authority to operate, with or without conditions, to [the class] **these classes** of solid waste collection or disposal facilities or operations which in the Commissioner's opinion meet[s] the general and [application] **applicable** specific criteria set forth in this section.

(b)-(f) (No change.)

(g) This subsection sets forth the specific criteria for exempting vegetative waste composting facilities which accept greater than 20,000 cubic yards of leaves annually or vegetative waste composting facilities that, regardless of volume, accept in addition to leaves other non-crop residues such as grass clippings, tree branches, shrubbery and garden wastes.

1. Notwithstanding the provisions of N.J.A.C. 7:26-1.11 and 2.4, a temporary certificate of authority to operate (TCAO) which shall be for a fixed period of time, not to exceed one year, may be granted to a vegetative waste composting facility which in the opinion of the Commissioner meets the following criteria for exemption:

i. The proposed owner or operator of the facility is determined by the Commissioner, after a preliminary review of such information as the Commissioner may require, to demonstrate sufficient, integrity, expertise and competence to operate a vegetative waste composting facility in compliance with the Solid Waste Management Act and this subsection. Where this determination is made pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c), the TCAO shall not be issued for a period exceeding six months and may, in the Department's discretion, be renewed for one additional consecutive six month period;

ii. Use of the facility prior to the time that a Solid Waste Facility Permit (SWF permit) can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a major disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act;

iii. The facility is included in or consistent with the solid waste management plan of the solid waste management district within which the facility is to be located;

iv. The facility will be designed, constructed, and operated in a manner consistent with the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the TCAO and this subsection; and

v. A schedule has been established and incorporated into the TCAO for compliance with all the requirements of N.J.A.C. 7:26-2 for a SWF permit for this facility or for an alternative facility (where the subject facility is designed for temporary operation only). The schedule may call for accomplishing one or more SWF permit requirements after commencement of facility operation.

2. Vegetative waste composting facilities are not eligible for an exemption under this section if they are located on land which has been purchased with money from any Green Acres bond act or which is designated as land for recreation and conservation purposes and listed in the Green Acres recreational land inventory prepared by individual municipalities and counties and approved by the Department pursuant to N.J.S.A. 13:8A-1, 13:8A-20, 13:8A-35, and N.J.A.C. 7:36, unless the approval of the Department and the State House Commission has been received and any and all conditions of said approvals have been complied with. In cases where such approvals have been given, evidence of those approvals must be submitted to the Department as part of the application for a TCAO pursuant to (g)4 below.

3. Vegetative waste composting facilities shall also not be eligible for an exemption under this section if they are located on lands which are county or municipally owned parks, wildlife sanctuaries, recreational facilities or other similar open public spaces;

4. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the application requirements for a TCAO for vegetative waste composting facilities:

i. Where applicable, a disclosure statement pursuant to N.J.S.A. 13:1D-126 et seq. and N.J.A.C. 7:26-16 on such forms as the Department requires. The disclosure statement, where appropriate, should be accompanied by a written request for a temporary license pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c);

ii. An emergency environmental impact statement pursuant to (g)5 below;

iii. An engineering design or site plan which specifies the following:

(1) Boundaries of the composting area showing windrow locations and the property boundary lines;

(2) Access roads;

(3) Site access controls;

(4) Location of scales, if required pursuant to N.J.S.A. 13:1E-117;

(5) Location of equipment and all machinery sufficient to handle specified capacity;

(6) Contours of the land;

(7) On-site drainage controls; and

(8) On-site roadway designs sufficient to handle anticipated vehicular traffic;

iv. An operational narrative which specifies the following:

(1) The maximum design capacity of the facility by weight and volume;

(2) A description of types of vegetative wastes to be handled at the facility and anticipated quantity of each by weight and volume;

(3) A description of the proposed level of technology to be employed at the facility, for example, low-level, intermediate level, high-level, and the term of the composting process from the time of windrow formation to the time of final product;

(4) A description of the additives, where applicable, to be employed to maintain the proper moisture content or carbon to nitrogen ratios;

(5) Operational safety and environmental monitoring procedures; and

(6) Housekeeping procedures such as litter, odor, dust and vector control; and

v. Where applicable, a copy of any approval of the Department and State House Commission obtained in accordance with (g)2 above.

5. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the requirements for an emergency environmental

impact statement for a vegetative waste composting facility meeting the exemption criteria in (g)1 above. An emergency environmental impact statement shall be in narrative form and must be approved by the Department prior to or concurrent with issuance of a TCAO for a vegetative waste composting facility. An emergency environmental impact statement shall contain, at a minimum, the following:

i. A brief description of the existing land use of the proposed site and of the area within a one-quarter mile radius of the proposed facility, including identification of properties used or occupied by humans;

ii. A description of possible environmental impacts associated with the composting and operation on-site and within one-quarter mile radius of the facility and a description of the facility design elements or other measures that will address these impacts. This description shall address, at a minimum, the following environmental concerns:

(1) The impact that the proposed facility will have on:

(A) All existing wetlands;

(B) Applicable Federal, State or local land uses including the Pinelands area and agricultural development areas;

(C) Diversion of dedicated recreational or open space areas; and

(D) Endangered or threatened wildlife and vegetation.

(2) Soil erosion and sediment control;

(3) Noise;

(4) Air quality including odor control mechanisms;

(5) Traffic;

(6) Stormwater run-off and drainage controls;

(7) Ground water and surface water quality; and

(8) Any other concerns described in the solid waste disposal rules, N.J.A.C. 7:26, which the Department determines should be discussed based upon the circumstances of the particular case, including time constraints.

6. All TCAO applicants for vegetative waste composting facilities shall file copies of their applications, except for the disclosure statement, in the offices of the municipality and county in which the facility is proposed to be located on the same day such application is filed with the Department. The applicant shall also publish notice of the application, within five calendar days after filing the application, in a newspaper of general circulation in the municipality and county. After evaluating the emergent time constraints, the Department may require a public comment period. The dates of the public comment period and the address at which the Department will receive public comments shall be included in the public notice, if applicable.

7. The completed TCAO application shall be submitted to the following address:

Department of Environmental Protection
Division of Solid Waste Management
Bureau of Resource Recovery
428 East State Street
CN 414
Trenton, New Jersey 08625

8. When approved by the Department, the TCAO applicant shall be issued a temporary certificate of authority to operate, receipt of which is necessary prior to beginning construction.

9. Within one year of the start up of the facility, leaf composting facility operators shall attend a leaf composting course sponsored by the Rutgers Extension County Agricultural or Resource Management Agents or other courses approved by the Department.

7:26-1.11 [(Reserved)] Exemption from SWF permitting—leaf composting facilities (leaves only)

(a) This section applies only to and sets forth the requirements for an exemption from SWF permitting for leaf composting facilities with a capacity not in excess of 20,000 cubic yards annually which compost only leaves.

(b) Notwithstanding N.J.A.C. 7:26-1.7(g) and 7:26-2.4(c), a leaf composting facility which composts only leaves not in excess of 20,000 cubic yards annually shall be exempt from SWF permitting if the requirements set forth in this section are met.

(c) Leaf composting facilities are not eligible for an exemption under this section if they are located on land which has been purchased with money from any Green Acres bond act or which is designated as land for recreation and conservation purposes and listed in the Green Acres recreational land inventory prepared by individual municipalities and counties and approved by the Department pursuant to N.J.S.A. 13:8A-1, 13:8A-20, 13:8A-35, and N.J.A.C. 7:36, unless the approval of the Department and the State House Commission has been received and any and all conditions of said approvals have been complied with. In cases where such approvals have been given, evidence of those approvals must be submitted to the Department as part of the "Filing Package for Exemption for SWF permitting—Leaf Composting Facility (leaves only)" pursuant to (e) below.

(d) Leaf composting facilities are not eligible for an exemption under this section in they are located on lands which are county or municipally owned parks, wildlife sanctuaries, recreational facilities, or other similar open public spaces. Such facilities must comply with the SWF permitting requirements set forth at N.J.A.C. 7:26-2.4.

(e) Prior to beginning construction, the owner or operator shall submit required information as a "Filing Package for Exemption from SWF permitting—Leaf Composting Facility (leaves only)" to the Department and on the same day to the host municipality and the county in which the facility is located, which shall include, but not be limited to, the following:

1. Documentation establishing that the facility is included in or consistent with the solid waste management plan of the solid waste management district within which the facility is to be located;

2. For informational and filing purposes, a completed Standard Application Form (CP#1) and a Solid Waste Supplement Form, which are available from the Department;

3. A key map plotted on a seven and one-half minute United States Geological Survey Quadrangle Map that shows the boundary of the proposed facility site and which delineates public access roads to the facility, streams or ponds, and other details such as hospitals, schools, playgrounds, and homes located on-site and within a one-half mile radius from the site;

4. A site plan prepared by a New Jersey Licensed Professional Engineer which shall be signed, sealed, and dated and which shall identify the following:

i. Composting area boundaries showing acreage available for composting;

ii. Available utilities, location of all buildings, and other pertinent data related to the operation of the proposed facility;

iii. Location of composting windrows, which terminate no closer than 50 feet from the facility property line and 150 feet from any area of human use or occupancy;

iv. Drainage characteristics, specifically the direction of stormwater flow both on-site and off-site, ditches, swales and any runoff controls that now exist or will exist; and

v. Location and volumetric capacity of the staging and final product storage areas.

