NEW JERSEY REGISTER

IN THIS ISSUE
"INDEX OF PROPOSED RULES"

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(Includes rules filed through February 6, 1984)

The New Jersey Register supplements the New Jersey Administrative Code. To complete your research of the latest State Agency rule changes, see the Rule Adoptions in This Issue, the Rule Adoptions in the February 6 issue, and the Index of Adopted Rules beginning on Page 265 of that issue.

TABLE OF RULES IN THIS ISSUE

RULE PROPOSALS

(Continued on Back Cover)

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Livestock and Poultry Importations Livestock for Breeding and Herd Replacements

Proposed Readoption with Amendments: N.J.A.C. 2:3-2

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

Authority: N.J.S.A. 4:5-54-75; 4:5-93.21-93.50 and 4:5-106.2.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Director, Division of Animal Health
Department of Agriculture
CN 330
Trenton, New Jersey 08625

The Department of Agriculture thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on April 3, 1984. The readoption of these rules becomes effective upon acceptance by the Office of Administrative Law of a notice of their readoption.

This proposal is known as PRN 1984-90.

The agency proposal follows:

Summary

N.J.A.C. 2:3-2 proposed for readoption with amendments was internally reviewed in October 1983 in compliance with Executive Order Number 66(1978) and was found to be adequate, reasonable, and necessary in order to prevent introduction of disease into New Jersey herds and flocks. The subchapter requires that livestock and poultry imported into New Jersey be examined and certified free of contagious or parasitic diseases or exposure thereto in order that only healthy animals be imported into New Jersey. The subchapter also provides for the quarantine and release of all imported livestock.

N.J.A.C. 2:3-2.1 specifies that in addition to complying with general requirements, the importation of livestock into New Jersey for breeding and herd replacement shall meet the requirements of the subchapter.

N.J.A.C. 2:3-2.2 clearly explains the terms used in the rules and to introduce terms referred to in Title 9, C.F.R. Part 78, in order that New Jersey rules be in compliance.

N.J.A.C. 2:3-2.3 specifies that cattle and goats from herds under quarantine shall not be imported into the State.

N.J.A.C. 2:3-2.4 is necessary to include bison, since the animal can also be infected with brucellosis and tuberculosis. Goats have been excluded since no tuberculosis or brucellosis of goats has been diagnosed in the United States n the last five years. With the reduced incidence of tuberculosis, it is not necessary to test animals from tuberculosis free states and tuberculosis free herds.

N.J.A.C. 2:3-2.5 through 2.7 concern brucellosis testing from different classes of states.

N.J.A.C. 2:3-2.8 specifies that vaccination tags or date of vaccination must be recorded on the interstate health certificate.

N.J.A.C. 2:3-2.9 requires brucellosis tests for imported cattle and bison to be held in quarantine between 45 and 120 days after entering the State.

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

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The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by Administrative Publications of the Office of Administrative Law. Subscription rates for this 31-volume, regularly updated set of all State administrative rules are available on request. The Code is sold either in the full set or in one to three volumes depending on the Department coverage desired.

N.J.A.C. 2:3-2.10 requires that goats entering the State shall be free from disease and be individually identified with permanent identification.

N.J.A.C. 2:3-2.11 requires that horses, mules and asses entering the State must meet the requirements of N.J.A.C. 2:3-1.

N.J.A.C. 2:3-2.12 requires that sheep be certified free from infectious disease.

N.J.A.C. 2:3-2.13 and 2.14 state that a health certificate shall indicate that swine for breeding shall be brucellosis free and conform to Federal regulations.

N.J.A.C. 2:3-2.15 and 2.16 specify that swine cannot be diverted enroute from the destination indicated on the certificate and the swine must be quarantined on the farm of destination for 30 days until released by the Department of Agriculture.

N.J.A.C. 2:3-2.17 requires that all imported breeding swine must be free from pseudorabies.

Social Impact

As long as there is disease present in other states and countries, N.J.A.C. 2:3-2 is needed to prevent introduction of disease into the livestock herds and poultry flocks in New Jersey. The subchapter impacts on livestock and poultry farmers, veterinarians, and livestock dealers. The subchapter also, indirectly affects all consumers of animal products such as milk, eggs, beef, pork, and lamb, since any disease threat to the livestock and poultry industries affects the availability of these products. Without these rules, the Department of Agriculture would not be able to control or prevent the spread of livestock and poultry diseases. Failure to readopt this subchapter would result in introduction of disease and resulting loss of livestock, poultry, and animal products.

Economic Impact

Failure to readopt this subchapter would result in increased disease and losses of livestock, poultry, and animal products, thus resulting in increased food prices to the consumer and economic loss to producers. The amount of loss to livestock and poultry owners cannot be estimated. The increased cost to consumers of livestock and poultry products also cannot be estimated.

These rules will have no economic impact on the Department of Agriculture.

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

SUBCHAPTER 2. LIVESTOCK FOR BREEDING AND HERD REPLACEMENTS

2:3-2.1 Compliance with subchapter and importation requirements

In addition to the general requirements for importation, livestock for breeding and herd replacement moved into New Jersey shall meet the specific requirements of this Subchapter.

2:3-2.2 Definitions

"Accredited tuberculosis free state" shall mean a state which maintains full compliance with all of the provisions of the Uniform Methods and Rules, Bovine Tuberculosis Eradication, and where no evidence of bovine tuberculosis has been disclosed for 5 or more years.

"Accredited herd" (cattle or diary goats) shall mean an accredited herd that has passed at least two consecutive annual caudal fold tuberculin tests, has no other evidence of bovine tuberculosis, and meets the standards of Uniform Methods and Rules, Bovine Tuberculosis Eradication.

"Brucellosis class free state or area" shall mean a state or area as defined in Title 9, C.F.R., Part 78.1(t).[1]

"Brucellosis class A state or area" shall mean a state or area as defined in Title 9, C.F.R., Part 78.1(u).[1]

"Brucellosis class B state or area" shall mean a state or area as defined in Title 9, C.F.R., Part 78.1(v).[1]

"Brucellosis class C state or area" shall mean a state or area as defined in Title 9, C.F.R., Part 78.1(w).[1]

"Certified brucellosis free herd" shall mean a herd as defined in Title 9, C.F.R., Part 78.1(q).[1]

[1] Copies are filed with and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, CN 330, Trenton, New Jersey 08625.

[2:3-2.2] **2:3-2.3** Importing diseased cattle and goats

Cattle and goats from herds under quarantine because of tuberculosis, brucellosis, or any other disease, or cattle currently classified as suspects because of tuberculosis shall not be imported into the State.

[2:3-2.3] **2:3-2.4** Negative reaction of cattle and [goats] **bison** to the tuberculosis [and brucellosis] test

(a) Cattle and [goats] **bison** six months of age or over shall be negative to a tuberculosis test within 60 days prior to entry.

[(b) All cattle and goats over six months of age shall be negative to a test for brucellosis within 30 days prior to entry, except officially brucellosis vaccinated heifers under 18 months of age need not be tested.]

(b) Animals that originate from an accredited bovine Tuberculosis-Free State or an accredited bovine Tuberculosis-Free Herd and shall have been included in the annual herd test or are a natural addition to the herd are exempt from tuberculosis tests.

[(c) Vaccination tag, tattoo or date of vaccination must be recorded on the official interstate health certificate.

(d) All cattle and goats that originate in a state not certified free shall originate in herds negative to the brucellosis test within 12 months but not less than 90 days prior to entry and shall be negative to a test for brucellosis within 30 days prior to entry. For such cattle and goats an import permit issued by the Director, New Jersey Division of Animal Health shall be required prior to entry.]

2:3-2.5 Brucellosis testing-Class Free States

All animals imported from Class Free States six months of age or over shall be negative to an official brucellosis test within 30 days prior to entry, except officially brucellosis vaccinated heifers under 14 months of age, steers and spayed heifers need not be tested.

2:3-2.6 Brucellosis testing-Class A States

(a) All animals imported from Class A States six months of age or over shall be negative to an official brucellosis test within 30 days prior to entry, except official brucellosis vaccinated heifers under 14 months of age, steers, and spayed heifers need not be tested.

(b) All animals imported from Class A States except steers or spayed heifers must originate from and be members of, or natural additions to a herd that has been brucellosis tested negative within 15 months or 450 days of entry, but prior to

90 days of shipment, and the herd test date shall be entered on the official health certificate.

2:3-2.7 Brucellosis testing-Class B and C States

(a) The following conditions apply to animals imported from Class B and Class C States:

1. A prior permit for movement shall be obtained by the consignee from the Director, Division of Animal Health, New Jersey Department of Agriculture.

2. All animals to be imported must be members of or natural additions to a Certified Brucellosis-Free Herd.

3. All animals six months of age or over shall be negative to an official brucellosis test within 30 days prior to entry, except official brucellosis vaccinated heifers under 14 months of age.

4. Steers and spayed heifers need not be tested.

5. The imported animals shall be quarantined separate and apart from native animals upon entry into the state until brucellosis tested negative not less than 45 or more than 120 days after entry into the state.

6. The herd test, certified herd number, prior permit number, and a statement by the accredited veterinarian that the animals being imported were included in the herd test or were natural additions must appear on the health certificate.

2:3-2.8 Interstate health certificate

In all appropriate cases, vaccination tag, tattoo, or date of vaccination must be recorded on the interstate health certificate.

[2:3-2.4] **2:3-2.9** Brucellosis test for imported cattle

(a) The department may require cattle imported to be held for testing for brucellosis if in its judgment such testing would be necessary to prevent introduction of the disease.

(b) All test eligible breeding cattle and [goats] **bison** as defined in U.S.D.A., APHIS 91-1 from [modified, certified, or non-certified states] **Class B or Class C States** shall be held under quarantine separate and apart from native livestock until tested negative not less than 45 or more than 120 days after entry into New Jersey.

2:3-2.10 Goats

In addition to the general requirements set forth above, all goats entering New Jersey shall be free from all infectious or communicable diseases and shall be individually identified with a permanent identification, ear tag or tattoo, and recorded on the health certificate.

[2:3-2.5] **2:3-2.11** Horses, mules and asses

(a) All equidae entering New Jersey must meet the requirements of N.J.A.C. 2.3-1. [All equidae from states where Venezuelan equine encephalomyelitis has been diagnosed must have been vaccinated for Venezuelan equine encephalomyelitis at least 14 days prior to shipment and the date of vaccination entered on the official interstate health certificate.]

(b) All equidae entering the State after January 1, 1974, must have had a negative Coggins test for equine infectious anemia conducted at a jointly-approved U.S.D.A.-State laboratory within the past 12 months.

(c) All equidae entering the State which originate in a state that does not have a mandatory identification and quarantine program for equidae having a positive test for equine infectious anemia (EIA) must have had a negative Coggins test for equine infectious anemia conducted at a jointly-approved U.S.D.A.-State laboratory within 30 days prior to entry.

[2:3-2.6] **2:3-2.12** Certification of sheep free from infectious disease

All sheep entering New Jersey shall be certified to be free[d] from [scabies, scrapie, lice, foot rot and] all infectious or communicable disease, **and be individually identified by an official ear tag or registration tattoo.**

[2:3-2.7 Dip treatment of sheep originating in state with scabies

Sheep originating in a state known to have scabies, shall have been dipped with a permitted dip as approved for treatment of sheep scabies by the Federal Code of Regulations, Title 9, part 74, as amended, and these facts recorded on the health certificate and approved.] **Reserved**

[2:3-2.8] **2:3-2.13** Health certificate to indicate swine free from brucellosis

The official interstate health certificate shall indicate that swine for breeding purposes are members of a brucellosis-free herd or are negative to a blood test for brucellosis within 30 days [of] **prior to** entry.

[2:3-2.9] **2:3-2.14** Imported breeding swine to conform to Federal Regulation

(a) All breeding swine imported into New Jersey must meet the requirements of Title 9, part 76, sections 4 through 18 of the Code of Federal Regulations[1].

(b) All breeding swine imported into New Jersey must be individually identified by ear tag, tattoo or other approved individual identification.

[1] Copies are filed with and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, CN 330, Trenton, New Jersey 08625.

[2:3-2.10] **2:3-2.15** Diversion of swine enroute

No swine shall be diverted enroute from the destination of the consignee as indicated on the health certificate.

[2:3-2.11] **2:3-2.16** Quarantine of imported breeding swine

All breeding swine imported must be held in quarantine on the farm of destination **separate and apart from all native animals** [for 30 days until released] **and retested negative after 30 days for pseudorabies and brucellosis prior to release** by the New Jersey Department of Agriculture.

[2:3-2.12] **2:3-2.17** All imported breeding swine; not infected with pseudorabies

(a) All imported breeding swine must come from a herd that has not been infected with pseudorabies in the past 60 days. Individuals must have been negative to a serum neutralization test within 30 days [of] **prior to** entry conducted at a State or Federal laboratory. Swine from [q]**Q**ualified [p]**P**seudorabies **Negative Herds may enter** [prior to entry] if the [q]**Q**ualified [p]**P**seudorabies **Negative** [h]**H**erd number and the date of the last qualifying test are stated on the official interstate health certificate.

(b) "Qualified Pseudorabies Negative Herd" means a herd which complies with the provisions of 9 C.F.R. 85.1(ee).

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program
New Jersey Sire Stakes Rules

Proposed Amendments: N.J.A.C. 2:32-2.32 and 2.36
Proposed Repeal and New Rule: N.J.A.C. 2:32-2.17

Authorized By: Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 5:5-91.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

R. Donald Bechamps, Secretary
New Jersey Sire Stakes
CN 330
Trenton, New Jersey 08625

The Department of Agriculture thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-91.

The agency proposal follows:

Summary

The New Jersey Sire Stakes is a 12 year old program which has given the State of New Jersey prominence in Standardbred race horse breeding. The State is currently ranked in the top three states or provinces in North America for breeding Standardbred race horses. The program has also resulted in preserving open land space in New Jersey as a result of increasing horse farms. The proposed amendments attempt to insure that top quality horses are involved in the program. The amendments also provide for fees to be charged program participants and sanctions for violation of the procedures and rules. The proposed amendment to N.J.A.C. 2:32-2.17 establishes qualifying times for Pari-mutuel tracks. In the past, individual tracks established qualifying times for qualifying.