5. A New Jersey Licensed Professional Engineer's certificate which shall be signed, sealed and dated by the engineer certifying the following:

"I certify under penalty of law that I have personally examined and am familiar with the site plan submitted in the Filing Package for Exemption from Solid Waste Facility permitting—Leaf Composting Facility. I certify that the information is true, accurate and complete. I further certify that the facility's design and operation, as set forth in the site plan, is capable of complying with the terms and conditions set forth in N.J.A.C. 7:26-1.11 if operated properly. I am also aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

6. The Filing Package shall include the following owner or operator Certification:

"I certify that the leaf composting facility site will be properly constructed, maintained and operated in accordance with the site plan, as filed with the Department, and in accordance with N.J.A.C. 7:26-1.11."

7. The certification required in (e)6 above shall be signed as follows:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, county, state or other public agency, by either a principal executive officer or ranking elected official.

8. A cover sheet which the owner or operator shall entitle "Filing Package for Exemption from SWF permitting—Leaf Compost Facility (leaves only)" and which shall be submitted to:

New Jersey Department of Environmental Protection
Bureau of Registration and Permits Administration
Division of Solid Waste Management
401 East State Street
CN 414
Trenton, New Jersey 08625

9. Where applicable, a copy of any approval of the Department and State House Commission obtained in accordance with (c) above.

(f) The construction and operation of the composting facility shall be performed in accordance with the site plan and specifications required pursuant to (e) above, prepared by a New Jersey Licensed Professional Engineer and in accordance with the following:

1. Only leaves may be accepted for processing at leaf composting facilities exempted by this section;

2. No more than 3,500 cubic yards of leaves per acre shall be composted in the composting area delineated on the site plan submitted in accordance with (e)4 above;

3. Prior to operation the composting area, related leaf staging and finished compost storage areas and access roads shall be graded in a manner that prevents the accumulation of surface water on site without resulting in a discharge of leachate off site or an adverse impact to natural drainage conditions of surrounding properties. Once original grading is completed in the manner which satisfies the local soil conservation office, the four areas of the site referenced above shall be maintained throughout the life of the facility. Any disturbance of the natural environmental setting caused by any necessary land clearing and grading shall be held to a minimum;

4. The perimeter of the composting activity area shall be separated from any and all adjacent residential and/or commercial land uses through the establishment of an effective vegetative visual screen buffer;

5. The access road shall be fenced or otherwise secured to prevent unauthorized access to the site;

6. Leaves shall be received only during times when the site operator or owner is present;

7. A sign shall be posted at the entrance of the facility which identifies the hours of operation;

8. An adequate water supply and fire-fighting equipment shall be readily available to extinguish any fires. The telephone number of the local fire department shall be posted at the entrance to the facility;

9. The operation of the facility shall follow the approved method of windrow composting set forth at (f)10 through 18 below, or other composting method approved by the Department, on a case-by-case basis, which results in the aerobic biodegradation of the leaves received;

10. All leaves delivered to the facility for processing shall be removed from bags, boxes or similar containers prior to windrow formation, except that leaves brought to the facility in biodegradable paper bags and natural fiber biodegradable burlap bags need not be removed from these specified containers. All discarded bags, boxes and similar containers shall be placed in a suitable refuse receptacle in the staging area of the facility for removal to an off-site disposal facility in accordance with N.J.A.C. 7:26-6;

11. Prior to windrow formation, dry leaves shall be moistened to saturation without producing excess runoff;

12. To facilitate drainage and to reduce surface water ponding, each windrow shall be constructed and positioned in such a manner so that it is perpendicular to the contours of the ground surface;

13. Windrows shall be constructed and reconstructed after each turning to a maximum height of six feet with a corresponding base not to exceed a maximum of 14 feet in width;

14. A minimum separation of 16 feet measured from the pile base of the windrow to the next adjacent pile base shall be provided along at least one side of the longest dimension of each windrow pile to provide ample working space;

15. Windrows shall be turned and reconstructed, at a minimum, once no later than the end of the first two months of the composting cycle. The composting cycle begins on the day that the leaves are placed in windrows. Windrows shall be turned and reconstructed again, at a minimum, four to six months into the composting cycle, and finally again at the tenth month of the composting cycle. More frequent windrow turning and reconstruction may occur at the discretion of the owner or operator;

16. No composting activities shall be conducted in an area within 50 feet from all property lines;

17. Upon completion of the 12 to 18 month composting cycle, the end product mulch shall be aerated and any uncomposted material present shall be removed and re-composted;

18. The composting cycle shall be extended beyond the 12 to 18 month period, but not beyond 24 months, if the leaves do not show evidence of an acceptable level of biodegradation. Similarly, the composting cycle can be shortened provided that suitable accelerated biodegradation has occurred and a finished compost has been produced;

19. The operation of this facility shall not result in odors associated with the composting process being detected off-site by the sense of smell in any area of human use or occupancy;

20. The noise generated by the use of equipment at the facility shall not exceed the applicable noise standard established by N.J.A.C. 7:29-1.2 at any surrounding residential and/or commercial property line;

21. To provide ample vehicular support, to prevent the tracking of soil onto public roads and to prevent the generation of dust, those areas of the facility subject to vehicular usage shall be suitably compacted and, where necessary, surfaced;

22. Traffic associated with the operation of the facility shall not result in a degradation of the level of service of any major intersection or public roadway within a one-half mile radius of the composting facility; and

23. Within one year of the start up of the facility, leaf composting facility operators shall attend a leaf composting course sponsored by the Rutgers Extension County Agricultural or Resource Management Agents or other courses approved by the Department.

(g) Construction or operation may not occur until receipt of a letter from the Department notifying the owner or operator that the submittals are complete and in accordance with (e) above.

(h) The Department may enter and inspect any building or other portion of the facility, at any time, in order to ascertain compliance or non-compliance with the act or this section. No person shall refuse, prohibit or otherwise inhibit the Department from lawfully entering and inspecting any building or other portion of the facility at any time. Inspection includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion or portions of the facility;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department; and

v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

(i) The following annual updates shall be submitted by May 1 of each calendar year to the address listed in (e)8 above:

1. An annual operational statement which is available from the address listed in (e)8 above.

2. An updated New Jersey Licensed Professional Engineer's certification which shall be signed, sealed and dated by the engineer certifying the following:

"I certify under penalty of law that I have personally examined the site and that I have reviewed the site plan submitted in the Filing Package for Exemption from SWF permitting—Leaf Composting Facility. I certify that the site's construction is in accordance with the site plan submitted."

3. An updated owner or operator certification which shall contain the following statement and which shall be signed in accordance with (e)8 above:

"I certify that the leaf composting site has been and is now properly constructed, maintained and operated in accordance with the site plan, as filed with the Department, and the rules and regulations under which authority to operate was granted by the New Jersey Department of Environmental Protection."

(j) A request for expansion or modification of any leaf composting facility authorized under this section shall be accompanied by a new filing package in accordance with (e) above. Any expansion shall not allow operations to exceed 20,000 cubic yards annually.

(k) Eligibility for this exemption shall terminate and the facility shall cease operations if any of the following occur:

1. The owner or operator fails to obtain any applicable permits required by Federal, State, county and local statute, rule and ordinance;

2. The owner or operator fails to comply with this section; or

3. The Department determines that the facility poses a threat to the public health, safety or the environment.

7:26-1.12 Exemption from SWF permitting—leaf composting facility—(leaf mulching only operations)

(a) Notwithstanding the provisions of N.J.A.C. 7:26-2.4(c), a leaf mulching operation shall be exempt from SWF permitting if the requirements set forth in this section are met.

(b) The leaf mulching operation shall be included in or consistent with the solid waste management plan of the solid waste management district within which the operation is to be located.

(c) Standards for leaf mulching include the following:

1. Leaves shall be delivered unbagged to land deemed actively devoted to agricultural or horticultural use, as defined in the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.5.

2. Within seven days of delivery, the leaves shall be spread onto the field in a thin layer no higher than six inches.

3. No later than the next tillage season, the layered leaves shall be incorporated into the soil.

4. At no time shall leaves delivered to the leaf mulching operation be stockpiled on-site for more than seven days.

(d) The Department may enter and inspect any building or other portion of the facility, at any time, in order to ascertain compliance or non-compliance with the act or this rule. No person shall refuse, prohibit or otherwise inhibit the Department from lawfully entering and inspecting any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion or portions of the facility;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department; and

v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

(e) Eligibility for this exemption shall terminate and the facility shall cease operations if any of the following occur:

1. The owner or operator fails to obtain any applicable permits required by Federal, State, county and local statute, rule and ordinance;

2. The owner or operator fails to comply with this section; or

3. The Department determines that the facility poses a threat to the public health, safety or the environment.

7:26-2.1 Scope and applicability

(a) This subchapter and N.J.A.C. 7:26-2A and 2B shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid waste unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7, [or] 1.8, **1.11, or 1.12**.

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

7:26-2.4 Application procedures for a solid waste facility permit

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

(c) All applications for a SWF permit shall include a completed registration statement meeting the requirements of N.J.A.C. 7:26-2.8, an EHIS meeting the requirements of N.J.A.C. 7:26-2.9 and an engineering design meeting the requirements of N.J.A.C. 7:26-2.10, except for applications for the types of facilities identified in (c)1, 2, 3 or 4 below, which shall include only the material required to be submitted for that particular type of facility.

1. **Unless otherwise exempted by N.J.A.C. 7:26-1.7(g), 1.11 or 1.12** [A]an application for a [leaf] **vegetative waste** composting facility shall include the following:

i.-iii. (No change.)

2.-4. (No change.)

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

7:26-2.8 Registration and general prohibitions

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

(e) No person shall engage or continue to engage, unless exempt by N.J.A.C. 7:26-1.1,[or] 1.7, [or] 1.8, **1.11 or 1.12** in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit.

1. (No change.)

(f) No person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit **unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7, 1.8, 1.11, or 1.12.**

(g) No person shall continue to operate a solid waste facility, **unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7, 1.8, 1.11 or 1.12,** without obtaining a SWF Permit. All existing Certificates of Approved Registration and Engineering Design Approval shall constitute an approved [Solid Waste Facility] **SWF** Permit until the duration of the Certificate of Approved Registration and Engineering Design Approval expires or a modification is requested by the permittee or required by the Department.

(h) (No change.)

(i) No person shall engage or continue to engage in the disposal of solid waste in this State if such an operation does not comply with the operational requirements of N.J.A.C. 7:26-2.11, unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7, [or] 1.8, **1.11 or 1.12**.

(j)-(o) (No change.)

7:26-2.13 Solid waste facilities; records

(a)-(f) (No change.)

(g) Waste identification and definition of solids include the following:

1. Solid wastes; waste ID numbers and definitions;

i.-iii. (No change.)

iv. 23 Vegetative waste: Waste materials from farms, plant nurseries and greenhouses that are produced from the raising of plants. This waste includes such crop residues as plant stalks, hulls, leaves and tree wastes processed through a wood chipper. **Also included are non-crop residues such as leaves, grass clippings, tree parts, shrubbery and garden wastes.**

v.-vi. (No change.)

(h)-(i) (No change.)

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Acting Appointments
Notice of Correction: N.J.A.C. 5:23-4.4(a)6

Take notice that an error appears in the current text of N.J.A.C. 5:23-4.4(a)6. The omitted text set forth below appears in the February 1, 1982 adoption of then N.J.A.C. 5:23-4.3(b)1vi; (see 14 N.J.R. 142(b)), subsequently recodified as now appears.

The current rule should read as follows (additions indicated in boldface **thus**).

5:23-4.3 Enforcing agencies; municipal

(a) The municipality shall organize its enforcing agency in accordance with the ordinance adopted pursuant to N.J.A.C. 5:23-4.3 and to meet the following additional requirements:

1.-5. (No change.)

6. Acting appointments: A municipality shall appoint an acting construction official or subcode official any time the absence of such official will impede orderly administration of the Uniform Construction Code and other duties mandated by the municipality; but in no event may the time period exceed the statutory period of 20 business days. Acting appointments shall be accomplished by any mechanism acceptable to the municipality, providing, however, that a written record [of the appointment] shall be kept. Notice to the department shall be provided within seven days any time an appointment is made for more than **30 days. Acting appointments may not be made for longer than** 60 days nor may they be extended or renewed beyond 60 days unless specific authority to do so is granted in writing by the department.

i.-iv. (No change.)

7. (No change.)

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

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Migratory Bird Hunting Season
Shooting Hours Restrictions
N.J.A.C. 7:25-5.13 and 5.15

Take notice that pursuant to the Migratory Bird Treaty Act of July 3, 1918 (16 U.S.C. §§703 et seq.), the United States Fish and Wildlife Service has adopted new regulations concerning the hunting of migratory birds which have been published at 53 Fed. Reg. 36,033 (1988). As part of the new regulations for migratory birds, new restrictions have been placed on the shooting hours for ducks and geese in the Atlantic Flyway. Therefore, shooting hours for ducks and geese for the 1988-89 New Jersey hunting season shall be from sunrise to sunset. For all other migratory birds, the shooting hours shall be as follows: woodcock—between sunrise and sunset; rails, moorhens, and snipe—between one-half hour before sunrise to sunset; and, crows—between sunrise to one-half hour after sunset. The specific times for sunrise and sunset shall be based on Trenton time, which shall be the Statewide official time (Timetables for Trenton time have been published in the annual Summary of Game Regulations issued by the Department's Division of Fish, Game and Wildlife and available at the Division's Trenton office, 501 East State Street, CN400, Third Floor, Trenton, NJ 08625.)

DIVISION OF WATER RESOURCES

(c)

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 provides for the expansion of the Middlesex County Utilities Authority sewer service area to include the Industrial Highway Corporation development (Lots 3, 4, and 6 of Block 71) in Woodbridge Township. Approval of sewer service for Lot 6, however, would be conditioned on obtaining a Water Quality Certification.

This notice is being given to inform the public that a plan amendment has been proposed 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, N.J. 08901, and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Middlesex County will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Thursday, December 15, 1988, 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 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.

(d)

Amendment to the Sussex County Water Quality Management Plan
Public Notice

Take notice that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. A Wastewater Management Plan (WMP) has been prepared for Hardyston Township. This WMP would amend the Upper Wallkill Valley Water Pollution Control Plant flow allocation previously approved by the Department of Environmental Protection. The wastewater facility will remain at 2.5 million gallons per day.

This notice is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment are located at the Sussex County Water Resource Management Program, 57 High Street, Newton, New Jersey 07860; 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.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment. The public meeting will be held on Tuesday, November 22, 1988 at 8:30 P.M. in the Freeholders' Meeting Room of the Sussex County Administration Complex at Don Bosco College, Swartswood Road, Newton, New Jersey.

Interested persons may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Water Resource Management Program address cited above; and George Horzepa, Bureau of Water

Resources Management Planning, at the NJDEP address cited above. All comments must be submitted by December 7, 1988. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

HEALTH

(a)

EPIDEMIOLOGY AND DISEASE CONTROL

Notice of Meeting: Public Forum on New Jersey's Clean Indoor Air Laws

Take notice that the Department of Health, in coordination with the departmental advisory Commission on Smoking or Health, is announcing a public forum to give opportunity for public participation in the discussion of current and proposed activities concerning New Jersey's Clean Indoor Air Laws, which will include: the effectiveness in protecting the health of nonsmokers, the methods of enforcement, the clarity of the provisions for implementation and the penalties for violation. Indoor places to be considered include government and private sector workplaces, schools, restaurants, and other public places such as theaters and sports facilities. New Jersey is in the forefront in enactment of legislation protecting the rights of all to breathe clean indoor air. The Department of Health now seeks to elicit broad public input so that it can comprehensively report to the Legislature about the impact of the legislation and develop recommendations for revision.

The meeting will be held on Monday, November 28, 1988, from 9:00 A.M. to 4:00 P.M. at:

Hughes Justice Complex
Conference Room C, Fourth Floor
25 Market Street
Trenton, NJ 08625

Persons wishing to present testimony, or further information on this subject, please contact:

Diane DiDonato, R.N., M.P.H.
Chief, Cancer Control and Risk Reduction Program
Chronic Disease Control Services
University Office Plaza
CN 369
Trenton, New Jersey 08625-0369
(609) 588-7470

HUMAN SERVICES

(b)

OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Public Information Projects Availability of Grants

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5, 34.6 (P.L. 1987 c.5 and P.L. 1987 c.7), the Office for Prevention of Mental Retardation and Developmental Disabilities announces the following availability of funds:

A. Name of program: OPMRDD Public Information Projects (1989)

B. Purpose: Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD) has been allocated State funds specific to the goal of public information relative to prevention of mental retardation and other developmental disabilities, with the intent to increase public and professional awareness of the preventability of many forms of disability, and to modify conditions of life, professional practices, or personal behaviors in such a way as to reduce the risks, and hence the incidence, of various kinds of mental and physical disabilities originating in early life.

C. Amount of money in this program: Fifteen grants will be awarded in amounts between $5,000 and $25,000. The grants will be planned for initiation and completion between March 1, 1989 and February 28, 1990.

D. Organizations which may apply for funding under this program: Agencies must be New Jersey based organizations, or corporate bodies; non-profit, profit making or public entities, who have demonstrated capacity to carry out the proposed project.

E. Procedure for eligible organizations to apply: Proposal packages may be requested from:

Deborah E. Cohen, Director
Office for Prevention of Mental Retardation
and Developmental Disabilities
Department of Human Services
222 South Warren Street, 4th Floor
CN 700
Trenton, New Jersey 08625

F. Address for application to be submitted: Same as above.

G. Deadline by which application proposals must be submitted: Proposals must be submitted by December 7, 1988.

H. Dates by which applicants shall be notified of approval or disapproval: Applicants shall receive notice of approval or disapproval of an RFP Proposal by February 1, 1989.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF MOTOR VEHICLES

Notice of Contract Carrier Application

Take notice that Glenn Paulsen, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E-11 hereby lists the names and addresses of applicants who have filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)
Stephen J. Laclair, Inc.
225 Water Street
Belvidere, NJ 07823

Vernon Transport, Inc.
2 Altamont Road
Edison, NJ

Kuhnle Brothers, Inc.
14900 Cross Creek
P.O. Box 375
Newbury, OH 44065

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, N.J. 08666 within 20 days (November 27, 1988) following the publication of the application.