The proposed amendment to N.J.A.C. 2:32-2.32 allows ten horses to race in the Baby Races at the Meadowlands.

The proposed amendment to N.J.A.C. 2:32-2.36 eliminates "dollars" as the criteria to be used towards the "Final" and replaces it with "points."

Social Impact

The proposed amendments will affect owners, trainers and drivers of New Jersey Sire Stakes' eligible horses. They number in excess of 6,500 persons, many of whom make their livings racing New Jersey bred horses.

Economic Impact

The proposed amendments will have a positive economic impact upon horseowners, trainers and drivers. The program has resulted in an increase in purses from $474,000 in 1972 to an estimated $7.1 million in 1984. The increasing purse sizes have resulted in owners expanding their horsefarms. Moreover, the increased purses have resulted in increased payments for trainers and drivers. The money winners have been able to increase their annual revenues by 133 percent since the program commenced in 1972. Since the procedures of the program have not changed, the required fees remain the same and will have no adverse economic impact upon the affected groups. For the same reason, the Department of Agriculture will not be affected.

The amendment to N.J.A.C. 2:32-2.17 may have a minor impact on the number of horses some horse owners may raise.

The amendment to N.J.A.C. 2:32-2.32 may decrease the size of the purse at the Meadowlands for Baby Races only, however, the affect of consolidating the heats will result in a positive economic impact upon the Meadowlands Raceway since the raceway will race less heats per event.

The proposed amendment to N.J.A.C. 2:32-2.36 may have a minor economic impact upon some horses that are put into the "Final," however, it will provide parity in the "Final" race.

Full text of the current rules may be found in the New Jersey Register at 15 N.J.R. 69(a), 15 N.J.R. 439(a).

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

2:32-2.17 Qualifying conditions

[(a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the following qualifying conditions for the 1983 racing season:

1. Two-year-pacers, three-year-old pacers, and three-year-old trotters must meet the current raceway standard for that age and gait or they will not be allowed to start in either a wagering or non-wagering event. The qualifying standards of the raceway, with respect to time, breaks, gate performance and the New Jersey 30-day rule, are to be determined by the racing officials of the Pari-mutuel track at which the race is to be contested.

2. Two-year-trotters are allowed two seconds over the raceway standard for that age and gait, but must comply with all other qualifying standards of the raceway at which the race is to be contested.

i. A two-year-old pacer, a three-year-old pacer, and a three-year-old trotter must meet qualifying time (two-year-old trotters are allowed two seconds over the track qualifying time) in a betting or non-betting race within 30 days of declaration, and, in addition, show no breaks and have satisfactory gate performance prior to the Sire Stakes event.

ii. If a horse initially makes qualifying time but then fails to meet qualifying time in a subsequent event, it must then requalify to meet the standards of the raceway at which the race is to be contested.

iii. Official workouts are not acceptable as a substitute for a qualifying racing line.

3. Four-year-old pacers and trotters must show one satisfactory racing line within 30 days of declaration. For the purposes of the New Jersey Sire Stakes Program, a satisfactory line for four-year-old pacers and trotters is any race line, betting or non-betting, with no breaks and satisfactory gate performance. Official workouts are not acceptable as a substitute for a racing line. In 1984, four-year-olds will be required to meet qualifying time standards for that age and gait.

(b) All starters in the New Jersey Sire Stakes Fair Division must meet the following condition for the 1983 racing season:

i. All horses, two-, three-, and four-year-olds, must have a racing line (of any sort) at time of declaration.]

(a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the qualifying conditions in this section for the 1984 racing season.

(b) The 1984 New Jersey Sire Stakes Qualifying Times at the Pari-mutuel tracks will be as follows:

	1 Mile Track	5/8 Mile Track	1/2 Mile Track
Two-Year-Old Trot	210	211	212
Three-Year-Old Trot	205	206	207
Four-Year-Old Trot	203	204	205
Two-Year-Old Pace	205	206	207
Three-Year-Old Pace	203	204	205
Four-Year-Old Pace	202	203	204

(c) If a horse initially makes qualifying time but then fails to meet qualifying time in a subsequent event, it must then requalify to meet the standards of the raceway at which the race is to be contested.

(d) Official workouts are not acceptable as a substitute for a qualifying racing line.

(e) All other qualifying standards in effect at the track where the race is being conducted must be adhered to.

(f) All starters in the New Jersey Sire Stakes Fair Division must meet the following condition for the 1983 racing season:

1. All horses, two-, three-, and four-year-olds, must have at least one satisfactory racing line in 2:15 or better within 30 days of declaration. A satisfactory racing line is defined as a qualifying or racing line, charted in 2:15 or better, and without any breaks.

2:32-2.32 Baby Races

All Baby Races shall consist of no more than eight starters per heat [regardless of the size of the track] **at Freehold and Showplace Farms, and 10 starters per heat at the Meadowlands**. There must be at least four horses entered in a division in order to conduct a heat solely for that division. If less than four horses are entered in a division, the remaining horses shall be seeded into other divisions. The New Jersey Sire Stakes representative shall be permitted to seed horses in Baby Races according to owners, trainers, money earned, sex.

2:32-2.36 Establishment of "Final" Race

(a) There will be a two- and three-year-old "Final" race in each division with a minimum purse of $50,000 as well as a "Final" race in the four-year-old divisions with a minimum purse of $25,000 at both Freehold and the Meadowlands raceways. There will be a $20,000 Fair "Final" race in each division. There will be no entry fees for these events and each is open to the top 10 New Jersey Sire Stakes [money] **point** winners at the Meadowlands and the top eight New Jersey Sire Stakes [money] **point** winners at Freehold in each division. This applies to yearlings nominated in 1982. The two-, three-, and four-year-old Finals at Freehold in 1982 will consist of 10 starters, the three- and four-year-old Finals in 1983 will consist of 10 starters, and the four-year-old Finals in 1984 will consist of 10 starters. In the event that one or more of the top 10 [money] **point** earners cannot start, the ninth, 10th, 11th, and 12th, etc., horse(s) will move up. In addition, two "Also Eligibles" will be carries in each division. Two-year-old "Baby Race" [earnings] **points** will not be considered as points toward the "finals" in either the Fair or Pari-mutuel Divisions.

(b) Beginning in 1984, all horses competing in both the Pari-mutuel and Fair "Finals" at all tracks will be determined on a point basis. The point value will be awarded as follows:

1. 50 points for winning a heat;
2. 25 points for placing second in a heat;
3. 12 points for placing third in a heat;
4. 8 points for placing fourth in a heat;
5. 5 points for placing fifth in a heat.

BANKING

(a)

DIVISION OF BANKING

Premium Finance Agreement

Proposed New Rule: N.J.A.C. 3:22-1.4

Authorized By: Michael M. Horn, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:16D-1 et seq., specifically 17:16D-8.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Dominick A. Mazzagetti, Deputy Commissioner
Department of Banking
Division of Consumer Complaints Legal & Economic Research
CN 040
Trenton, New Jersey 08625

The Department of Banking thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-94.

The agency proposal follows:

Summary

The proposed new rule requires that there be disclosure in the premium financing contract of several key elements prior to signature by the borrower as required by N.J.S.A. 17:16D-9. The rule further requires that there be separately signed premium finance agreements for each subsequent renewal period so as to disclose current conditions and provisions applicable to each loan or advance. A continuous payment agreement which authorizes renewable or continuing arrangements is specifically prohibited. The proposed new rule is necessary so as to enable persons and business engaging in this type of activity to accurately comply with the letter and intent of the law which does not allow the subsequent insertion of terms in a previously signed form.

Social Impact

The adoption of this rule will allow persons and businesses engaging in this type of economic activity to comply with the provisions of the statute which require disclosure of all relevant terms prior to signature by the borrower.

Economic Impact

The adoption of this rule should not have any economic impact since it simply clarifies rights and duties between contracting parties and persons relying thereon.

Full text of the proposed new rule follows.

3:22-1.4 Premium finance agreement

(a) There must be disclosure in the premium financing agreement of the key elements prior to the signature of the insured in accordance with the requirements set forth in N.J.S.A. 17:16D-9.

(b) A continuous payment agreement which authorizes renewable or continuing arrangements is prohibited.

(c) Separately signed premium finance agreements are required for each policy, renewal, or addition or change in order to disclose current conditions and provisions applicable to each loan.

(d) This rule shall apply to Insurance Premium Finance Companies doing business or authorized to do business in the State of New Jersey.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding Houses Fire Partitions and Doors

Proposed Amendment: N.J.A.C. 5:27-5.3

Authorized By: John P. Renna, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 55:13B-4.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquires about submissions and responses, should be addressed to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

The Department of Community Affairs thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-95.

The agency proposal follows:

Summary

The proposal amendment provides that fire resistance rated unit doors are no longer to be required in rooming and boarding house buildings that are fully sprinklered.

Social Impact

If a building is fully sprinklered, the degree of protection from fire provided to the residents is sufficiently high that fire resistance rated dwelling unit doors are unnecessary. The amendment will therefore not have any adverse effect upon life safety of the building's occupants.

Economic Impact

Owners who have installed sprinkler systems providing full coverage to the building will be spared the additional cost of installing fire resistance rated doors or adding fire retardant material to existing doors.

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

5:27-5.3 Fire partitions and doors

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

(c) No entrance door to a rooming unit shall consist either in whole or in part of glass[,]**or** of louvers. **No entrance door to a rooming unit in a building that is not fully sprinklered shall consist either in whole or in part of**[,or] hollow core wood, or of wood panels having a thickness of less than 1/2 inch unless such panels are covered with a fire retardant material so as to be flush with the door stiles and rails; there shall be no voids behind such fire retardant covering.

1. Where doors must be replaced, they shall, **except in a fully sprinklered building**, be replaced with solid wood core doors or 20 minute rated fire doors.

2. (No change.)

EDUCATION

(b)

STATE BOARD OF EDUCATION

Business Services; Public School Contracts Competitive Bidding

Proposed Amendment: N.J.A.C. 6:20-8.1

Authorized By: New Jersey State Board of Education, Saul Cooperman, Secretary.
Authority: N.J.S.A. 18A:4-15 and 18A:18A-37.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lorraine L. Colavita
Executive Assistant for Administrative Practice and Procedure
Department of Education
225 West State Street
Trenton, New Jersey 08625

At the close of the period for comments, the State Board of Education may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these amendments, a notice of the

adoption shall be published in the Register. The adoption shall become effective upon publication of that notice in the Register.

This proposal is known as PRN 1984-87.

The agency proposal follows:

Summary

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:18A-37, proposes to amend N.J.A.C. 6:20-8.1 of the rules concerning public school contracts.

The amendments are proposed to amend the rules code as the result of the enactment of Chapter 171, Laws of 1983 which amended the "Public School Contracts Law" by raising the limit for solicitation of quotations from $500.00 to 20 percent of the bid threshold. The current limit is $1,500 which is 20 percent of the current $7,500 bid threshold.

Social Impact

The proposed amendments merely bring the code into conformance with the requirements of the law as it now reads. The law now permits district boards of education to purchase materials or supplies or to contract for the performance of any work without soliciting quotations whenever the cost or price is less than 20 percent of the bid threshold. This increased limit makes it easier for district boards of education to purchase or contract for less expensive items.

Economic Impact

The proposed amendments have no direct economic impact on district boards of education since they merely bring the code into conformance with the now existing law. The law had a positive economic impact on district boards of education by reducing the cost associated with soliciting quotations for items between $500.00 and 20 percent of the bid threshold.

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

6:20-8.1 Restricting the avoidance of competitive bidding for extraordinary, unspecifiable services

(a) (No change.)

(b) Any purchase, contract or agreement of the character described in N.J.S.A. 18A:18A-4, may be made, negotiated or awarded by a **district** board of education by resolution at a public meeting without public advertising for bids and bidding if the subject matter thereof consists of extraordinary, unspecified services. This exception shall be construed narrowly in favor of open competitive bidding where possible and in each instance of such exception, the **district** board of education is required to state the supporting reasons for its action in the resolution awarding the contract. The use of such exception shall be further limited by the following conditions:

1.-5. (No change.)

6. Before awarding a contract under the EUS provisions, a designated school official of the **district** board of education must file a certificate with the **district** board of education clearly describing the nature of the work to be done, stating it is not reasonably possible to write specifications, describing the informal solicitation of quotations [if the cost is in excess of $500.00] (if quotes not sought, or lowest responsible price is not observed explain this also) and describing in detail why the contract meets the provisions of the statute and these [regulations] **rules**. A mere recitation of the language in the statute shall not be sufficient for this purpose. The certification must be kept with the resolution awarding the contract in the **district** board of education office;

7. If the estimated cost [of] **or** price exceeds [$500.00] **the minimum amount, which is calculated semi-annually,** quotations as to the cost or price must be solicited by the **district** board of education whenever practicable, and the contract shall be made on the basis of the lowest responsible quotation, which quotation is most advantageous to the **district** board of education, price and other factors considered;

8.-9. (No change.)

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

(a)

STATE BOARD OF EDUCATION

School Health Services Procedures

Proposed Readoption with Amendments: N.J.A.C. 6:29-4

Authorized By: New Jersey State Board of Education, Saul Cooperman, Secretary.

Authority: N.J.S.A. 18A:4-15, 18A:16-2, 18A:40-3 and 18A:40-4.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lorraine L. Colavita
Executive Assistant for Administrative Practice and Procedure
Department of Education
225 West State Street
Trenton, New Jersey 08625

At the close of the period for comments, the State Board of Education may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1984-88.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of the Executive Order 66, 1978, the State Board of Education proposes to readopt with amendments N.J.A.C. 6:29-4.1 through 6:29-4.5 concerning school health services procedures. The rules will expire July 1, 1984.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15, 18A:16-2, 18A:40-3 and 18A:40-4, is proposing amendments reflecting the progress and changes in school health services for children in New Jersey.