TREASURY-GENERAL

(d)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection Notice of Assignments—Month of September 1988

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated September 6, 1988.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
I014	Reroofing of Life Hall Montclair State College Upper Montclair, NJ	Brown & Hale Arch.	$170,000
A558	Ceiling Investigation Pension Building Trenton, NJ	Lernard Bush Assoc.	$3,000 Services
I045	Swimming Pool Reno. Ramapo College Mahwah, NJ	Chu & Gassman, Inc.	$150,000
I046	Air Conditioning—Library Ramapo College Mahwah, NJ	Tighe-Firtion-Carrino & Assoc., Inc.	$170,000
J044	Facility Consultant FY 89 Division of Building & Construction	O'Brien & Gere Engineers, Inc.	$50,000 Services
W043	Facility Consultant FY 89 Division of Fish, Game & Wildlife Dept. of Environmental Protection	Tarquini Organization	$20,000 Services
X041	Facility Consultant FY 89 Division of Motor Vehicles	Leslie M. Dennis & Son	$50,000 Services
X042	Facility Consultant FY 89 Division of Motor Vehicles	O'Connor Group	$50,000 Services
D070	Facility Consultant FY 89 Dept. of Corrections	Barnickel Engineering	$20,000 Services
D048	Facility Consultant FY 89 Dept. of Corrections	Louis A. North	$10,000 Services
F058	Facility Consultant FY 89 Stockton State College Dept. of Higher Education	James C. Anderson	$50,000 Services
P577	Renovation of Personnel Building Island Beach State Park Berkeley Twp., Ocean County, NJ	Ronald A. Sebring & Assoc.	$500,000

COMPETITIVE PROPOSALS

Ronald A. Sebring & Assoc.	8.3%
Ryan Group, PA	10.25%
Wasleski Steelman Sindoni Wertz, PA	12.66%

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92
3:22	5/21/89
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	9/1/93
5:3	9/1/93
5:4	10/5/92
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91

N.J.A.C.	Expiration Date
5:92	6/16/91
5:100	5/7/89

DEPARTMENT OF DEFENSE—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	12/19/88
7:7	5/7/89
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25 (Except for 7:25-1 which expired 9/17/85)	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Exempt
7:38	9/18/90
7:45	Expired 1/11/85

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89

N.J.A.C.	Expiration Date
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	8/19/93
8:71	4/2/89

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/88
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/21/89

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:5	9/19/93
12:6	10/17/93

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	11/5/89
12:35	8/5/90
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	12/9/88
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:100-1	9/8/91
12A:120	9/6/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/1/93
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	6/27/93
13:77	2/1/93

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89

N.J.A.C.	Expiration Date
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	6/16/93
16:53D	5/7/89
16:54	4/7/91
16:55	6/14/93
16:56	6/4/89
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	6/18/89
17:27	11/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/89
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

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 September 6, 1988 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.1988 d.1 means the first rule adopted in 1988.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 15, 1988