The tuberculosis testing section of the code 6:29-4.2 was amended in August 1977, April 1979, and March 1982. In 1970 the department published the School Health Services Guidelines. These guidelines were revised in 1980 in an effort to help local districts to develop, evaluate and improve school health services. The procedures contained in these guidelines relate to the school health services procedures and have been reviewed by medical specialists, school physicians, school nurses, pediatricians, college faculty members, New Jersey Department of Education and Department of Health staff, and others interested in improving school health services.

The proposed amendments continue to reflect the progress in medicine and health and the changes in school health services. The current rules were adopted to protect the health and well-being of school age children. The rules are necessary due to State statute 18A:4-15, 18A:16-2, 18A:40-3 and 18A:40-4 which was amended in 1955, 1969, 1978, and 1980 to provide up to date modern health services for the children reflecting the continued progress and clarification of the school health services. The past effectiveness of the rules has been very positive based on the school health services provided in the areas of dental health, tuberculosis testing, communicable disease and record keeping. The State Board of Education proposes to readopt these regulations to continue providing the school health services mandated by law. Proposed amendments would strengthen requirements for medical assessment prior to readmission of children with communicable disease, continue the Mantoux testing for tuberculosis and require that a pupil's original health record is transferred from one district to another.

Notices were distributed to affected interested persons and organizations regarding the intent of the Department of Education to amend the school health services procedures.

The following organizations and individuals were sent draft copies for comments and review:

New Jersey State Department of Health
New Jersey State School Nurses Association
Senior Staff of the State Department of Education
County Superintendents of Schools
New Jersey Association of School Administrators
New Jersey Association of School Business Officials
New Jersey Education Association
New Jersey Principals and Supervisors Association
New Jersey School Boards Association

Comments were received, reviewed, and included for consideration in amendments. The proposed amendments are an effort to continue support for the needed services for children, while eliminating duplication of efforts. The rules have been stated more clearly, deleting repetitive terminology and language.

The overall intent of amending the rules is not to alter the existing code, but to clarify it reflecting changes in professional practice. A review of the proposed amendments is as follows:

N.J.A.C. 6:29-4.1, Dental examination

This section addresses the duties of the dentist, the dental assistant, and the nurse assigned to the dental service. It specifies that no child will undergo treatment against his or her will. The amendments eliminate special forms and dental records, which will result in financial savings for district boards of education. The changes eliminate the reporting of dental health data to the Commissioner of Education.

N.J.A.C. 6:29-4.2, Testing for tuberculosis infection

This section requires that the Mantoux intradermal tuberculin test be the only skin test used to detect evidence of tuberculosis infection in pupils and employees.

The section specifies that the pupils to be tested are in grades and schools specified by the State Department of Health based upon the high incidence of tuberculosis or reactor rates in the communities or population groups concerned. No changes are proposed in this section.

N.J.A.C. 6:29-4.3, Communicable disease

This section describes the requirements regarding pupil's readmission to school, following a communicable disease. Each district board of education will be required to establish and implement a readmission policy. The procedures allow a private physician, school physician, or the school nurse, under the direction of the school physician, to readmit pupils. The readmission provisions would be beneficial to the school children in New Jersey, eliminating expenses that many families are unable to afford.

N.J.A.C. 6:29-4.4, Records and reports

This section explains the transfer of records and clearly states that the original record is to be transferred. This section also addresses the importance of simplifying and reducing the amount of paperwork. One technical change was made in this section.

N.J.A.C. 6:29-4.5, Nursing services

This section requires all nurses in the public schools to comply with the rules of district boards of education. One technical change was made in this section.

Social Impact

The present rule of the School Health Services Procedures have been effective in the past. The present rules are necessary to protect and promote the health of all students uniformly throughout New Jersey.

Current code requires a dental form not now in active use. The amendment recommends the elimination of the dental form and allows for recording dental information on the pupil's health record.

During the past five years, there has been a decrease in communicable diseases due to the immunization requirements. The proposed amendment does not alter the intent of the existing code, but it clarifies the process for readmission of pupils following communicable diseases. It mandates a readmission policy that permits the school medical inspector or the school nurse, as well as a private physician, to readmit the pupil to school. The amendment will continue to prevent and control the spread of communicable diseases, eliminate excessive absenteeism, and enhance the well-being of all pupils, through continuous delivery of health services and maintenance of health records.

The proposed amendment on transferring health records clearly states that only the original health record shall be transferred. An original record allows for a more uniform, efficient accumulation of pertinent health data. The health record ensures that the district will receive factual information concerning the health status of the pupil, which may affect his educational potential. The proposed amendments will have a significant and beneficial social impact on district boards of education, individual pupils, and the entire school staff, as well as the Department of Education.

Economic Impact

The amended rules will not have a significant economic impact in terms of increasing State or local expenditures. It will, however, eliminate the duplication of record-keeping, and the producing of unnecessary forms, which in itself will become cost-effective at both the State and local levels. The readmission of pupils to school with disease free certification will reduce absenteeism and may alleviate medical costs for families.

The amendment specifying that a pupil's original health record be transferred will reduce the amount of paperwork required by individual district boards of education. This process will result in financial savings for the districts and the State Department of Education.

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

6:29-4.1 Dental examination

(a) The school dentist shall direct the professional duties or activities of the dental assistant or of the nurse assigned to the dental service.

(b) Reparative dentistry shall be limited to pupils whose parents indicate consent to such treatment [upon a form provided for the purpose by the board of education and filed with the school principal, but]. **In** no case shall a pupil be required to undergo treatment against his **or her** will.

(c) Each school dentist or any dentist examining or treating pupils with the approval of the **district** board of education shall record the results of examinations, treatment administered, and recommendations upon the health records of the pupils [or upon dental health records provided for the purpose by the local board of education and recommended by the Commissioner of Education. In all other respects the rules relating to medical examination forms shall apply.]

(d) The results of dental examinations or of treatment administered or recommended shall be reported to parents [upon forms provided for the purpose by the board of education].

[(e) Board of education shall submit reports of the dental health service to the Commissioner of Education from time to time and in the form recommended by the Commissioner of Education.]

6:29-4.2 Testing for tuberculosis infection

(No change.)

6:29-4.3 Communicable disease

(a) The rules of a **district** board of education pertaining to the prevention and control of communicable disease, **including a readmission policy,** in schools shall be distributed to all principals, medical inspectors, **and** nurses. [and] **The** rules shall be explained by the health service staff to the entire school personnel at the beginning of each school year.

(b) Any pupil who appears to be ill or who is suspected of having a communicable disease shall be excluded from school or isolated at school to await instructions from or the arrival of an adult member of his **or her** family, the medical inspector or the **school** nurse.

(c) Any pupil retained at home or excluded from school by reason of having or suspected of having communicable disease shall not be readmitted to his **or her** classroom until he **or she** presents [a] written [certification of good health from a regularly] **evidence of being free of communicable disease. Such evidence may be by a** qualified physician, **the medical inspector or the school nurse** who has examined [or attended him] **the pupil.**

(d) The rules of the local board of health or the State Department of Health pertaining to communicable diseases among school children shall apply in determining periods of incubation, communicability, [and] quarantine, and **reporting** [in excluding or readmitting pupils known to have had or suspected of having had contact with cases of communicable diseases].

[(e) Medical inspectors shall comply with the regulations of the State Department of Health concerning the reporting of communicable diseases.]

6:29-4.4 Record and reports

(a) Each medical inspector shall record the results of examinations upon a record form recommended by the Commissioner of Education. Such form shall be kept in a permanent file and shall be the property of the **district** board of education and shall be preserved. The [individual] **original** health record shall be forwarded with other school records of pupils who transfer to another school district. If a child leaves school for any other reason, the record shall remain the property of the school.

(b) The results of health examinations or of emergency treatment administered or recommended by the medical inspector shall be reported to parents [upon forms provided for the purpose by the board of education].

[(c) Board of education shall submit reports of medical examinations to the Commissioner of Education at times and in the form prescribed by the Commissioner.]

[(d) Each school dentist or any dentist examining or treating pupils with the approval of the board of education shall record the results of examinations, treatment administered, and recommendations upon the health records of the pupils or upon dental health records provided for the purpose by the local board of education and recommended by the Commissioner of Education. In all other respects the rules relating to medical examination forms shall apply.]

[(e) The results of dental examinations or of treatment administered or recommended shall be reported to parents upon forms provided for the purpose by the board of education.]

[(f) Board of education shall submit reports of the dental health service to the Commissioner of Education from time to time and in the form recommended by the Commissioner of Education.]

6:29-4.5 Nursing services

All nurses engaged in any capacity in the public schools shall comply with the rules and regulations of the [local] **district** board or boards of education having jurisdiction, and shall be subject to the administrative authority of such school and school districts.

(a)

STATE BOARD OF EDUCATION

Physical Education and Athletics Personnel and Procedures

Proposed Readoption with Amendments: N.J.A.C. 6:29-6

Authorized By: New Jersey State Board of Education, Saul Cooperman, Secretary.
Authority: N.J.S.A. 18A:4-15, 18A:6-38, 18A:35-5 and 18A:35-7.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquires about submissions and responses, should be addressed to:

Lorraine L. Colavita
Executive Assistant for Administrative Practice and Procedure
Department of Education
225 West State Street
Trenton, New Jersey 08625

At the close of the period for comments, the State Board of Education may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1984-89.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66, 1978, the State Board of Education proposes to readopt with amendments N.J.A.C. 6:29-6.1 through 6:29-6.4, concerning physical education and athletic personnel and procedures. The current rules will expire on May 1, 1984.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15, 18A:6-38, 18A:35-5 and 18A:35-7 is proposing changes reflecting the advances in sports medicine and reinforcing the granting of graduation credits in physical education through alternative, school level approved, activity.

In 1914, the New Jersey Legislature passed legislation requiring four years of physical education participation as a prerequisite for graduation. The Department of Education adopted rules requiring school-wide physical examinations, ultimately encompassing examinations as a prerequisite for participation in school endorsed or sponsored athletics. In March 1977, December 1982 and October 1983, amendments were adopted to N.J.A.C. 6:29-6.3, athletics personnel. In May 1979, amendments were adopted to N.J.A.C. 6:29-6.4, athletics procedures.

In February 1967, the Department developed recommendations for school level medical examinations. A significant portion of these recommended guidelines dealt with physical examinations to ascertain a pupil's fitness to participate in athletics. These recommendations were subsequently revised in 1970 and 1980, and published within the Department's **School Health Services Guidelines**. The Department is currently working with the Medical Society of New Jersey's Committee on the Medical Aspects of School Sports, and the New Jersey State Interscholastic Athletic Association to revise existing guidelines and recommend the elements of a comprehensive physical examination necessary before a pupil's participation in athletics. The intent of these guidelines is to improve and standardize the form of examination administered statewide.

The past effectiveness of the rules has been very positive, based on the information reported to the Department. The rules have provided guidance to district boards of education in the procedures necessary for safely conducting supervised physical education classes to pupils, and set the perimeters for granting high school graduation credit for alternative physical education activity. Additionally, the rules have provided a medical screening process for those pupils wishing to participate in school sponsored athletic competition.

The rules have been amended to clarify the eligibility requirements to receive graduation credit in physical education through alternative activity; streamline the processes for hiring athletic personnel to coach interscholastic sports; and increase the safety of those pupils participating in athletic competition. The overall intentions of the proposed amendments are to protect the decision making rules of district boards of education, clarify the hiring of coaches, and protect students participating in sports competition.

The Department of Education, in its effort to initiate concerns and comments, submitted this proposal to the following individuals and associations for review and evaluation:

Senior Staff of the State Department of Education
County Superintendent of Schools
Medical Society of New Jersey
Committee on the Medical Aspects of School Sports
New Jersey Association of School Administrators
New Jersey Association of School Business Officials
New Jersey Education Association
New Jersey Principals and Supervisors Association
New Jersey School Boards Association
New Jersey State Interscholastic Athletics Association

As a result of this evaluation and review, the following amendments are proposed. A review of the proposed amendments follows:

N.J.A.C. 6:29-6.1, Physical education personnel

This section specifies that in schools not having the services of a certificated physical education teacher, the responsibility for the program of activities and instruction shall be that of each teacher or delegated to one or more teachers designated by the superintendent of schools. The section additionally specifies that no person not certified as a teacher and not in the employ of the district board of education shall be permitted to organize pupils during school time for the purposes of instruction, conducting games, events or contests in physical education. Several technical corrections are proposed in addition to deleting "or coaching" and "or athletics" to bring this section into conformity with N.J.A.C. 6:29-6.3.

N.J.A.C. 6:29-6.2, Physical education procedures

This section specifies the foundation program in physical education. It allows district boards of education the discretion to grant graduation credits for the successful completion of basic training in the military and alternative programs of physical education activities. The section also permits district boards of education to excuse members of an interscholastic athletic team from their physical education class on the days that regular interscholastic games are scheduled.

This section specifies that to be eligible to receive graduation credit in physical education through alternative activities a pupil must:

1. Be enrolled in a four-year or senior high school.
2. Demonstrate that the activity will provide development equivalent to that provided by the regular physical education program.

Additionally, this section requires that if an alternative program leaves unscheduled time during the school day that the pupil use the time for scholastic purposes.

Several technical corrections are proposed in addition to language clarifying a district board of education's option to grant graduation credit in physical education through alternative programming.

N.J.A.C. 6:29-6.3, Athletics personnel

This section specifies the process for hiring athletic personnel to coach interscholastic athletics. Districts must advertise once, as widely as possible, and screen all of the applicants at one time. After advertising, if the district is still unable to secure the services of a certified person, an applicant possessing a county substitute certificate could be employed, if all of the applicable conditions in the Administrative Code are met.

This section was amended by the State Board of Education at its September 1983 meeting. Therefore, there are no changes included in the text of this proposal.

N.J.A.C. 6:29-6.4, Athletics procedures

This section specifies that the superintendent and district board of education annually approve any public school competitive contests and assure adequate safeguards for participants and spectators at facilities not owned by the district board of education or municipality.