NEXT UPDATE: SUPPLEMENT SEPTEMBER 19, 1988

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
19 N.J.R. 1927 and 2086	November 2, 1987	20 N.J.R. 1019 and 1126	May 16, 1988
19 N.J.R. 2087 and 2224	November 16, 1987	20 N.J.R. 1127 and 1316	June 6, 1988
19 N.J.R. 2225 and 2324	December 7, 1987	20 N.J.R. 1317 and 1500	June 20, 1988
19 N.J.R. 2325 and 2510	December 21, 1987	20 N.J.R. 1501 and 1594	July 5, 1988
20 N.J.R. 1 and 124	January 4, 1988	20 N.J.R. 1595 and 1758	July 18, 1988
20 N.J.R. 125 and 220	January 19, 1988	20 N.J.R. 1759 and 1976	August 1, 1988
20 N.J.R. 221 and 320	February 1, 1988	20 N.J.R. 1977 and 2122	August 15, 1988
20 N.J.R. 321 and 434	February 16, 1988	20 N.J.R. 2123 and 2350	September 6, 1988
20 N.J.R. 435 and 570	March 7, 1988	20 N.J.R. 2351 and 2416	September 19, 1988
20 N.J.R. 571 and 692	March 21, 1988	20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 693 and 842	April 4, 1988	20 N.J.R. 2499 and 2610	October 17, 1988
20 N.J.R. 843 and 950	April 18, 1988	20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 951 and 1018	May 2, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-9.5	Transmittal of clerk's notices	20 N.J.R. 1979(a)		
1:1-14.3	Interpreters for hearing impaired: preproposal	20 N.J.R. 1979(b)		
1:1-14.8	Proceedings on the papers: inaction by requesting party	20 N.J.R. 1979(c)	R.1988 d.517	20 N.J.R. 2749(a)
1:6-10.1	Discovery in school budget cases	20 N.J.R. 1980(a)	R.1988 d.516	20 N.J.R. 2749(b)
1:6A-1.1	Applicability: correction to text	———	———	20 N.J.R. 2325(a)
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)		
	Most recent update to Title 1: TRANSMITTAL 1988-3 (supplement August 15, 1988)			
AGRICULTURE—TITLE 2				
2:2	Animal disease control program	20 N.J.R. 2419(a)		
2:33	Agricultural fairs	20 N.J.R. 2125(a)		
2:68-1	Association standards for commercial feeds	20 N.J.R. 1671(c)	R.1988 d.528	20 N.J.R. 2749(c)
2:69	Commercial fertilizers and soil conditioners	20 N.J.R. 1673(a)	R.1988 d.527	20 N.J.R. 2750(a)
2:71-2.4, 2.5	Jersey Fresh Logo program	20 N.J.R. 1129(b)	R.1988 d.421	20 N.J.R. 2254(a)
2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11, 6.16	Farmland preservation: acquisition of development easements	20 N.J.R. 1503(a)	R.1988 d.493	20 N.J.R. 2565(a)
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 1761(a)		
2:76-6.9, 6.11, 6.14	Farmland preservation: acquisition of development easements	20 N.J.R. 1319(a)	R.1988 d.435	20 N.J.R. 2254(b)
2:76-8	Acquisition of farmland in fee simple	20 N.J.R. 2501(a)		
	Most recent update to Title 2: TRANSMITTAL 1988-5 (supplement August 15, 1988)			
BANKING—TITLE 3				
3:1-2.17	Repeal (see 3:32-1)	20 N.J.R. 697(a)	R.1988 d.472	20 N.J.R. 2450(a)
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	20 N.J.R. 1025(a)	R.1988 d.524	20 N.J.R. 2750(b)
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)		
3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11	Conversion of savings and loan associations from mutual to capital stock	20 N.J.R. 697(a)	R.1988 d.472	20 N.J.R. 2450(a)
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		
	Most recent update to Title 3: TRANSMITTAL 1988-5 (supplement August 15, 1988)			
CIVIL SERVICE—TITLE 4				
4:1-6, 7, 10.1, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4:2-6.4–6.10, 7.1–7.6, 7.8–7.13, 7.27	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4:3-2	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
	Most recent update to Title 4: TRANSMITTAL 1988-2 (supplement June 20, 1988)			
PERSONNEL—TITLE 4A				
4A:1-1.3	State and local departments defined	20 N.J.R. 845(b)	R.1988 d.415	20 N.J.R. 2255(a)
4A:3	Classification, services, and compensation	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(a)		
	Most recent update to Title 4A: TRANSMITTAL 1988-2 (supplement June 20, 1988)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:2	Handicapped Persons' Recreational Opportunities grant program	20 N.J.R. 1765(a)	R.1988 d.459	20 N.J.R. 2451(a)
5:3-2	Nonpublic records	20 N.J.R. 1763(a)	R.1988 d.458	20 N.J.R. 2451(b)
5:10	Maintenance of hotels and multiple dwellings	20 N.J.R. 2126(a)		
5:10-1.3, 1.6, 1.10, 1.12, 25	Fire safety in hotels and multiple dwellings	20 N.J.R. 2126(a)		
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)	R.1988 d.521	20 N.J.R. 2752(a)
5:13-1.14	Limited dividend and nonprofit housing projects: payment in lieu of taxes	20 N.J.R. 2425(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)	Expired	
5:23-3.18	Energy Subcode	20 N.J.R. 699(b)	R.1988 d.417	20 N.J.R. 2274(a)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-4.4	Acting appointments: correction to text	_____	_____	20 N.J.R. 2823(a)
5:23-7.104, 7.116	Barrier Free Subcode: recreation standards	20 N.J.R. 1764(b)	R.1988 d.503	20 N.J.R. 2754(a)
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-1.3, 1.6, 5	Fire safety in rooming and boarding houses	20 N.J.R. 2126(a)		
5:30	Local Finance Board rules: waiver of Executive Order No. 66 (1978) expiration provision	20 N.J.R. 1320(a)		
5:38	State intergovernmental review process for Federal programs and direct development activities	20 N.J.R. 2354(a)		
5:51	Handicapped Persons' Recreational Opportunities grant program (recodified as 5:2)	20 N.J.R. 1765(a)	R.1988 d.459	20 N.J.R. 2451(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	20 N.J.R. 2426(a)		
5:92-6.1, 11.4, 11.5, 12.9, 16.6, App. F	Affordable housing council rules	20 N.J.R. 1673(b)		
5:92-11.2	Council on Affordable Housing: excess funds in regional contribution agreements; age restricted units	20 N.J.R. 1140(a)	R.1988 d.440	20 N.J.R. 2376(a)
5:92-12.4	Council on Affordable Housing: initial pricing of rental units	20 N.J.R. 1320(b)	R.1988 d.441	20 N.J.R. 2376(b)
	Most recent update to Title 5: TRANSMITTAL 1988-8 (supplement August 15, 1988)			
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)			
EDUCATION—TITLE 6				
6:2-1.21	Issuance of administrative order creating State-operated school district	20 N.J.R. 1505(a)	R.1988 d.475	20 N.J.R. 2452(a)
6:3-1.23, 1.24	Principal certification	20 N.J.R. 1320(c)	R.1988 d.491	20 N.J.R. 2567(a)
6:11-12.5	Substance awareness coordinator	20 N.J.R. 1980(c)		
6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 1320(c)	R.1988 d.491	20 N.J.R. 2567(a)
6:20-2	Bookkeeping and accounting in local districts	20 N.J.R. 2502(a)		
6:20-5.7	Reimbursement to nonpublic schools for asbestos removal and encapsulation	20 N.J.R. 2505(a)		
6:22A-1	School facility lease purchase agreements	20 N.J.R. 2127(a)		
6:28-11.12	Special Education Pilot Project: moderate behavior handicap class types	20 N.J.R. 1141(a)	R.1988 d.430	20 N.J.R. 2275(a)
6:29-4.2	Testing for tuberculosis infection	20 N.J.R. 1981(a)		
6:31-1.10	Bilingual education and English as a second language programs: exit testing and reentry process	20 N.J.R. 1034(a)	R.1988 d.448	20 N.J.R. 2383(a)
6:78-1.1, 1.2, 1.3	Marie H. Katzenbach School for the Deaf	20 N.J.R. 1678(a)	R.1988 d.534	20 N.J.R. 2754(b)
	Most recent update to Title 6: TRANSMITTAL 1988-6 (supplement August 15, 1988)			
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1A-1.1, 1.2, 1.4, 1.6, 2.1–2.4, 2.8, 2.10, 2.12–2.15, 5.1, 5.2, 7	Replacement of contaminated wellfields	Emergency (expires 11-18-88)	R.1988 d.479	20 N.J.R. 2470(a)
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1D	Allocation of costs for emergency water supply projects	20 N.J.R. 2197(a)		
7:2	State Park Service: extenstion of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7-2.3	Waterfront development	Emergency (expires 12-3-88)	R.1988 d.518	20 N.J.R. 2815(a)
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:14A-3.1	NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters	20 N.J.R. 1328(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)	R.1988 d.529	20 N.J.R. 2755(a)
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:22-10	Environmental assessment requirements for State-assisted wastewater treatment facilities	20 N.J.R. 1983(a)		
7:25-5.7	1989 Wild turkey season	20 N.J.R. 2217(a)	R.1988 d.530	20 N.J.R. 2757(a)
7:25-6	1989-90 Fish Code	20 N.J.R. 1627(a)	R.1988 d.531	20 N.J.R. 2758(a)
7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3	Hazardous waste fee schedule	20 N.J.R. 1995(a)		
7:26-1.1, 1.4, 4, 4A	Hazardous waste fee schedule: extension of comment period	20 N.J.R. 2427(c)		
7:26-1.4, 1.7, 1. 1, 1.12, 2.1, 2.4, 2.8, 2.13	Permit exemptions for composting facilities	Emergency (expires 12-25-88)	R.1988 d.547	20 N.J.R. 2817(a)
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 9.8–9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-3A	Special medical waste	20 N.J.R. 2321(a)	R.1988 d.523	20 N.J.R. 2760(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)		
7:26B-1.10	Environmental Cleanup Responsibility Act: fee schedule	20 N.J.R. 2000(a)		
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 866(a)		