This section also requires that, as a precondition for participation on a school athletic squad, that a pupil be given a comprehensive physical examination not more than 30 days prior to the first practice session. If the pupil participates in additional sports, and has not subsequently sustained any serious injury or illness, succeeding physical assessments may be of a more general nature. The parent or legal guardian of the participating pupil shall receive notification of the examination and its results. As an additional prerequisite to participation, a pupil must sign a form requesting to be considered a candidate for a place on the school team, the form must also include acknowledgment of the possibility of physical hazards and must be signed by at least one parent or legal guardian.

The proposed changes in this section were made to increase the safety of those pupils participating in athletics and assure parental consent to participation and acknowledgment of the physical hazards present in sports.

Social Impact

The proposed amendments do not alter the intent of the existing rules. They are written to expand a pupil's option in acquiring graduation credits in physical education through alternative programs in athletics and insure his or her fitness to participate in athletic competition. The proposal clarifies the department's intent that parents or legal guardians be made aware of the results of the physical examination and sign a statement attesting to their consent to the pupil participating in competitive athletic contests and their knowledge of the physical hazards present.

Prior to the promulgation of these rules, there was no uniform methodology for granting high school graduation credit in physical education by alternative, district level approved programming. In addition, there was no statewide requirement for a physical examination prior to a pupil participating in athletics. Therefore, each district board of education, in adopting policies and procedures governing athletic procedures and personnel, did not have the guidance of the State Board of Education. The social conditions which existed at the time these rules were adopted have changed, but the public's expectations that local district boards of education provide pupils with safe, adequately supervised or coached, physical education activities have not.

There would be intense public concern over the safeguards afforded pupils participating in physical education activities if these rules were not readopted. The rules seek to clarify and insure school based programs that are well thought out and consistant with the goals of a thorough and efficient public education.

Economic Impact

There will be no significant additional costs to school districts in the state resulting from the proposed amendments, since they deal primarily with adjustments to an existing administrative process. The proposed amendments streamline and update, but do not alter the intent or process of, regulations which govern the granting of high school graduation credit in physical education through alternative physical education activity and the hiring of individuals to coach interscholastic competition. The economic conditions which affect these rules have not changed since prior amendments were adopted.

For those districts currently administering a comprehensive physical examination prior to a pupil's participation in athletics, there will be no direct or indirect economic impact. For those districts that are currently providing medical examinations that cannot be considered comprehensive, there will be a financial impact that will vary, depending on the individual district's contractual arrangements with medical authorities contracted to provide physical assessments. Since the elements of contractual arrangements vary widely across the State, it is not possible to accurately put a cost factor on this proposed amendment to the code. It is intended, however, that any additional cost will be compensated by the increased safeguards afforded to pupils participating in school sponsored athletics.

All other proposed amendments to this subchapter will have no direct or indirect economic impact on either the State or local school districts. These clarifying amendments were made to protect the policy making role of district boards of education and bring the existing rule into conformity with the changes in other subchapters.

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

6:29-6.1 Physical education personnel

(a) (No change.)

(b) [No] **Any** person not certified as a teacher and not in the employ of a **district** board of education shall be permitted to organize public school pupils during school time or during any recess in the school day for purposes of instruction; [or coaching] or for conducting games, events or [contest] **contests** in physical education [or athletics].

6:29-6.2 Physical education procedures

(a) The foundation program in physical education for the public schools of this State shall be the program as provided in this chapter. **District** [B]boards of education may, at their discretion, accept the successful completion of basic training in the military or naval service of the United States or United States Merchant Marine in full satisfaction of the physical training requirements of N.J.S.A. 18A:35-7.

(b) A **district** board of education may give approval for members of an interscholastic athletic team of a school to be excused from physical activity in their physical education class on the days that a regular interscholastic game is scheduled. This approval applies only to those members listed for participation in the game.

(c) **District** [B]boards of education shall provide by regular appropriations suitable and adequate equipment for carrying out the program for physical education activities.

(d) A **district** board of education may adopt a policy to permit pupils to receive graduation credit in physical education [through] **while participating in** interscholastic team activity, [or] alternative programs of athletics, **or alternative programs of physical education activities** that meet the requirements of N.J.A.C. [6:27-1.4] **6:8-4.2** and are consistent with local district's physical education program goals and instructional objectives. Health and safety requirements must be satisfied, pursuant to the provisions of N.J.S.A. 18A:35-5. Any policy adopted under this authority shall include, but need not be limited to, the following provisions:

1. The principal, **in consultation with an appropriately certificated staff member(s),** shall, upon application by the pupil and parents, or guardian, determine the appropriateness of the interscholastic activity, [or] alternative athletic program, **or physical education activity**. [This determination shall be made in consultation with an appropriately certificated staff member.]

2. To be eligible **to receive graduation credit in physical education through interscholastic team activity, alternative programs of athletics, or alternative programs of physical education activities** the pupil must:

i. Be enrolled in a four-year or senior high school;

ii. Demonstrate that the interscholastic activity or alternative program will provide activity and development equivalent to that provided by the physical education program.

3. Credit and grading for the alternative program shall be given through the administrative procedures of the local physical education program.

4. The permanent school records shall indicate the credits granted for physical education through the alternative program.

5. If the alternate program leaves unscheduled time during the school day, the pupil shall use the time for scholastic purposes.

6:29-6.3 Athletics personnel

(No change in text but see 14 N.J.R. 1010(a), 15 N.J.R. 84(c), and 15 N.J.R. 1152(b), 15 N.J.R. 1860(c)).

6:29-6.4 Athletics procedures

(a) The program of activities or sports to be employed by any public school in competitive contests, games or events or in exhibitions with individual pupils or teams of one or more schools of the same district, or of other districts, shall be approved annually by the superintendent and by the **district** board of education.

(b) In cases in which the athletic facilities are not owned by the municipality or the **district** board of education, the **district** board of education shall require that adequate safeguards to players and spectators be provided by the owner. The field, room, court, track, stands and surrounding premises shall be kept in good condition and free from hazards.

(c) Good physical condition, freedom from injury and full recovery from illness shall be prerequisites to participation in athletics, whether in practice or in competition. Each candidate for a place on a school athletic squad or team shall be given a [complete] **comprehensive** physical examination by the medical inspector or designated team doctor **no more than 30 days** prior to the first practice session. **If a pupil participates in more than one sport, the initial physical examination must be comprehensive. If the pupil has not sustained any serious injuries or illnesses prior to participation in another sport, the succeeding physical assessment may be of a more general nature. Each candidate must undergo at least one comprehensive physical examination per school year.** [He] **The parent or legal guardian** shall receive a certificate or record card signed by the medical inspector or team doctor testifying to the candidate's physical fitness or lack of physical fitness for the sport he **or she** has selected. The reasons [therefor and] **for** the medical inspector's or team doctor's approval or disapproval for the candidate's participation shall be registered thereon. The health findings of the medical examination for participation in athletics shall be made a part of the general medical examination record.

(d) A pupil representing his **or her** school in interscholastic athletic competition shall sign a form furnished by the **district** board of education, the wording of which shall embody a request to be enrolled as a candidate for a place on a school team in a specified sport. [He] **The parent or legal guardian** must execute an acknowledgment that physical hazards may be encountered.

(e) Every candidate for a place on the school athletic squad or team shall submit a form furnished by the **district** board of education conveying **the** consent [to] **of** his **or her parent or legal guardian to** [participation] **participate**. [Such form shall be signed by one parent or the legal guardian.]

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WASTE MANAGEMENT
DIVISION OF WATER RESOURCES

Hazardous Waste Regulations

Proposed Amendments: N.J.A.C. 7:14A-4.6, 7:26-7.4, 7.6, 8.15, 9.1, 9.4, 9.6, 10.3, and 12.1

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3, 13:1E-6, and 58:10A-1 et seq.
DEP Docket No. 002-84-01.

Interested persons may submit in writing, data, views or arguments relevant to this proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Susan Savoca
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

At the close of the period for comments, the Department of Environmental Protection thereafter may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-84.

The agency proposal follows:

Summary

The Department of Environmental Protection is proposing amendments to its hazardous waste rules to achieve equivalence with the Federal counterparts in order to obtain Federal authorization to regulate hazardous waste in New Jersey. To receive such authorization, the State's rules must be equivalent to or more stringent than their Federal counterparts. Although the majority of the State rules meet this standard, the Department has identified minor modifications that must be made in order for the Department's hazardous waste management program to be acceptable to the United Stated Environmental Protection Agency. A summary of the proposal follows:

N.J.A.C. 7:26-7.4(a)7 and (a)8. The proposal amends these paragraphs to require generators to send three copies of manifests to the facility for rail or bulk waste shipments. See 40 C.F.R. 262.23(c) and (d).

N.J.A.C. 7:26-7.4(h)1 and 9.4(c)2v. The proposal corrects the Department telephone numbers for certain reporting purposes.

N.J.A.C. 7:26-7.4(i). The proposal adds a new subsection in order to grant authority to the Department to require generators to furnish additional reports concerning hazardous waste. See 40 C.F.R. 262.43.

N.J.A.C. 7:26-7.6. The proposal adds the requirement that the United States Environmental Protection Agency must be notified in advance, as well as the Department, of importation of hazardous waste from a foreign country. See 40 C.F.R. 264.12(a) and 265.12(a).

N.J.A.C. 7:26-8.15(e). The proposal will correct an error in the listing of a particular hazardous waste. See 40 C.F.R. 261.33.

N.J.A.C. 7:26-9.4(i)9 and 9.6(f)6. The proposal requires that a facility owner or operator must document in the operating record refusals by various local agencies, contractors and suppliers to enter into arrangements regarding preparedness for and prevention of environmental hazards at the facility. See 40 C.F.R. 264.37(b) and 265.37(b).

In addition, the Department proposes to make the following minor modifications:

N.J.A.C. 7:26-9.1(c)9i and 12.1(b)7i. The proposal amends these subparagraphs to make them consistent with the definition of hazardous waste incinerator found in N.J.A.C. 7:26-1.4. This change does not include the United States Environmental Protection Agency's amendments of June 24, 1982 to its incinerator rules. The State has agreed to further evaluate the Federal amendments to determine which, if any, will be incorporated into the State rules.

N.J.A.C. 7:26-9.1(c)12. The proposal adds a new paragraph in order to cross reference an IWMF exemption that presently exists in N.J.A.C. 7:26-12.1 and N.J.A.C. 7:14A-4.6.

N.J.A.C. 7:26-10.3(b). The proposal amends this subsection to cross reference N.J.A.C. 7:26-13, the siting criteria for new major commercial hazardous waste facilities.

Finally, the Department proposes to amend N.J.A.C. 7:14A-4.6(a)2 to clarify the scope and applicability of the standards for wastewater treatment units subject to permit-by-rule by indicating that the annual reporting requirements of N.J.A.C. 7:26-7.6(f) are not applicable to such wastewater treatment units. The reason for this proposed change is to avoid duplication of reports submitted to the Department. N.J.A.C. 7:26-7.6(f)2 is also proposed to be amended to reflect the change to N.J.A.C. 7:14A-4.6(a)2.

Social Impact

Consistency between the Federal and State hazardous waste management programs will facilitate compliance with the State rules by removing the need for the regulated community to comply with two differing sets of regulations.

Economic Impact

The regulated community must presently meet the regulatory requirements contained in this proposal at the Federal level and, therefore, no further economic burden will result.

Environmental Impact

The proposed amendments will advance the protection of the environment by requiring that the regulated industry comply with all the requirements now contained in the Federal regulations.

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

7:14A-4.6 Standards for wastewater treatment units subject to a permit-by-rule

(a) Purpose, scope, and applicability:

1. (No change.)

2. The standards in this part apply, in lieu of the requirements of **N.J.A.C. 7:26-7.6(f) and** N.J.A.C. 7:26-9 through 11 to owners and operators of eligible industrial waste management facilities.

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

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C [7:26-8.1 et seq.] **7:26-8** are as follows:

1.-6. (No change.)

7. For shipment of hazardous waste within the United States solely by railroad or solely by water (bulk shipments only), the generator must send **three copies of** the approved manifest form dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each hauler.

8. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send **at least three copies of** the approved manifest form dated and signed in accordance with this section to:

i.-iii. (No change.)

(b)-(g) (No change.)

(h) Exception reporting requirements are as follows:

1. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial hauler must contact the hauler and/or the owner or operator of the designated facility to determine the status of the hazardous waste and the Department at [609-292-9877] **609-292-8341** to inform the Department of the situation.

2.-3. (No change.)

(i) The Department, as it deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes identified or listed in N.J.A.C. 7:26-8.

7:26-7.6 Hazardous waste facility operator responsibilities

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

(c) When importing hazardous waste from a foreign country, a person must meet all requirements of this subchapter for the manifest except that:

1.-2. (No change.)

3. Notice in writing shall be given to the Department **and to the Regional Administrator for the United States Environmental Protection Agency (Region II)** at least four weeks in advance of the date that the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(d)-(e) (No change.)

(f) Reporting and recordkeeping requirements are as follows:

1. (No change.)

2. The owner or operator must prepare and submit two copies of an annual report to the Department by March 1 of each year, **except for owners and operators of industrial waste management facilities which are subject to N.J.A.C. 7:14A-4.6.** The report must include:

i.-ix. (No change.)

3. (No change.)

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded.

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

(e) The following commercial chemical products or manufacturing chemical intermediates, referred to in (a) through (d) [of this section] **above**, are identified as acute hazardous waste (H). These wastes and their corresponding EPA Hazardous Waste Numbers are:

. . .

P060	[Hexachlorohexathydro-endo,endo dimethanonaphthalene] **Hexachlorohexahydro-exo,exo-dimethanonaphthalene**

. . .

(f) (No change).

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-8. (No change.)

9. The owner or operator of a device burning a hazardous waste, provided the following conditions are met:

i. The wastes to be burned in the device are **to be beneficially used or reused as a fuel for the purpose of recovering usable energy and are** limited to on-site wastes or specific wastes between intra-company and intra-state facilities under the control of the same person. Said wastes to be burned pursuant to this authorization shall be fully classified in accordance with the requirements of N.J.A.C. 7:26-8, and shipped using New Jersey DEP manifests in accordance with the requirements of N.J.A.C 7:26-7.

ii.-vii. (No change.)

10.-11. (No change.)

12. The owner or operator of an industrial waste management facility (IWMF) constructed and operated in accordance with N.J.A.C. 7:14A-4.

(d) (No change.).

7:26-9.4 General facility standards

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

(c) The owner or operator shall comply with the requirements of this subsection for unauthorized waste shipments.

1. (No change.)

2. An owner or operator, if offered hazardous waste of a type which the facility is not authorized to handle, shall:

i.-iv. (No change.)

v. Telephone the Department, at [609-292-9877] **609-292-8341**, and report the unauthorized waste shipment; and

vi. (No change.)

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

(i) The owner or operator shall keep a written operating record at the facility in which the following information shall be recorded, as it becomes available, and maintained until closure of the facility:

1.-8. (No change.)

9. Declinations by authorities, in accordance with N.J.A.C. 7:26-9.6(f).

(j)-(o) (No change.)

7:26-9.6 Preparedness and prevention
(a)-(e) (No change.)
(f) The owner or operator shall make the following arrangements, in addition to the requirements [at 9.4(g)8] **of N.J.A.C. 7:26-9.4(g)8**, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations:
1.-5. (No change.)
6. Where the authorities identified in (f)1 through 5, above, decline to enter into such arrangements, the owner or operator must document the refusal in the operating record required by N.J.A.C. 7:26-9.4(i).

7:26:10.3 Location standards for new hazardous waste facilities
(a) (No change.)
(b) [Additional regulations concerning the siting of all hazardous waste facilities, including those covered by N.J.S.A. 13:1E-49, the Major Hazardous Waste Facilities Siting Act, will be published in the New Jersey Administrative Code in 1983.] **Additional regulations concerning hazardous waste facilities subject to N.J.S.A. 13:1E-49, the Major Hazardous Waste Facilities Siting Act, are set forth in N.J.A.C. 7:26-13.**

7:26-12.1 Scope and applicability
(a) (No change.)
(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct to operate the following hazardous waste facilities:
1.-6. (No change.)
7. The owner or operator of a device burning a hazardous waste, provided the following conditions are met (see N.J.A.C. 7:26-9.1(c)9):
i. The wastes to be burned in the device are **to be beneficially used or reused as a fuel for the purpose of recovering useable energy and are** limited to on-site wastes or specific wastes between intra-company and intra-[site]**state** facilities under the control of the same person. Said waste to be burned pursuant to this authorization shall be fully classified in accordance with the requirements of N.J.A.C. 7:26-8, and shipped using New Jersey DEP manifests in accordance with the requirements of N.J.A.C. 7:26-7.
ii.-vii. (No change.)
8.-10. (No change.)

(a)

DIVISION OF WATER RESOURCES

Emergency Water Supply Allocation Plan Rules

Proposed New Rule: N.J.A.C. 7:19A

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 58:1A-1 et seq; specifically 58:1A-4 and 5.
DEP Docket No. 004-84-01.

Public hearings concerning this rule will be held at the following times and locations:

March 27, 1984
10:00 A.M.
Wayne Township Municipal Building,
Council Chambers
475 Valley Road
Wayne, New Jersey

March 28, 1984
7:00 P.M.
Freehold Township Municipal Building
Shank and Stillwell Corner Rd.
Freehold Township, New Jersey

March 29, 1984
10:00 A.M.
Haddonfield Boro Municipal Building
292 Kings Highway
Haddonfield, New Jersey

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 29, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William Whipple, Administrator
Water Supply and Watershed
Management Administration
Division of Water Resources
CN 029
Trenton, New Jersey 08625

At the close of the comment period, the Department of Environmental Protection may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-82.

The agency proposal follows:

Summary

The proposed new rules were made necessary by the severe 1980-81 drought. One of the major purposes of these rules is to provide the Governor and the Commissioner of the Department of Environmental Protection with an improved ability to manage the waters of the State during water emergencies. These powers are intended to supplement, not supplant or limit any emergency powers vested in the Governor or the Commissioner.

The proposed new rules provide for the imposition of water use restrictions during a declared state of water emergency. The Commissioner shall be empowered to order the reduction by a specified amount of the use of any water supply, to require the use of an alternate water supply, to require emergency interconnections and the transfer of water between systems, to order the cessation of the use of any water supply, to require the alteration of passing flow requirements, and to order the imposition of bans on adjustable water uses.

The proposed new rules create a priority system for the order in which restrictions should be imposed during water emergencies. The prioritized allocation of water supplies is divided by phases denoting the severity of the water emergency.

The proposed new rules provide for the establishment of a Water Emergency Task Force. This body shall consist of inter-agency representatives whose purpose it is to assist the

Commissioner in the formulation of policy and render decisions during a water emergency.

The proposed new rules also establish procedures to obtain relief from Department orders. These include procedures for appealing Department orders, for selective curtailment of water to large industrial users, and for hardship exemptions for water rationing and ban on adjustable water uses orders.

Finally, the proposed new rules also establish procedures for setting rates for mandated transfers of water. A process to resolve conflicts regarding same is also provided.

Social Impact

The proposed new rules will have a net positive social impact, as it will improve the management of the State's water supplies during a water emergency period. More importantly, the rules will help ensure an adequate supply of water for citizens of the State during water supply and/or water quality emergencies of a dimension which significantly impact water supply, as well as to protect the public health, safety and welfare in all or any part of the State in which a water emergency exists. The proposed rules will also foster an increased awareness on the public's part of the urgency of the situation and bring about needed water conservation.

Economic Impact

The proposed new rules will have a net positive economic impact. They are designed to minimize impacts on business and labor as a result of a water crisis. The proposed rules are designed to reduce the overall impact of a drought or other water emergency on the economic wellbeing of the State. Failure to properly manage and conserve our water resources could result in an inability to supply water to all water users, thereby causing a major loss of jobs. The conservation stimulated by these rules will limit and reduce these and other economic dislocations.

Only in the advanced stages of the Emergency Water Supply Allocation Plan and after other conservation efforts prove insufficient, would economic activities have to be seriously effected by the stringest conservation called for under these rules. This type of restriction shall initially be done on a selective basis. In choosing those industrial users whose water supply shall be curtailed consideration shall be given to the volume of water usage, the number of employees, and other pertinent data. Such selective curtailment would be critical in avoiding massive industrial closings because of exhausted water supplies as the water shortage continued.

Environmental Impact

The proposed new rules seek to make the most efficient use of water supply during a period of water emergency. The Department seeks to minimize stress on water supply systems by alteration of passing flow requirements, reductions in demand on water supplies, and the transfer of water from areas of surplus to areas of need. Ultimately, it will conserve water for the most essential uses and minimize the effect of the water emergency on the State as a whole.

Full text of the proposed new rule follows.

CHAPTER 19A

EMERGENCY WATER SUPPLY ALLOCATION PLAN REGULATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

7:19-1.1 Scope and authority

This chapter, adopted pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., constitutes the rules governing the management of the waters of the State during water supply emergencies, and water quality emergencies severe enough to constitute a water supply emergency. This chapter partially implements the emergency provisions under the Act, however, it in no way limits the emergency powers now or hereafter vested in the Governor or the Commissioner.

7:19-1.2 Construction

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions, and to effectuate the purposes of the Act.

(b) The Commissioner may amend, repeal or rescind this chapter from time to time to conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:19-1.3 Purpose

(a) This chapter is promulgated for the following purposes:

1. To impose water usage restrictions during a declared state of water emergency;
2. To create a priority system for the order in which restrictions shall be imposed upon the various categories of water uses;
3. To ensure an adequate supply and quality of water for citizens of the State during water supply and water quality emergencies;
4. To protect the public health, safety, and welfare in all or any part of the State in which a declared state of water emergency exists;
5. To establish a Water Emergency Task Force;
6. To establish a procedure whereby departmental orders issued during a declared state of water emergency may be appealed;
7. To establish a procedure for the selective curtailment of water to large industrial users;
8. To establish procedures for setting rates for transfers of water including those mandated by the Commissioner and a process to resolve conflicts regarding same; and
9. To establish application procedures for hardship exemption from the ban on adjustable water uses and the requirements of the water rationing plan.

7:19A-1.4 Definitions

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates a different meaning:

"Act" means the Water Supply Management Act," N.J.S.A. 58:1A-1 et seq.

"Adjustable water use ban" means the prohibition or restriction of various uses of water as defined in "Adjustable water uses."

"Adjustable water uses" means:

1. The watering of all plant growth except commercially grown crops;
2. The noncommercial washing of vehicles, except by businesses engaged exclusively in car washing or in those instances where a threat to public health may exist;
3. The washing of streets, driveways, sidewalks or paved areas;
4. The serving of water in restaurants, clubs or eating places unless specifically requested by the patron;
5. The use of water for flushing sewers by municipalities or any public or private entity except as deemed necessary and approved in the interest of public health or safety by municipal health officials;
6. The use of fire hydrants by fire companies for testing fire apparatus and for fire department drills except as deemed

necessary in the interest of public safety and specifically approved by the municipal governing body and the purveyor;

7. The use of fire hydrants by municipal road departments, contractors and all others, except as necessary for fire fighting or protection purposes;

8. All outdoor recreational purposes;

9. Any other uses of potable water as may be designated by the Water Emergency Task Force as adjustable. Such designations shall be made by rule or order and shall be effective immediately upon adoption by the Commissioner and shall be published in the New Jersey Register as soon thereafter as possible;

10. Exemptions from the adjustable water uses as listed herein may be designated by the Water Emergency Task Force as provided for at N.J.A.C. 7:19A-9.1.

"Chairman" means the Chairman of the Water Emergency Task Force who shall be designated by the Commissioner.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designated representative.

"Department" means the New Jersey Department of Environmental Protection.

"Division" means the Division of Water Resources of the New Jersey Department of Environmental Protection.

"Emergency response plan" means the document submitted by each water purveyor to the Department outlining the actions it will take to assure water supply during a water emergency.

"Industrial users" means those non-residential users excluding multiple dwellings and health care facilities.

"Non-residential users" means all users of water except those in single family homes and multiple family homes with individual meters.

"Passing flow requirements" means the minimum volume of water required to be maintained at a selected point to promote water quality conditions after consideration of the needs of downstream users.

"Phase" means the particular level of water emergency severity.

"Residential users" means those users of water who are in single family homes and multiple family homes with individual meters.

"Water emergency" means a declaration by the Governor upon a finding by the Commissioner, that there exists or impends a water supply shortage and/or water quality emergency of a dimension which significantly impacts water supply and, thereby, endangers the public health, safety or welfare in all or any part of the State.

"Water Emergency Rate Schedule" means the rate schedule for the retail costs of water supplies which shall be utilized by applicable water purveyors, as provided by rule, in the event of a declared emergency.

"Water Emergency Task Force" or "Task Force" means that State body consisting of inter-agency representatives whose purpose is to assist the Commissioner in the formulation of policy and render decisions during a water emergency. The following departments of State government shall be represented on the Task Force: Environmental Protection, Commerce and Economic Development, Education, Labor, Law and Public Safety, Community Affairs, Energy, Health, Agriculture and others as designated by the Commissioner.

"Water purveyor" means any public or private organization that distributes potable water to the public.

"Water supply system" means a physical infrastructure operated and maintained to deliver water on either a retail or wholesale basis to customers.

7:19A-1.5 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SUBCHAPTER 2. POWERS OF THE COMMISSIONER DURING A STATE OF WATER EMERGENCY

7:19A-2.1 Scope

This subchapter establishes the restrictions and requirements that the Commissioner may impose on water purveyors and users during a water emergency, notwithstanding any State or local law or contractual agreement. The Commissioner may impose such additional restrictions and requirements during a water emergency he deems necessary to alleviate the water emergency.

7:19A-2.2 Restrictions and requirements placed on water purveyors

(a) The restrictions and requirements placed by the Commissioner on water purveyors during a water emergency may include the following:

1. Reduction by a specified amount of the use of any water supply;

2. Utilization of an alternate water supply where possible;

3. Emergency interconnections between water supply systems;

4. Transfer of water from any public or private system;

5. Cessation of the use of any water supply;

6. Alteration of passing flow requirements;

7. Imposition of bans on adjustable water uses;

8. Other modifications or measures to insure an adequate water supply;

9. Reduction, reapportionment and/or redistribution of their particular water supply;

10. Cessation of the distribution of their particular water supply;

11. Distribution of a specified amount of water to certain users; and

12. Collection by water purveyors of rates pursuant to the water emergency rate schedule.

7:19A-2.3 Requirements placed on departments and agencies within State government

After determination by the Commissioner and after notice to the appropriate State government body, agency, department, said body, agency, or department shall provide immediately, any information, assistance, resources and personnel as shall be necessary for the Commissioner to discharge his functions and responsibilities under the Act or this chapter.

SUBCHAPTER 3. GENERAL POWERS OF THE DEPARTMENT

7:18A-3.1 Scope

This subchapter establishes the requirements that the Commissioner shall impose on water purveyors and users, but not limited thereto, after the effective date of this chapter.

7:19A-3.2 Water purveyor emergency response plans and teams

(a) Water purveyors serving more than 50,000 residents, and other purveyors when requested by the Department shall develop and submit to the Department:

1. Emergency response plans within one year of the effective date of this chapter, which shall identify relevant backup supplies and interconnections to be utilized and outline interim water restrictions and other proposed conservation measures; and submit any other information the Department deems necessary to respond to unforeseen water emergencies and long-term relatively predictable water emergencies.

2. Revised and updated emergency response plans every two years.

(b) Water purveyor emergency response teams shall be comprised of managerial, technical, operations, and public information personnel to implement the emergency response plan. The members of the emergency response teams shall be listed in the emergency response plans.

(c) The water purveyor shall undertake the periodic evaluation of the effectiveness of the emergency response plan and shall incorporate the results of such evaluations into the plan revisions and updates.