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels: extension of comment period	20 N.J.R. 2355(a)		
7:30	Pesticide Control Code	20 N.J.R. 579(a)		
7:31-2.12, 2.15, 5	Confidentiality and trade secrets: correction and extension of comment period	20 N.J.R. 554(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 552(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 869(a)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		
7:50-2.11, 3.32, 4.1, 4.40, 4.66, 5.22–5.26, 5.30, 5.43, 5.47, 6.7, 6.84, 6.107, 6.123, 6.131, 6.132, 6.133	Pinelands Comprehensive Management Plan	20 N.J.R. 716(a)	R.1988 d.405	20 N.J.R. 2384(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
HEALTH—TITLE 8				
8:31A-7.2, 7.4, 7.5, 7.11	Reimbursement for new SHARE facilities	20 N.J.R. 1633(a)		
8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement: existing capital indebtedness	19 N.J.R. 1145(a)	R.1988 d.24	20 N.J.R. 2572(a)
8:31B-3.19	Hospital reimbursement: burn care unit reporting	20 N.J.R. 2541(a)		
8:31B-3.43	General acute care hospitals: implementation of proposed schedule of rates	20 N.J.R. 2542(a)		
8:31B-3.44	Hospital reimbursement: DRG outliers	20 N.J.R. 2542(b)		
8:31B-3.45	Hospital reimbursement: submission of uniform bill-patient summaries	20 N.J.R. 1143(a)	R.1988 d.497	20 N.J.R. 2574(a)
8:31B-3, App. II	Hospital reimbursement: laundry and linen cost center	20 N.J.R. 2543(a)		
8:31B-4.37	Uncompensated Care Trust Fund: charity care eligibility and charges	20 N.J.R. 2219(a)		
8:31B-4.37, 4.39	Uncompensated Care Trust Fund: charity care eligibility	20 N.J.R. 595(a)	R.1988 d.420	20 N.J.R. 2276(a)
8:33J-1.3	Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) demonstration period	20 N.J.R. 2220(a)		
8:34	Licensing of nursing home administrators	20 N.J.R. 2355(b)		
8:39-20.1, 29.1, 30.5, 31.2	Long-term care licensing standards: corrections to text	———	———	20 N.J.R. 1944(a)
8:39-41.3, 42.2	Long-term care facilities: excessive heat emergency plan	20 N.J.R. 2543(b)		
8:43-4.11	Residential health care facilities: hot water temperature	20 N.J.R. 2221(a)		
8:43B-1.10	Hospital facilities: confidentiality of patient information	20 N.J.R. 2221(b)		
8:43B-18	Hospital anesthesiology standards	20 N.J.R. 2544(a)		
8:44	Operation of clinical laboratories	20 N.J.R. 2222(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)	R.1988 d.498	20 N.J.R. 2574(b)
8:65-10.5	Schedule V, Controlled Dangerous Substances	20 N.J.R. 1506(a)	R.1988 d.496	20 N.J.R. 2575(a)
8:70	Evaluation criteria for interchangeable drug products	20 N.J.R. 1507(a)	R.1988 d.444	20 N.J.R. 2376(c)
8:71	Interchangeable drug products (see 20 N.J.R. 900(a), 1461(a), 1711(b))	20 N.J.R. 146(a)	R.1988 d.509	20 N.J.R. 2768(a)
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d))	20 N.J.R. 871(a)	R.1988 d.510	20 N.J.R. 2768(b)
8:71	Interchangeable drug products	20 N.J.R. 1766(a)	R.1988 d.511	20 N.J.R. 2769(a)
8:71	Interchangeable drug products: correction to list	———	———	20 N.J.R. 2290(a)
8:71	Interchangeable drug products	20 N.J.R. 2356(a)		
	Most recent update to Title 8: TRANSMITTAL 1988-7 (supplement July 18, 1988)			
HIGHER EDUCATION—TITLE 9				
9:3	Facilities planning for public colleges and universities	20 N.J.R. 1768(a)	R.1988 d.506	20 N.J.R. 2771(a)
9:4-1.5	Chargeback for disability-specific programs at county colleges	20 N.J.R. 1330(a)	R.1988 d.519	20 N.J.R. 2771(b)
9:7-3.5	Tuition Aid Grant Program: part-time students	20 N.J.R. 2007(a)	R.1988 d.533	20 N.J.R. 2772(a)
9:7-4.2, 4.3, 4.4	Garden State Scholarships	20 N.J.R. 1635(a)	R.1988 d.532	20 N.J.R. 2772(b)
9:9	Student loan programs: policies and procedures	20 N.J.R. 1636(a)	R.1988 d.478	20 N.J.R. 2452(b)
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:9-11.2	Guaranteed Student Loan Program: institution compliance	20 N.J.R. 1641(a)	R.1988 d.477	20 N.J.R. 2456(a)
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
	Most recent update to Title 9: TRANSMITTAL 1988-5 (supplement August 15, 1988)			
HUMAN SERVICES—TITLE 10				
10:1-2	Public comment procedure and petitions for rulemaking	20 N.J.R. 1050(a)	R.1988 d.504	20 N.J.R. 2773(a)
10:3	Contract administration	20 N.J.R. 1771(a)		
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:14-1.4, 4.1, 6.3	Statewide Respite Care Program	20 N.J.R. 1051(a)	R.1988 d.505	20 N.J.R. 2774(a)
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
10:37-5.6, 5.16	Repeal (see 10:31)	20 N.J.R. 2427(d)		
10:39	Group homes for mentally ill: operating standards	20 N.J.R. 2547(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)		
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:49	New Jersey Care—Special Medicaid Programs	_____	_____	20 N.J.R. 2478(c)
10:49-1.12	Timely claim submittal—pharmaceutical services	20 N.J.R. 1642(a)		
10:49-3.19	Outpatient claim form: correction	_____	_____	20 N.J.R. 2400(f)
10:49-6.9	Medicaid providers and administrative charges and service fees	20 N.J.R. 518(a)	R.1988 d.446	20 N.J.R. 2387(a)
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:54-4	Physician's services reimbursement: correction	_____	_____	20 N.J.R. 2400(f)
10:54-4.5	Medicaid reimbursement for physician's services	20 N.J.R. 2558(a)		
10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)		
10:56-3.7, 3.10	Dental services reimbursement: correction	_____	_____	20 N.J.R. 2400(f)
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:61-3.2	Medicaid reimbursement for independent laboratory services	20 N.J.R. 2558(a)		
10:62-1, 2, 3	Vision Care Manual	20 N.J.R. 956(c)		
10:63-1.11, 1.19	Use of personal needs allowance in long-term care facilities	20 N.J.R. 1144(a)		
10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:66	Independent Clinic Services Manual	20 N.J.R. 2562(a)		
10:66-1.6, 3	Mental health services: partial care	20 N.J.R. 1054(a)	R.1988 d.481	20 N.J.R. 2576(a)
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:66-3.2	Medicaid reimbursement for independent clinic services	20 N.J.R. 2558(a)		
10:69B	Lifeline Credit/Tenants Lifeline Assistance programs	20 N.J.R. 2440(a)		
10:72	New Jersey Care—Special Medicaid Programs	_____	_____	20 N.J.R. 2478(c)
10:81-3.38–3.42, 3.46	PAM: client resources in AFDC program	20 N.J.R. 1056(a)	R.1988 d.426	20 N.J.R. 2291(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)	Expired	
10:81-11.18	Child support guidelines: spousal support obligation	20 N.J.R. 1058(a)	R.1988 d.423	20 N.J.R. 2292(a)
10:81-14	Realizing Economic Achievement (REACH) program	20 N.J.R. 2222(b)		
10:82-3.2, 3.6, 3.7	ASH: client resources in AFDC program	20 N.J.R. 1059(a)	R.1988 d.424	20 N.J.R. 2292(b)
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:83-1	Special Payments Handbook for SSI recipients	20 N.J.R. 2563(a)		
10:85-3.2, 3.3	GAM: travel costs for job seeking or training	20 N.J.R. 879(a)	R.1988 d.425	20 N.J.R. 2292(c)
10:85-3.3	General Assistance: income-in-kind	20 N.J.R. 2238(a)		
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-12.1–12.4, 12.7	Food Stamp Program: income deductions, coupon allotment, maximum allowable income	Emergency (expires 11-29-88)	R.1988 d.512	20 N.J.R. 2592(a)
10:89-2.1, 2.3, 3.4, 4.1	Home energy assistance	20 N.J.R. 1643(a)	R.1988 d.482	20 N.J.R. 2577(a)
10:89-3.5, 3.6, 5.3	Home Energy Assistance program	20 N.J.R. 1060(a)	R.1988 d.422	20 N.J.R. 2293(a)
10:100-3, App. A	Special Payments Handbook for SSI recipients (Recodified to 10:83-1)	20 N.J.R. 2563(a)		
10:126	Registration of family day care providers	20 N.J.R. 1508(a)	R.1988 d.507	20 N.J.R. 2774(b)
10:127	Residential child care facilities	20 N.J.R. 1149(a)	R.1988 d.456	20 N.J.R. 2387(b)
	Most recent update to Title 10: TRANSMITTAL 1988-8 (supplement August 15, 1988)			
CORRECTIONS—TITLE 10A				
10A:3-5.2	Institutional search plan	20 N.J.R. 2441(a)		
10A:3-5.6, 5.7	Pat and strip searches	20 N.J.R. 1331(a)	R.1988 d.406	20 N.J.R. 2294(a)
10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)		
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:9-11.4	Classification process	20 N.J.R. 1645(a)	R.1988 d.467	20 N.J.R. 2456(b)
10A:16-4.1, 4.2, 4.8	Psychological services at correctional facilities	20 N.J.R. 2128(a)		
10A:16-4.4	Inmate/therapist confidentiality	20 N.J.R. 1772(a)	R.1988 d.476	20 N.J.R. 2457(a)
10A:16-11.4, 11.5, 11.14	Special Medical Unit	20 N.J.R. 1773(a)	R.1988 d.460	20 N.J.R. 2457(b)
10A:17-5.3, 5.8	Religious services	20 N.J.R. 1332(a)	R.1988 d.433	20 N.J.R. 2294(b)
10A:18-7	Bedside and funeral visits	20 N.J.R. 1332(b)	R.1988 d.432	20 N.J.R. 2294(c)
10A:32-6.5	Temporary restriction of juveniles	20 N.J.R. 2442(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:34-2.8	Municipal cell equipment	20 N.J.R. 2442(b)		
10A:34-2.9	Holding rooms: administrative correction	_____	_____	20 N.J.R. 2594(e)
10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)		
	Most recent update to Title 10A: TRANSMITTAL 1988-6 (supplement July 18, 1988)			
INSURANCE—TITLE 11				
11:1-1.1, 1.2	Organization of department; public information	Exempt	R.1988 d.454	20 N.J.R. 2377(a)
11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	20 N.J.R. 2130(a)		
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
11:2-17.3, 17.10	Replacement parts for damanged automobiles	20 N.J.R. 1159(a)	R.1988 d.480	20 N.J.R. 2578(a)
11:3-16	Private passenger automobile rate filings for voluntary market	20 N.J.R. 2135(a)		
11:3-24	Automobile coverage: policy constants	20 N.J.R. 2508(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)	R.1988 d.453	20 N.J.R. 2377(b)
11:4-16.6, 16.8, 23.6, 23.8, Appendices	Medicare Supplement insurance coverage, benefits and premiums	20 N.J.R. 2510(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)	R.1988 d.473	20 N.J.R. 2457(c)
11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)	R.1988 d.455	20 N.J.R. 2377(c)
11:4-28	Group coordination of health benefits	20 N.J.R. 1773(b)	R.1988 d.499	20 N.J.R. 2581(a)
11:4-29	Homeowners price comparison survey	20 N.J.R. 2181(a)		
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:5	Real Estate Commission rules	20 N.J.R. 2184(a)		
11:5-1.13	Control of real estate brokerage files	20 N.J.R. 883(a)	R.1988 d.410	20 N.J.R. 2295(a)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.23	Real estate services to handicapped	20 N.J.R. 725(a)	R.1988 d.412	20 N.J.R. 2295(b)
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.27	Educational requirements for real estate licensure	20 N.J.R. 725(b)	R.1988 d.411	20 N.J.R. 2296(a)
11:5-1.28	Certification as real estate instructor; classroom procedure	20 N.J.R. 1161(a)	R.1988 d.409	20 N.J.R. 2298(a)
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: correction	20 N.J.R. 2186(b)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing	20 N.J.R. 2478(d)		
	Most recent update to Title 11: TRANSMITTAL 1988-5 (supplement July 18, 1988)			
LABOR—TITLE 12				
12:3-1	Debarment from contracting; conflicts of interest	20 N.J.R. 2519(a)		
12:5-1	Audit resolution procedures concerning awards of Federal money	20 N.J.R. 1520(a)	R.1988 d.452	20 N.J.R. 2390(a)
12:6-1	Petitions for rulemaking	20 N.J.R. 2012(a)	R.1988 d.494	20 N.J.R. 2586(a)
12:15-1.3–1.7	1989 Unemployment Compensation weekly benefit, taxable wage base, local government contribution rate, base week, and alternate earnings test	20 N.J.R. 2187(a)	R.1988 d.535	20 N.J.R. 2786(a)
12:16-7	Use of surplus unemployment funds by contributing local govermments	20 N.J.R. 1521(a)	R.1988 d.437	20 N.J.R. 2300(a)
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:58-4.12	Minor employees in meat industry	20 N.J.R. 2357(a)		
12:60-8	Public works and EDA projects: debarment from contracting	20 N.J.R. 2520(a)		
12:100-4.2	Public employee safety and health: exposure to ethylene oxide	20 N.J.R. 1334(a)	R.1988 d.436	20 N.J.R. 2300(b)
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
12:100-9	Public employee safety and health: work in confined spaces	20 N.J.R. 1523(a)	R.1988 d.451	20 N.J.R. 2391(a)
12:112	Public Employees' Occupational Safety and Health Review Commission	20 N.J.R. 1165(a)	R.1988 d.438	20 N.J.R. 2301(a)
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
12:175	Ski lift safety	20 N.J.R. 2521(a)		
12:210-1	Apparel industry registration system	20 N.J.R. 1334(b)	R.1988 d.439	20 N.J.R. 2306(a)
12:235-1.6	1989 Workers' Compensation maximum weekly benefit	20 N.J.R. 2188(a)	R.1988 d.536	20 N.J.R. 2786(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:235-3.11–3.23	Workers' Compensation: conduct of compensation judges	20 N.J.R. 2442(c)		
12:235-13	Uninsured Employers' Fund and Second Injury Fund: surcharge collection	20 N.J.R. 2522(a)		
	Most recent update to Title 12: TRANSMITTAL 1988-6 (supplement August 15, 1988)			
COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A:12-2.10	Local Development Financing Fund program: information confidentiality	20 N.J.R. 2524(a)		
12A:60	Methodology for computing energy cost savings	20 N.J.R. 2238(b)		
12A:80-1	Urban Small Business Incubator Program	20 N.J.R. 2524(b)		
12A:81-1	Urban Development Program	20 N.J.R. 2527(a)		
12A:82-1	Neighborhood Development Corporation	20 N.J.R. 2530(a)		
12A:120-1	Urban Enterprise Zone Program	20 N.J.R. 1336(a)	R.1988 d.431	20 N.J.R. 2307(a)
12A:121	Urban enterprise zone boundaries	20 N.J.R. 2358(a)		
	Most recent update to Title 12A: TRANSMITTAL 1988-4 (supplement August 15, 1988)			
LAW AND PUBLIC SAFETY—TITLE 13				
13:3-3.4, 3.5, 3.6	Amusement games: preproposal concerning player fees and value of prizes	20 N.J.R. 44(a)		
13:3-5, 6	Amusement games control: disciplinary proceedings and appeals	20 N.J.R. 2032(a)	R.1988 d.500	20 N.J.R. 2787(a)
13:4-3.4, 3.5, 8.2	Discrimination complaints: confidentiality of parties' identities	20 N.J.R. 499(a)		
13:20-39	Special motor vehicle plates for nonprofit organizations	20 N.J.R. 2033(a)	R.1988 d.537	20 N.J.R. 2788(a)
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)		
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)	R.1988 d.474	20 N.J.R. 2460(a)
13:26	Transportation of bulk commodities	20 N.J.R. 2035(a)	R.1988 d.502	20 N.J.R. 2790(a)
13:27-5.8, 8.7, 8.8, 8.15	Certification of landscape architects	20 N.J.R. 2359(a)		
13:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)		
13:34	Board of Marriage Counselor Examiners	20 N.J.R. 2361(a)		
13:37-1.1, 1.2	Accreditation of nursing programs	20 N.J.R. 1645(b)		
13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)		
13:38-2.11	Practice of optometry: delegation of duties to ancillary personnel	20 N.J.R. 2363(a)		
13:39	Board of Pharmacy rules	19 N.J.R. 1952(a)		
13:39	Board of Pharmacy rules: extension of comment period	20 N.J.R. 244(a)		
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:40-10.1	Professional engineers and land surveyors: contract to provide services	20 N.J.R. 2243(b)		
13:42	Board of Psychological Examiners	20 N.J.R. 2244(a)		
13:43	Shorthand reporters rules	20 N.J.R. 1666(a)	R.1988 d.457	20 N.J.R. 2465(a)
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)		
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
13:45A-25	Health club services	20 N.J.R. 2036(a)	R.1988 d.520	20 N.J.R. 2790(b)
13:46-1A.3	Athletic Control Board: weighing of boxers	20 N.J.R. 380(a)		
13:70-5	Thoroughbred racing: registration of colors	20 N.J.R. 2536(a)		
13:70-11.12	Thoroughbred racing: abusive whipping by jockey	20 N.J.R. 2038(a)		
13:70-19.22	Thoroughbred racing: determining finishing place	20 N.J.R. 2038(b)		
13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
13:80-1	Hazard Waste Management Information Awards	20 N.J.R. 507(b)		
	Most recent update to Title 13: TRANSMITTAL 1988-8 (supplement August 15, 1988)			
PUBLIC UTILITIES—TITLE 14				
14:3-7.5	Interest on customer deposits	20 N.J.R. 737(a)		
14:3-7.13	Collection activity on disputed charges; interest on overpayments	20 N.J.R. 963(b)		
14:3-7.14	Discontinuance of residential service to tenants	20 N.J.R. 1668(a)		
14:3-9.6	Solid waste: filing contracts for service (preproposal)	20 N.J.R. 1669(a)		
14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
14:9-4.3	Solid waste: decals for vehicles (preproposal)	20 N.J.R. 1671(a)		
14:9-4.4	Solid waste: container identification (preproposal)	20 N.J.R. 1671(b)		
14:11-6	Interest on fuel clause overrecoveries	19 N.J.R. 1967(c)		
14:18-3	Cable TV: pre-proposal for telephone service standards	19 N.J.R. 2125(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14:18-15.1	Preproposal: Statewide cable TV access channel for educational and public affairs programming	20 N.J.R. 1063(a)		
	Most recent update to Title 14: TRANSMITTAL 1988-1 (supplement January 19, 1988)			
ENERGY—TITLE 14A				
14A:14	Certificate of need for electrical facilities	20 N.J.R. 2188(b)		
	Most recent update to Title 14A: TRANSMITTAL 1988-2 (supplement May 16, 1988)			
STATE—TITLE 15				
15:10-6	Voting accessibility for elderly and handicapped	20 N.J.R. 1527(a)	R.1988 d.450	20 N.J.R. 2378(a)
	Most recent update to Title 15: TRANSMITTAL 1988-1 (supplement May 16, 1988)			
PUBLIC ADVOCATE—TITLE 15A				
	Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)			
TRANSPORTATION—TITLE 16				
16:16, 16:17	Municipal operations and construction: expiration of rules	_____	_____	20 N.J.R. 2596(c)
16:28-1.35, 1.49, 1.111	Speed rates along Route 35 in Monmouth County, and Routes 87 and 187 in Atlantic County	20 N.J.R. 2039(a)	R.1988 d.484	20 N.J.R. 2586(b)
16:28-1.41	Speed limits along U.S. 9 in Atlantic County and Ocean County	20 N.J.R. 2190(a)		
16:28-1.44	Speed rates along Route 27 in Middlesex and Somerset counties	20 N.J.R. 2040(a)	R.1988 d.488	20 N.J.R. 2587(a)
16:28-1.77	Speed limits along Route 29 in Hunterdon County	20 N.J.R. 1573(a)	R.1988 d.449	20 N.J.R. 2382(a)
16:28A-1.6	Parking for handicapped along Route 7 in Belleville	20 N.J.R. 1778(a)	R.1988 d.463	20 N.J.R. 2465(b)