7:19A-3.3 Interconnection tests

(a) Complete interconnection flow tests shall be taken by the water purveyor when specifically ordered by the Department during an emergency.

(b) Any purveyor wishing to be exempt from the requirements of this section on the basis of hardship, should petition the Department and demonstrate that same would result in extraordinary hardship to the water purveyor.

(c) Such tests shall be attended by representatives of both systems.

7:19A-3.4 Large user contingency plans

(a) Water users with a rate of use of 250,000 gallons per day or more shall submit contingency plans to their respective purveyors. Self-supplied users with a rate of use of 250,000 gallons per day or more shall submit contingency plans to the Department. Such large user contingency plans shall include but shall not be limited to the following:

1. A description of where water conservation can be achieved in their system and what alternative supplies are available to replace existing ones.

2. A description of the measures which such user would take in the event such user was required to cease operations on a partial or total basis, outlining the expected consequences to the public which might result from such a closure and the possible alternative sources of supply of any products produced by the user or services provided by the user.

SUBCHAPTER 4. WATER EMERGENCY TASK FORCE

7:19A-4.1 Scope

(a) This subchapter establishes the purposes of the Water Emergency Task Force which is created to:

1. Review and render decisions regarding applications for hardship exemptions from the ban on adjustable water uses;

2. Hear appeals of water purveyors' decisions regarding applications for hardship exemptions from the requirements of the water rationing plans; and

3. Assist the Commissioner in the formulation of policy during a water emergency.

7:19A-4.2 Membership; meetings

(a) The Water Emergency Task Force shall consist of State agency representatives appointed thereto by their particular Department. This Task Force shall be assisted by consultants as necessary.

(b) Meetings of the Task Force shall be convened at the discretion of the Chairman who shall direct its activities.

SUBCHAPTER 5. THE PRIORITY-BASED PHASE SYSTEM OF WATER RESTRICTIONS

7:19A-5.1 Scope

This subchapter establishes the prioritized allocation of water supplies which will be implemented by the Department with the assistance of other State and local agencies once a water emergency is declared. This subchapter also defines the "phases" which denote the severity of the water emergency and upon which the prioritized allocation of water supplies and restrictions are based. Once a water emergency is declared by the Governor, the Commissioner shall immediately determine the severity of the water emergency and order the implementation of the activities specified in the appropriate phase or phases outlined below.

7:19A-5.2 Agricultural activities

Pursuant to the "Agriculture Retention and Development Act," P.L. 1983, c.33 agricultural activities on land in a municipally approved program shall be exempt from this subchapter unless the Governor declares that the public safety and welfare require otherwise.

7:19A-5.3 Phase I: Available water supply levels determined to be below normal

(a) Voluntary water conservation may be encouraged at this phase.

(b) A ban on adjustable water uses may be instituted at this phase.

(c) Variables affecting the application of a ban on adjustable water users are:

1. Severity of the water emergency;
2. Time of year; or
3. Climatic conditions.

(d) Any person wishing to be exempt from the ban on adjustable water uses shall file an application for a hardship exemption in accordance with N.J.A.C. 7:19A-9.1.

(e) If the Phase I activities fail to achieve water demand management objectives, Phases II through IV shall be implemented in a manner that reflects the existing water supply conditions.

7:19-5.4 Phase II: Severity; Substantial threat to the public health and welfare

(a) Non-residential users shall be subject to the water emergency rate schedule as provided by rule. (See N.J.A.C. 7:19B).

(b) Water rationing shall be instituted at a maximum daily rate of 50 gallons of water per person for residential users.

(c) Based on the limitations on water use imposed during Phase II or a subsequent phase of an emergency and the number of customers served by an affected water purveyor, each such purveyor shall be assigned a water use allocation target. The affected purveyors shall be required to make good faith efforts to remain within these targets. Such targets may be modified in subsequent phases of the emergency.

(d) Any person wishing to be exempt from the requirements of this section shall file an application for a hardship exemption in accordance with N.J.A.C. 7:19A-9.2.

7:19A-5.5 Phase III: Further rationing required

This stage requires further rationing of water supplies to all sectors and the selective curtailment of industrial water users in accordance with N.J.A.C. 7:19A-6.

7:19A-5.6 Phase IV: Disaster stage

(a) At the disaster stage, public health and safety cannot be guaranteed. Water quality is of major concern.

(b) Maintenance of health facilities shall be at emergency levels.

(c) Industrial use shall be further curtailed and selective closings shall occur. Interruptions in water service may be necessary.

SUBCHAPTER 6. INDUSTRIAL CURTAILMENT STRATEGY

7:19A-6.1 Scope

This subchapter establishes the components of the industrial curtailment strategy and the procedural steps to effectuate this strategy in phases III and IV.

7:19A-6.2 Procedure for the selective curtailment during a water emergency situation

(a) The Department shall require the purveyors and self supplied water users to submit appropriate information during Phase I, in order to prepare for possible water curtailment.

(b) The date base shall be revised and updated to incorporate new data on consumption as appropriate.

(c) The Commissioner shall determine that supplies are at a level which justify initiating Phase III actions, including partial industrial curtailments.

(d) Industry wholly dependent upon public water supply, shall be closed (Phase IV) unless exempted by the Department.

7:19A-6.3 Basis of selective curtailment

(a) Selective curtailment of large industrial users, as referred to in Phase III, shall be based upon:

1. Water consumption per work site;
2. Number of employees per work site;
3. Essential nature of the industry; and
4. Other pertinent data.

(b) After considering the essential nature of the industry and other pertinent data, the first priority for curtailment shall be those industries with high water use and a low number of employees per work site relative to water use.

7:19A-6.4 Submission of water supply information

Industrial users shall submit to the Department, upon its request, all information relating to water consumption and employment required by N.J.A.C. 7:19A-6.2 and 6.3.

SUBCHAPTER 7. PENALTIES

Any person who violates this chapter or any order issued pursuant thereto or to the Act shall be subject to the penalty provisions of the Act.

SUBCHAPTER 8. EMERGENCY WATER TRANSFER PRICING

7:19A-8.1 General pricing procedures

(a) Within 90 days after the effective date of this chapter, all water purveyors having physical interconnections with other water purveyors shall initiate negotiations with the interconnected purveyors regarding the prices to be charged for supplying of water through such interconnections ordered by the Commissioner during a water supply emergency.

1. Prices may be expressed either in terms of specific prices or of a formula.

(b) The water purveyors shall submit the record of negotiations, and the agreed upon prices if arrived at, to the Board of Public Utilities, if within its jurisdiction, or the Department, in all other cases, for approval and/or reconciliation of differences and approval in accordance with the following time schedule;

1. Within 12 months after the effective date of this chapter:

i. All water purveyors with interconnections 12 inches in diameter or greater between their systems;

ii. All water purveyors having interconnections of any size with water purveyors serving those seashore communities having shoreline contiguous with the Atlantic Ocean proper from Cape May to Highlands inclusive where the water supply serves 10,000 or more residents for two months or more per year.

2. Within 36 months after the effective date of this chapter:

i. All water purveyors with interconnections of 8 inches in diameter or greater where either system serves 10,000 or more residents; and

ii. All water purveyors interconnected with purveyors serving seashore communities having shoreline contiguous with the Atlantic Ocean proper from Cape May to Highlands inclusive, except those covered by (b)1ii above.

3. Within five years after the effective date of this chapter all other water purveyors interconnected with another water purveyor.

7:19A-8.2 Criteria for pricing

(a) In the event an emergency transfer of water is ordered by the Commissioner, the price charged to the receiving system should be based upon fair compensation, reasonable rate relief and just and equitable terms as to not create a situation wherein the customers or owners of the supplying systems are subsidizing the transfer.

(b) Where an emergency transfer is ordered by the Commissioner which requires the curtailment of water used by existing customers, the price charged to the receiving system should be set at a level which will insure the fair recovery of all costs incurred by the supplying system as a result of the curtailment.

(c) Where an emergency transfer requiring no curtailment is mandated, the normal bulk water rates for existing regular customers of the supplier should receive serious considerations in determining the price of transferred water, except that this should not apply, for example, where such bulk rates are for off-peak water.

(d) Where such rates have not been established, rates may, in appropriate cases, be set so as to achieve revenue levels to cover the following requirements related to the facilities utilized to produce and transport water to the emergency purchaser:

1. Operation and maintenance;
2. Depreciation;
3. Taxes or payment in lieu thereof; and
4. Return (original plant investment minus depreciation times the rate of return) or debt service.

(e) Any foreseeable additional cost attributable to a mandated transfer shall be borne by the buyer of the water.

(f) Price schedules may specify that rate adjustments may be made later if actual costs fall short of or are greater than expected.

(g) If existing agreement on water transfer rates and other terms has been reached by the purveyors involved in such transfer and approved by the Department, the above criteria (a)-(f) shall not apply.

7:19A-8.3 Price resolution process

(a) Whenever during a water supply emergency a transfer of water has been made between one purveyor and one or more other purveyors, and the supplying water purveyor determines that additional cost recovery is required the following procedure shall be followed:

1. The supplying water purveyor, the receiving water purveyor and any other water purveyor whose facility was used to effectuate the transfer shall have 30 days from the date the supplying water purveyor gives notice that additional cost recovery is required to reach agreement as to the amount of additional charge.

(b) If the informal negotiation process is unsuccessful, any party may then file a written request for the initiation of formal proceedings to the Commissioner within 60 days of the ending date for negotiation specified in (a) above. Said request shall include:

1. The added charge the party is proposing;
2. Substantiated arguments supporting the charge; and
3. Any other pertinent data including but not limited to the following:

i. The extent to which, if any, there would be curtailment of use by regular customers of the supplying system as a result of the sharing of the resources, and concomitant loss of revenue;

ii. The cost to the supplying system which would not be incurred except for the fact that the transfer must be made and any other costs which the party believes should be attributed to the transfer, including a detailed explanation of cost calculation;

iii. All wholesale and retail rates (with terms and conditions):

(1) Charged by the supplying system to its customers;
(2) Paid by the receiving system to its suppliers; and
(3) Charged by the receiving system to its customers.

(c) The Commissioner or the Board of Public Utilities shall review the submitted requests, decide the fair compensation, and advise the parties.

(d) The actual transfer of water shall be accomplished in accordance with the order issued by the Department without regard to the time required for settlement of the added charge.

SUBCHAPTER 9. HARDSHIP EXEMPTION PROCEDURES

7:19A-9.1 Application procedures for hardship exemption from the ban on adjustable water uses

(a) Any person wishing to be exempt wholly or partially from the ban on adjustable water uses may apply for a hardship exemption according to the following procedures:

1. The applicant shall submit his request along with full documentation supporting the request to the attention of the Water Emergency Task Force at the Division.

2. The applicant's submittal shall include a demonstration that extraordinary hardship and no reasonable alternative exists if the exemption is not granted.

3. After review of the application, the Task Force shall notify the applicant in writing of the results of its review and the reasons for its decision. Before making a decision, the Task Force may request the applicant to supply additional documentation. An exemption approval by the Task Force may be rescinded should public health, safety and welfare require further reduction in water use.

4. An exemption granted to an applicant for a specific property, purpose or person is not transferable to any other property, purpose or person without prior approval from the Task Force which may be obtained by submitting a request to the Task Force including full documentation.

7:19A-9.2 Application procedures for hardship exemption from the requirements of the water rationing plan

(a) Any person wishing to be exempt from the requirements of the Water Rationing Plan shall file an application for a hardship exemption with the appropriate water purveyor on a form obtained from the water purveyor according to the following procedures:

1. The applicant shall submit the request for exemption along with whatever documentation which would aid the water purveyor in making its decision.

2. The applicant's submittal shall include a demonstration that extraordinary hardship and no reasonable alternative exists if the exemption is not granted.

3. After review of the application, the water purveyor shall notify the applicant of the results of its review. Before making a decision, the water purveyor may request the applicant to supply additional documentation.

4. An exemption granted to an applicant for a specific property, purpose or person is not transferable to any other property, purpose or person without prior approval from the water purveyor.

5. The denial by the water purveyor of an application for exemption entitles the applicant to appeal to the Water Emergency Task Force.

6. The water purveyor is required to notify the Task Force within seven days of all of its approvals. The Task Force may, at its discretion, review any approval granted and decide whether to uphold or deny said approval.

(b) An appeal to the Water Emergency Task Force shall contain the following documentation:

1. A copy of the original request for exemption with any documentation submitted to the water purveyor.

2. A copy of the exemption decision by the water purveyor.

(c) The Task Force shall review the request for appeal and all supporting documentation; and shall notify the applicant in writing of the results of its review and the reasons for its decision. Before making a decision, the Task Force may request the applicant to supply additional documentation.

SUBCHAPTER 10. DEPARTMENT ORDERS

7:19A-10.1 Requirements for departmental orders issued during a state of water emergency

(a) All departmental orders issued pursuant to this chapter shall be based upon fair compensation, reasonable rate relief, and just and equitable terms.

(b) Subsequent to the issuance of an order and compliance therewith, the basis upon which the order was issued will be determined after notice and hearing.

7:19A-10.2 Appeal procedure

(a) The party to whom an order has been issued, and/or aggrieved by a decision of the Task Force, shall have a right to request a hearing thereon, if requested in writing within 20 days of receipt of the order.

(b) For 30 days following receipt of the request for a hearing, the Department shall attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(c) If such efforts at settlement fail the Department shall file the request for a hearing with the Office of Administrative Law.

(d) The hearing shall be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(e) The decision by the Commissioner, based on the hearing record shall be the final administrative decision concerning an order.

(a)

DIVISION OF WATER RESOURCES

Emergency Water Surcharge Schedule

Proposed New Rule: 7:19B

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 58:1A-1 et seq., specifically 58:1A-5, and Executive Order No. 5. (1982).
DEP Docket No. 003-84-01.