16:28A-1.7	Bus stop zone along U.S. 9 in Marlboro	20 N.J.R. 1533(a)	R.1988 d.465	20 N.J.R. 2466(a)
16:28A-1.7	Stopping or standing along U.S. 9 in Somers Point	20 N.J.R. 2040(b)	R.1988 d.489	20 N.J.R. 2587(b)
16:28A-1.7, 1.38	Parking restrictions along U.S. 9 in Howell and Route 71 in Asbury Park and Manasquan	20 N.J.R. 2189(a)		
16:28A-1.9	Bus stop zone along Route 17 in Ho-Ho-Kus	20 N.J.R. 2374(a)		
16:28A-1.18, 1.21	Bus stop zones along Route 27 in Linden and U.S. 30 in Oaklyn	20 N.J.R. 2041(a)	R.1988 d.486	20 N.J.R. 2587(c)
16:28A-1.18, 1.32	Parking restrictions along Route 27 in Linden and U.S. 46 in Teterboro	20 N.J.R. 2040(c)	R.1988 d.485	20 N.J.R. 2588(a)
16:28A-1.19, 1.29	Parking restrictions along Route 28 in Garwood and Route 42 in Washington Township	20 N.J.R. 2042(a)	R.1988 d.487	20 N.J.R. 2589(a)
16:28A-1.36	Restricted parking on Route 57 in Washington Township, Warren County	20 N.J.R. 1484(b)	R.1988 d.418	20 N.J.R. 2310(a)
16:28A-1.46	No stopping or standing zones along U.S. 130 in Pennsville	20 N.J.R. 1533(b)	R.1988 d.464	20 N.J.R. 2466(b)
16:28A-1.46, 1.57	Bus stops along U.S. 130 and U.S. 206 in Bordentown	20 N.J.R. 2043(a)	R.1988 d.492	20 N.J.R. 2589(b)
16:30-3.1	Bus lanes on Route 35 in Brick and Mantoloking	20 N.J.R. 2044(a)	R.1988 d.490	20 N.J.R. 2590(a)
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)		
16:30-4.2	Bicycle restrictions along Route 88 in Point Pleasant	19 N.J.R. 2254(a)		
16:31-1.25	Turning restrictions along Route 10 in West Orange	20 N.J.R. 1779(a)	R.1988 d.462	20 N.J.R. 2466(c)
16:32-3.5, 3.6, App. A	102-inch truck standard network; Route 47 access	20 N.J.R. 2536(b)		
16:53D	Regular route autobus carriers: zone of rate freedom	20 N.J.R. 2374(b)		
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:80	NJ TRANSIT: Section 16(b)(2) Capital Assistance Program	20 N.J.R. 2044(b)	R.1988 d.515	20 N.J.R. 2791(a)
16:81	NJ TRANSIT: Small Urban and Rural Area Public Transportation Program	20 N.J.R. 2046(a)	R.1988 d.514	20 N.J.R. 2793(a)
	Most recent update to Title 16: TRANSMITTAL 1988-8 (supplement August 15, 1988)			
TREASURY-GENERAL—TITLE 17				
17:1-1.10	Pension administration: bad balances in withdrawn accounts	20 N.J.R. 1181(a)	R.1988 d.427	20 N.J.R. 2310(b)
17:3-7.1	Interfund transfers: correction to text	_____	_____	20 N.J.R. 2482(a)
17:6	Consolidated Police and Firemen's Pension Fund	20 N.J.R. 2537(a)		
17:7	Prison Officers' Pension Fund	20 N.J.R. 2375(a)		
17:8-3.3	Supplemental Annuity Collective Trust: lump sum distributions	20 N.J.R. 2192(a)		
17:9	State Health Benefits Program	20 N.J.R. 1536(a)	R.1988 d.461	20 N.J.R. 2466(d)
17:9-2.12	State Health Benefits Program: local coverage	20 N.J.R. 1536(b)	R.1988 d.469	20 N.J.R. 2466(e)
17:9-2.17	State Health Benefits Program: board of education retirees	20 N.J.R. 1537(a)	R.1988 d.471	20 N.J.R. 2467(a)
17:9-4.2	State Health Benefits Program: full-time employee defined	20 N.J.R. 741(a)	R.1988 d.442	20 N.J.R. 2590(b)
17:9-6.1	State Health Benefits Program: continuation of coverage into retirement	20 N.J.R. 1182(a)	R.1988 d.470	20 N.J.R. 2467(b)
17:16-41	Investment in loan participation notes	20 N.J.R. 1779(b)	R.1988 d.466	20 N.J.R. 2467(c)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:19-10.4, 10.5, 10.7, 10.9	Architect/engineer selection procedures	20 N.J.R. 180(a)		
17:20	Lottery Commission rules	20 N.J.R. 2048(a)	R.1988 d.501	20 N.J.R. 2795(a)
17:25	Collection of delinquent educational loans from local government employees	20 N.J.R. 2537(b)		
17:27	Affirmative action and public contracts	20 N.J.R. 1780(a)	R.1988 d.522	20 N.J.R. 2795(b)
	Most recent update to Title 17: TRANSMITTAL 1988-7 (supplement August 15, 1988)			
TREASURY-TAXATION—TITLE 18				
18:2-2	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:5-1.1, 6.2, 12.5	Sale of tobacco to minors	20 N.J.R. 970(a)	R.1988 d.434	20 N.J.R. 2317(a)
18:6-7.13	Wholesaling of prepackaged cigarettes	20 N.J.R. 2192(b)		
18:5-12.2	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:7-3.15, 11.12, 13.1, 13.7, 13.12, 13.13, 14.1, 14.3, 14.7, 14.13–14.17, 14.20	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:7-3.18	Corporation business tax: recycling equipment credit	20 N.J.R. 48(b)	R.1988 d.413	20 N.J.R. 2318(a)
18:8-4.5, -8	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:12-10	Real property defined	20 N.J.R. 1787(a)		
18:9-8.5–8.7	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:12–17	Local property taxation	20 N.J.R. 1066(a)	R.1988 d.408	20 N.J.R. 2319(a)
18:15-2.15	Woodland owners: application for farmland assessment status	20 N.J.R. 1337(a)	R.1988 d.414	20 N.J.R. 2319(b)
18:18-8.11, 12.5, 12.7	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:22-2.4, 8.4	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:26-2.5, 2.7, 5.9, 5.17, 5.19, 6.1, 6.2, 6.3, 7.10, 8.1, 8.6, 8.7, 8.12, 9.4, 9.10, 12.2, App. A	Transfer inheritance tax rules	20 N.J.R. 2193(a)		
18:26-8.4, 9.8	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:35-1.24	Gross income tax: investment fund distributions	20 N.J.R. 742(b)		
18:35-1.9, 1.18, 1.19, 1.20	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
18:35-1.21, 1.22, 1.23	Gross Income Tax: employee defined; employer withholding; business expenses	20 N.J.R. 515(a)	R.1988 d.419	20 N.J.R. 2319(c)
18:37-2.1, 2.2, -3, -4	Post tax amnesty	19 N.J.R. 2255(b)	R.1988 d.407	20 N.J.R. 2310(c)
	Most recent update to Title 18: TRANSMITTAL 1988-3 (supplement July 18, 1988)			
TITLE 19—OTHER AGENCIES				
19:4-5.3A, 6.28	Planned development center specially planned areas (PDC-1)	20 N.J.R. 2247(b)		
19:4-6.28	Rezoning in East Rutherford	19 N.J.R. 1975(a)		
19:9	Turnpike Authority rules	20 N.J.R. 1338(a)	R.1988 d.483	20 N.J.R. 2591(a)
19:9	Turnpike Authority rules: extension of comment period	20 N.J.R. 2049(a)		
19:9 Exh. A	Prequalification of bidders for widening contracts	19 N.J.R. 2129(b)		
19:25-16.4, 16.5, 16.11, 16.14, 16.18, 16.20, 16.27, 16.33	Public financing of primary election for Governor	20 N.J.R. 1339(a)	R.1988 d.447	20 N.J.R. 2395(a)
19:75	Atlantic County Transportation Authority: rules of operation	20 N.J.R. 1680(b)		
	Most recent update to Title 19: TRANSMITTAL 1988-3 (supplement July 18, 1988)			
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-2	Access to information maintained by casino licensees	20 N.J.R. 1068(a)		
19:40-2	Access to information maintained by casino licensees: public hearing	20 N.J.R. 2049(b)		
19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12, 9.18, 9.20	Billing rates for Commission and Gaming Enforcement services; special assessment	20 N.J.R. 2539(a)		
19:41-11.3	Filing of casino service industry applications	20 N.J.R. 1537(b)	R.1988 d.443	20 N.J.R. 2399(a)
19:42-4.2–4.7	Exclusion of persons hearings	20 N.J.R. 2250(a)	R.1988 d.526	20 N.J.R. 2801(a)
19:44	Gaming schools: licensure and standards	20 N.J.R. 2050(a)	R.1988 d.508	20 N.J.R. 2802(a)
19:45-1.36, 1.45	Internal casino controls	20 N.J.R. 1069(a)	R.1988 d.468	20 N.J.R. 2468(a)
19:45-1.25	Verification of cash equivalents	20 N.J.R. 1789(a)		
19:45-1.33, 1.42, 1.43	Count times for cash and coin	19 N.J.R. 2265(a)		
19:45-1.40, 1.41	Jackpot payout and hopper fill forms	20 N.J.R. 2050(b)		
19:46-1.7, 1.9	Roulette wheels	20 N.J.R. 2445(a)		
19:46-1.19	Dealing shoes	20 N.J.R. 1069(a)	R.1988 d.468	20 N.J.R. 2468(a)
19:46-1.19	Dealing shoes: public hearing	20 N.J.R. 1680(a)		
19:46-1.29	Approval of slot machine modifications	20 N.J.R. 52(a)	R.1988 d.495	20 N.J.R. 2591(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:48	Exclusion of persons	20 N.J.R. 2252(a)	R.1988 d.525	20 N.J.R. 2802(b)
19:53-2	Set-aside goals for minority and women's business enterprises	20 N.J.R. 2446(a)		

Most recent update to Title 19K: TRANSMITTAL 1988-6 (supplement August 15, 1988)

RULEMAKING IN THIS ISSUE—Continued

ENVIRONMENTAL PROTECTION
- Hunting of migratory birds: shooting hours ..... 2823(b)
- Lower Raritan/Middlesex County water quality management: Woodbridge ..... 2823(c)
- Sussex County water quality management: Hardyston Township ..... 2823(d)

HEALTH
- Forum on State Clean Indoor Air Laws ..... 2824(a)

HUMAN SERVICES
- Public information projects concerning prevention of mental retardation and developmental disabilities: availability of grants ..... 2824(b)

LAW AND PUBLIC SAFETY
- Contract carrier applicants ..... 2824(c)

TREASURY-GENERAL
- Architect-engineer selection for major projects ..... 2824(d)

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES 2826

INDEX OF RULE PROPOSALS AND ADOPTIONS 2831

Filing Deadlines

December 19 issue:	
Proposals	**November 17**
Adoptions	**November 28**
January 3, 1989 issue:	
Proposals	**December 5**
Adoptions	**December 9**
January 17 issue:	
Proposals	**December 16**
Adoptions	**December 22**
February 6 issue:	
Proposals	**January 6**
Adoptions	**January 13**

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