Public hearings concerning this rule will be held at the following times and locations:

March 27, 1984
10:00 A.M.
Wayne Township Municipal Building, Council Chambers
475 Valley Road
Wayne, New Jersey

March 28, 1984
7:00 P.M.
Freehold Township Municipal Building
Shank and Stillwell Corner Road
Freehold Township, New Jersey

March 29, 1984
10:00 A.M.
Haddonfield Boro Municipal Building
292 Kings Highway
Haddonfield, New Jersey

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 29, 1984. These submissions and any inquiries about submissions and responses, should be addressed to:

Joe Miri
Water Supply and Watershed Management Administration
CN 029
Trenton, New Jersey 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (sec: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-83.

The agency proposal follows:

Summary

The need for the proposed new rules became quite apparent during the severe 1980-81 drought experienced in New Jersey. The new rules provide for a water surcharge schedule which will go into effect when a water shortage of a magnitude sufficient enough to pose a threat to the public health and welfare exists.

The proposed new rules are a result of language in the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and Executive Order No. 5 signed by Governor Kean on April 27, 1982. This Order terminated the State of Emergency which existed as a result of the drought and provided for the development and adoption of a rate schedule to be utilized in the event of a future water supply emergency.

The purpose of such a water surcharge schedule is to provide a financial deterrent which would presumably promote conservation of dwindling water resources. At the phase of a water emergency where these surcharges would go into effect, conservation is a paramount concern.

The Water Surcharge Emergency Schedule rule has been developed parallel with the Emergency Water Supply Allocation Plan rules required under N.J.S.A. 58:1A-1 et seq. and will use many of the enforcement capabilities found in those rules. The Board of Public Utilities is to adopt these rates for the retail use of water supplies for purveyors under their jurisdiction, during future water emergencies.

Social Impact

The proposed new rules, in acting as a stimulus for conservation, would prolong and protect both water supply and water quality. During a water shortage, water quality is threatened due to reduced flow at crucial points.

Economic Impact

The proposed emergency water surcharge schedule has been divided into two categories, residential and non-residential. No economic impact will be felt by those residential users who maintain a consumption level of 50 gallons or less of water daily per resident. Extensive water use studies and surveys have shown that 50 gallons per capita daily is more than sufficient to maintain the necessary standard of living. Anyone exceeding the 50 gallons per capita used daily (gpcd) parameter will be charged the normal rate plus a $5.00 surcharge for each additional 100 cubic feet or portion thereof.

Non-residential users will pay a rate 1.33 times the rate normally charged. A conservation factor of 25 percent will allow the user to realize no increase in cost. The concomitant adverse effect of not conserving water is plant shutdown, which would be economically devastating.

The purpose of this surcharge is to promote conservation during a water emergency so as to reduce or prevent the serious economic dislocations which could be brought on by continuation of the emergency. These rules would produce a net positive economic benefit.

Inasmuch as the proposal seeks to promote water conservation during a drought emergency, thereby hopefully ensuring a supply of water of adequate quantity and quality to sustain residents of the drought affected area for the duration of the emergency, a net positive social impact will result. It should be realized, however, that any interruption of normal activity or increase in cost may be upsettling.

Full text of the proposed new rule follows.

CHAPTER 19B

WATER EMERGENCY SURCHARGE SCHEDULE RULES

7:19B-1.1 Scope and authority

This chapter, adopted pursuant to the Water Supply Management Act, (Act) N.J.S.A. 58:1A-1 et seq., shall constitute the rules governing the establishment of a water surcharge schedule applicable during declared state of emergency as mandated by Executive Order No. 5, signed by Governor Thomas Kean on April 27, 1982.

7:19B-1.2 Purpose

The purpose of this chapter is to establish a water surcharge schedule for the retail costs of water supplies during water emergencies, declared by the Governor of the State of New Jersey. The schedule will be utilized by all applicable water purveyors in the event of such a declared emergency.

7:19B-1.3 Definitions

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

"Applicable water purveyors" means all public-community water systems' purveyors serving those areas in which Phase II of the water emergency has been initiated.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his designated representative.

"Department" means the Department of Environmental Protection.

"Drought coordinator" means the individual designated by the Commissioner responsible for the supervision of the administration and enforcement of this chapter.

"Non-residential users" means all users of water except in single family homes and multiple family homes with individual meters supplied by applicable water purveyors.

"Normal water rates" means the prevailing retail rates which were charged by the applicable water purveyors and which were in effect immediately preceding the declaration of a water emergency.

"Phase I" means the first stage of a declared water emergency during which available water supply levels are determined to be below normal and bans on adjustable water uses may be instituted, as provided by regulation.

"Phase II" means the second stage of a declared water emergency during which a more substantial threat to the public health and welfare exists and a specified reduction in water use may be mandated.

"Residential users" means those users of water who are in single family homes and multiple dwelling units with individual meters for each dwelling unit and who are supplied by applicable water purveyors.

"Water emergency" means a declaration by the Governor, upon a finding by the Commissioner, that there exists or impends a water supply shortage and/or water quality emergency, which significantly impacts water supply and, thereby, endangers the public health, safety or welfare in all or any part of the State.

"Water emergency fund" means that repository of all sums collected by the applicable water purveyors pursuant to the water emergency surcharge schedule which are in excess of the amounts which would have been collected under normal water rates.

7:19B-1.4 Applicability

This chapter shall be applied to all persons serviced by all applicable purveyors.

7:19B-1.5 Establishment of the water emergency rate schedule

(a) Once a water emergency has been declared, as provided at N.J.S.A. 58:1A-4, and at the initiation of Phase II, the Drought Coordinator shall cause to be implemented the following water surcharge schedules established for the retail cost of water:

1. During Phase II of a water emergency the normal water rate shall be charged residential users for the first 50 gallons per capita used daily. Any water used above the prescribed amount in each billing period shall be charged the normal rate plus a $5.00 surcharge for each additional 100 cubic feet or portion thereof.

2. During Phase II of a water emergency, non-residential users of water shall be charged the normal water rate plus 0.33 times the normal rate as a surcharge. This rate may be increased at the discretion of the Drought Coordinator should Phase II continue or should desired conservation levels not be met.

3. Water surcharge schedules set forth herein may be reviewed and adjusted, after notice and public hearing, in order to fulfill the objectives of the Act and Executive Order No. 5 (1982).

7:19B-1.6 Submission of the water emergency rate schedule; quarterly report

(a) Upon declaration of a water emergency, each applicable water purveyor shall submit a copy of its water surcharge schedule, determined pursuant to the method provided herein, to the Department of Environmental Protection.

(b) The purveyors shall also submit a quarterly report to the Department of Environmental Protection and the Department of Treasury and the Board of Public Utilities, where applicable, detailing the source, amount and other information required by these agencies concerning excess sums collected pursuant to the water surcharge schedule.

7:19B-1.7 Collection of the emergency water rates; water emergency fund

(a) It shall be the responsibility of the applicable water purveyor to assess and collect all sums under the water surcharge schedule and to forward, on a quarterly basis, those sums in excess of the amount collected under normal water rates, to a collecting authority designated by the Department of Treasury for deposit into a cash management amount to be known as the "Water Emergency Fund."

(b) Access to the monies in the Fund shall be limited to the State Treasurer and the Commissioner of the Department of Environmental Protection or their designees.

(c) Interest accrued on the monies in this fund shall be credited to the Fund.

(d) The Fund shall be disposed of as directed by the Drought Coordinator, in consultation with the Commissioner, only for the following purposes:

1. The promotion of water conservation, the purchase of water conservation devices for distribution to water users

affected by the water supply emergency, and emergency projects;

2. Reimbursement, in whole or part, to water purveyors for reasonable expenses incurred in the administration and enforcement of the accelerated rate schedule; and

3. Reasonable administrative costs directly attributed to the water supply emergency incurred by the State in the discharge of duties and responsibilities under an Executive Order which declares a water supply emergency.

7:19B-1.8 Exemption from the water emergency rate schedule

Any person who has secured a hardship exemption under the Emergency Water Supply Allocation Plan Regulations (N.J.A.C. 7:19A-9) qualifies for an exemption from the Water Emergency Rate Schedule and is subject only to the appropriate normal water rate schedule.

HEALTH

(a)

PUBLIC HEALTH COUNCIL

Chapter X—State Sanitary Code Collection, Processing, Storage and Distribution of Blood

Proposed Repeal: N.J.A.C. 8:8-1.1 through 6.2
Proposed New Rule: N.J.A.C. 8:8-1.1 through 10.7

Authorized By: Evelyn Geddes, Chairperson, Public Health Council.
Authority: N.J.S.A. 26:1A-7 and 26:2A-7.

A **public hearing** concerning this proposal will be held on March 12, 1984 at 9:30 A.M., at:

Department of Health
Health-Agriculture Building
Room 106-Auditorium
John Fitch Plaza
Trenton, New Jersey

NOTE: Notice of the public hearing was sent to newspapers to cover 21 counties in New Jersey.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before March 23, 1984. These submission, and any inquiries about submissions and responses should be addressed to:

James E. Prier, Ph.D
Director
Clinical Laboratory Programs
Department of Health
CN 360 - Room 405
Trenton, NJ 086256

The Public Health Council thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-35). The adoption becomes effective upon publication in the Register of a Notice of Adoption.

The proposal is known as PRN 1984-99.

The agency proposal follows:

Summary

These regulations are promulgated pursuant to N.J.S.A. 26:2A known as the Blood Bank Licensing Act. The regulations are applied to all establishments which handle or process human blood for therapeutic purposes, for sale, or for processing. Blood components are included. Requirements apply to the areas of technical personnel, associated laboratory testing, equipment and facilities, records, safety measures for donors and recipients of blood and blood products, proficiency evaluation, labels, preservation of product quality, and compliance with State and Federal regulations.

The Department of Health proposes to repeal the existing regulations and replace them with a completely revised version. The proposed new rules contain no substantial changes, rather, they clarify several points that were subjects of confusion and misinterpretation by licenses under the act. Accordingly, definitions have been made more precise, and new ones that are pertinent to proper interpretation have been added. Evaluation of performance in licensed establishments has been required previously, but the specifics of the process have been clarified.

Regulations have been added to include intraoperative transfusions, recipient blood testing, operative blood order schedules, issue and administration of blood and blood components for transfusion, specifications for freezer and room temperature storage of blood components and computerized records. The areas of cytapheresis, therapeutic phlebotomy, records and autologous transfusions have been expanded.

Personnel regulations have been changed to correspond to regulations governing clinical laboratory personnel. Also, the requirement for a phlebotomy supervisor has been changed to donor emergency care personnel. Blood and blood component sections have been reorganized and expanded. The pilot sample section shifts the emphasis from the attached pilot tube to the integral donor tubing. Requirements for donor identification and the volume of plasma drawn during plasmapheresis procedures have been adjusted to conform with the Code of Federal Regulations. Specific labelling, donor medical history, physical examination and bleeding limitation requirements are no longer listed but reference is made to the Federal regulations and American Association of Blood Banks guidelines.

Social Impact

The use of human blood and blood products (components) is a frequent and necessary therapeutic procedure in medical practice. Technical aspects of use of such materials is complex and requires extremely careful constant control measures. Blood is a very specific body fluid, and cannot be transmitted from one individual to another without consideration of specific blood types of both donor and recipient. Further, blood is capable of transmitting disease from donor to recipient, and therefore must be shown to be free of such infectious or contaminating agents. The preparation of blood components from blood, and the use of such products also must be done under exquisitely controlled conditions.

The purpose of these regulations is to assure that both donors and recipients are provided with safe conditions, and that all blood and blood products are safe for human use. In 1982, there were 291,801 units of blood administered to New Jersey patients. In addition, 143,195 blood components were administered. The record for the past few years indicate a trend of gradual increase in the use of both blood and components. It is probable that this trend will continued. There are 135 blood bank facilities which vary in size that participate in the collection, processing, storage and/or distribution of blood and blood components. They provide necessary blood therapy to all areas of the State for both routine and emergency use.

Specific tests on blood, as well as donors and recipients are required to assure the safety of all parties. These include tests for hepatitis virus, bacterial contaminants, and antigenic character of door's blood and recipient patient. Appropriate records are required to adequately catalog all pertinent data of each blood unit removed from donors, including tests on donors, blood, and recipients in order to assure that only proper blood materials are provided to patients. These records provide the necessary reference to investigate all adverse reactions that are reportable according to regulations. In addition, the recording process assures that proper data accompanies each unit of blood from its origin to final use, as a safeguard for patients who finally receive the blood or component.

Special requirements apply to blood banks which operate plasmapheresis facilities. Since the donor's cells are reinjected, it is necessary to have appropriate controls to avoid improper return of such cells.

These regulations are designed to prevent any individual to be used as a donor who is not physically able to undergo such a procedure with absolute safety. Finally, regulations regarding the handling of units of blood are detailed. These are designed to avoid improper storage, instability, improper labels, and over-age, and therefore to assure that only safe materials are used for human administration.

Economic Impact

Since these regulations are a redefinition of those already in existence, there is no significant change in the current economic factors.

There are three phases of economic effect. One is on the institution (blood bank) which obtains blood. The second is on the processors of blood products for subsequent development and sale of materials derived therefrom. The third economic factor is upon the regulatory agency.

Costs to the blood bank are those associated with personnel, equipment, testing, and recordkeeping, However, the requirements are essential for protection of the individuals who either donate or receive blood (a total of 599,513 in 1982). Costs are applied to fees for medical services paid by recipients or third party payors. Since the service of blood administration is generally considered to be essential to proper medical care, any diminution of the requirements of the regulations would jeopardize the safety of the individuals who either donate or receive blood.

Organizations that process blood products incur significant costs. These are, in most cases private for profit enterprises, and the costs are built into the final sale price of the product. There is no regulation of these costs, and it is probable that adherence to these regulations do not significantly alter the final price to the consumer.

The cost to the Department of Health in administering the Program is not covered by the license fee, which amount to $1,365. It is anticipated that these fees will be increased significantly to cover a large proportion of administrative costs. However, the fees will not necessarily be high enough to place a significant burden on the 135 licensees.

Finally, there is a significant economic factor relevant to the recipient patient. Unless assurance is provided that only safe material is used in medical therapy, there is a strong probability that serious adverse reactions would be common. If so the economic loss in terms of prolonged medical use, wage loss, or long term physical sequelae is significant.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 8:8-1.1 through 6.2.

Full text of the proposed new rule follows.

CHAPTER 8
COLLECTION, PROCESSING, STORAGE AND DISTRIBUTION OF BLOOD

SUBCHAPTER 1. GENERAL PROVISIONS

8:8-1.1 Compliance

(a) Persons operating blood banks in this State shall meet the qualifications and conduct blood banks in conformity with N.J.S.A. 26:2A and all regulations of this Chapter.

(b) Failure to comply with these regulations shall be cause for revocation of license and imposition of penalities as prescribed by law.

8:8-1.2 Definitions

For the purpose of this Chapter, the terms listed below shall be defined and interpreted as follows:

"Additive solution system" means blood preservative systems designed primarily for the extended storage of red blood cells. These systems utilize a second preservative solution for red cell storage in addition to the anticoagulant solution necessary for whole blood collection.

"Autologous transfusion" means the removal and storage of blood or blood components from a donor for subsequent reinfusion into the same individual.

"Blood bank" means any facility involved in the handling of human blood, blood components or products and which participates in any of the following operations: collection, processing, donor and recipient testing, the storage and distribution of blood and blood product.

"Blood bank director" means a physician licensed in the State with general responsibility for all procedures and policies relating to the donor and recipient, as well as, the collection, processing, storage and distribution of all blood and blood components.

"Blood components" means those preparations that are separated from whole blood and are intended for use as final products for transfusion, for further manufacturing, or as products used for in vitro testing.

"Brokerage" means procuring, selling and distributing of whole blood, components and blood products without engaging in processing, alteration or other manipulation of the blood product.

"Closed system" means a system in which the blood container is not entered or air introduced.

"Code of Federal Regulations" means the current Code of Federal Regulations, Title 21.

"Collection" means the procedure for obtaining blood by donor phlebotomy.

"Commissioner" means the commissioner of the New Jersey State Department of Health or his duly authorized agent.

"Cytapheresis" means the procedures in which blood is removed from the donor, certain cellular elements are separated, and the remaining formed elements and residual plasma are returned to the donor.

"Department" means the New Jersey State Department of Health.

"Distribution" means the transfer of blood or blood components from one blood bank facility to any other location for processing or storage or for the purpose of providing the blood for therapeutic, prophylactic or in vitro purposes.

"Donor" means and includes any individual from whom blood or components is collected by a blood bank.

"Health system" means a multidivisional hospital with a blood bank and no more than three satellite blood bank facilities.

"Hemapheresis" means the process of separating freshly drawn whole blood into various components, some of which are retained while the remainder is reinfused into the donor.

"Phlebotomist" means a person who obtains blood from donors by venipuncture.

"Plasmapheresis" means the procedure in which blood is removed from the donor, the plasma is separated from the formed elements and at least the red blood cells are returned to the donor.

"Pyrogen-free" means a system free from any material capable of causing a febrile response.

"Processing" means all tests and procedures required to prepare and identify the blood and blood products as to their suitability for therapeutic, prophylactic or other in vivo or in vitro purposes.

"Reagent" means a substance used for any in vitro purpose.

"Recipient" means any person who receives a transfusion of whole blood or blood components.

"Satellite blood bank" means a facility which does emergency or limited blood banking activities.

"Storage" means the physical environment of blood or blood components during collection, storage, distribution, transportation or processing.

"Therapeutic phlebotomy" means the removal of whole blood from a donor for the purpose of medical treatment.

8:8-1.3 Licensure

(a) Application for an initial license to conduct a blood bank, as required under the provisions of N.J.S.A. 26:1A-7 commonly known as the Blood Bank Licensing Act, shall be made on forms provided for that purpose by the State of New Jersey.

(b) Renewal of the license will be on an annual basis on or before November 10th of each year on forms provided for that purpose by the State of New Jersey.

(c) Amendments to the license shall be as follows:

1. A license renewal shall be obtained within 30 days whenever the name or the location of a blood bank is changed.

2. The Department shall be notified in writing within 30 days whenever the ownership, corporate structure or director of a blood bank is changed.

8:8-1.4 Inspection

(a) Blood bank facilities and operations shall be made available for inspection upon request by any authorized representative of the Department during normal working hours.

(b) Reports of inspections of blood banks made by the Office of Biologics or any private national accrediting agency approved by the Department may be accepted for purposes of approving and issuing renewal of licenses.

8:8-1.5 Proficiency testing

(a) Blood banks must successfully participate in a proficiency testing program approved by the Department.

(b) Records in all proficiency testing results must be maintained, including results and interpretations, and a periodic review by the blood bank director.

8:8-1.6 Quality control

All blood banks and transfusion services shall have a written quality control program which is sufficiently comprehensive to ensure that reagents and equipment perform as expected and that there is compliance with these regulations, and shall be acceptable to the Department.

8:8-1.7 Brokers

Brokers must maintain records of all applicable standards and procedures set forth in these regulations.

8:8-1.8 Exemptions

The Department is empowered to waive such of these regulations as may be necessary for purposes of research, experimentation and new methodologies in blood banking activities, provided requests for such activities, are received in writing and approved by the Department.

8:8-1.9 Waivers

The Public Health Council on the advice of the Commissioner may promulgate, enforce and may amend or repeal these regulations that at any given time shall be no less stringent than the complete interim or revised regulations of the Office of Biologics in effect at that time. In administering the Blood Bank Licensing Act, the Department can seek the advice and recommendations of an advisory committee.

SUBCHAPTER 2. PERSONNEL

8:8-2.1 Blood bank director

(a) The blood bank director shall administer the blood bank as follows:

1. The director shall be responsible for all procedures and policies relating to all phases of donor and recipient testing as well as the collection, processing, storage and distribution of all blood and blood components.

2. The director shall not individually serve as director or co-director of more than three blood banks, laboratories or one health system.

3. If the blood bank is an integral part of the clinical laboratory, this will be considered one facility.

4. The director shall spend an adequate amount of time in the blood bank to direct and supervise the technical performance of the staff. He shall be readily available for personal or telephone consultation.

5. The director is responsible for the employment of qualified blood bank personnel and their in-service training.

6. If the director is to be absent, the director must arrange for a qualified substitute director.

(b) Qualifications:

1. The blood bank director must have four years of full time clinical experience, of which at least two years were spent acquiring proficiency in blood banking.

2. This experience must include all phases of blood banking including but not limited to:

i. Donor and recipient testing;

ii. The collection, preparation, storage, processing and distribution; and where applicable;

iii. Transfusion of whole blood and blood components.

8:8-2.2 Donor related personnel

(a) General provisions for donor related personnel are:

1. Each blood bank during the collection of blood shall have a responsible individual on the premises who is qualified to provide emergency care.

2. An adequate number of phlebotomists shall be available.

3. All other personnel associated with donor related functions must be suitably trained and supervised in the performance of their prescribed tasks.

(b) Donor emergency care personnel shall be available as follows:

1. If a physician is not present, a person available to administer donor emergency care shall be a registered nurse (R.N.) holding a current certificate of registration who has fulfilled the following requirements:

i. Has demonstrated his or her familiarity with donor eligibility standards to the satisfaction of the medical director of the blood bank;

ii. Has taken an eight hour course in cardiopulmonary resuscitation within three years and successfully passed a practical and written exam on the subject matter.

(c) A phlebotomist shall be properly trained or supervised for six months and be proficient in the collection of blood from a donor.

(d) All other personnel associated with donor related functions must be suitably trained and supervised in the performance of their prescribed tasks.

8:8-2.3 Laboratory personnel

(a) The laboratory shall have one or more supervisors who under the general direction of the blood bank director supervise technical personnel, perform tests requiring special skills, and in the absence of the director are responsible for proper performance of all laboratory procedures.

(b) There shall be a sufficient number of properly qualified technical personnel to meet volume and complexity of technical procedures performed by the laboratory.

(c) The laboratory supervisor and laboratory personnel must meet the requirements of N.J.A.C. 8:44 under Regulations for Supervision and Technical Personnel.

SUBCHAPTER 3. FACILITIES, EQUIPMENT AND CONTAMINATED MATERIAL

8:8-3.1 Facilities and equipment

(a) Quarters, environment, and equipment acceptable to the Department shall be provided to maintain safe and acceptable standards for handling of human blood and blood components.

(b) Blood donor facilities shall consist of at least a waiting room, bleeding area, donor recovery area, lavatory facilities and the proper equipment for collection and immediate storage of blood.

(c) The blood bank shall also provide a processing laboratory.

1. The laboratory shall have appropriate equipment for donor and/or recipient testing, component preparation, record keeping, storage and distribution of blood and blood components.

2. All laboratory tests required for proper donor blood processing, not performed by the collecting facility, must be referred to a laboratory or blood bank licensed by the Department or possess a Federal interstate license.

8:8-3.2 Contaminated material

Contaminated material shall be disposed in a manner consistent with current standards of the New Jersey Department of Health, Health Facilities Evaluation Division and the New Jersey Department of Environmental Protection.

SUBCHAPTER 4. RECORDS AND REPORTING REQUIREMENTS

8:8-4.1 Records

(a) Suitable legible records prepared with indelible material shall be maintained for a period of not less than five years.

(b) If records are maintained on computer systems, adequate provisions must be made to safeguard against the eventuality of unexpected electronic loss of data from the computer storage medium.

(c) A system must be in existence which maintains duplicate records on electronic storage media, updates these duplicates continuously and/or transfers electronically stored data periodically to hard copy such as prints or microfiche.

(d) The records shall:

1. Include all data secured and developed by blood banks concerning donor and/or recipient testing, donor identification, medical qualifications, registration as well as the processing, storage and distribution and final disposition of blood and blood components;

2. Make it possible to trace a unit of any blood or blood component from source; (for example, donor or shipping facility) to final disposition; (for example, transfused, shipped, discarded).

3. Be available for review;

4. Be made available annually by January 31, of each year on forms provided by the Department for the purpose of preparing the State's Statistical Summary of Blood Use report;

5. Include the actual result of each test observed, recorded immediately, and the final interpretation recorded upon completion of testing.

(e) Before blood is issued for transfusion, test results for each recipient sample shall be compared with the following:

1. Past records of previous ABO and Rh typing results for the current admission.

2. Past records of all patients known to have significant unexpected antibodies, severe adverse reactions to transfusion, and/or difficulty in blood typing.

(f) If computers are used, hard copies of these results must be available.

(g) Records must include at least the following:

1. Donor records:

i. An annual record of each unit of blood or component as to its source bank and destination (this may be final disposition);

ii. Donor history, examination, consent, deferral, reactions and also the result of required laboratory tests performed on plasmapheresis and cytapheresis donors;
iii. An annual alphabetical file of donor registration cards or a cross index system;
iv. Blood and component labelling, including initials of person responsible for such labelling;
v. Storage temperatures of components, including dated and initialled temperature recording charts;
vi. Results of visual inspection of blood;
vii. Results of blood processing, including results and interpretation of all tests and retests;
viii. Component preparation, including all relevant dates and times;
ix. Documentation of separation and pooling of recovered plasma;
x. Documentation of units included in pooling of source plasma;
xi. Reissue records, including records of proper temperature maintenance.
2. Recipient records shall include:
i. An alphabetical file of the recipient and all units administered (transfusion services only);
ii. Each recipient's ABO and Rh type available for immediate reference at least for the duration of the current hospitalization;
iii. Patients known to have significant unexpected antibodies, adverse reactions to transfusion and/or difficulty in blood grouping and typing available for immediate reference for at least five years;
iv. Transfusion request records;
v. Test results, interpretations and release (issue) date for compatibility testing;
vi. Emergency release of blood including signature of requesting physician, type of blood and blood component.
3. List of therapeutic bleedings, including signed request by physician, donor's disease and disposition of units;
4. Detailed procedure manual including all policies and procedures developed for use in the blood bank;
5. Evidence of annual review of the procedure manual by the blood bank director;
6. A data sheet for each cytapheresis procedure and the following information recorded: volume of blood processed; anticoagulants given; duration of procedure; volume of product; drugs given; identity of the donor; any reactions which occurred and how they were treated;
7. Quality control records, including but not limited to: periodic evaluation of personnel, reagent, equipment, including dates of performance; test performed; observed result; interpretations; identification of personnel performing the test; any appropriate corrective action taken, review by supervisor and director.
8. Antibody identification records;
9. Reports of adverse reactions and laboratory investigation of suspect transfusion reactions;
10. Lost numbers of supplies and reagents.

8:8-4.2 Reporting requirements

(a) Transfusion reactions shall be reported as follows:
1. Any hemolytic or life threatening transfusion reaction must be reported on forms provided by the Department within 10 days of occurrence.
2. Each blood bank and transfusion service shall have a system for detecting, reporting and evaluating suspected adverse reactions to transfusion in accordance with current acceptable standards approved by the Department.

(b) Transfusion associated hepatitis shall be reported as follows:
1. Any known or presumed case of transfusion associated hepatitis brought to the attention of a blood bank shall be reported to the Department within 10 days on forms provided for this purpose.
2. All prospective donors found to test positive for hepatitis B surface antigen shall be reported to the Department within 10 days on forms provided for this purpose and shall be considered ineligible for transfusion purposes as long as they continue to be identified on current lists of interdicted donors supplied by the Department.

SUBCHAPTER 5. CRITERIA FOR DONOR SELECTION

8:8-5.1 Donor identification

(a) Blood donors shall be identified by a comparison of their signature at the time of donation with an identification card.

(b) The type of identification used shall be written on the donor registration card at the time of each blood donation.

8:8-5.2 Medical history; physical examination; bleeding limitations

(a) Medical history, physical examinations, bleeding limitation of the donor shall be consistent with the Code of Federal Regulations and the American Association of Blood Banks guidelines. If necessary these documents may be reviewed at the Department of Health, Clinical Laboratory Improvement Program, CN 360, Trenton, NJ 08625.

8:8-5.3 Donor selection

(a) On the day of donation the prospective donor's history shall be evaluated and the donor examined by qualified blood bank personnel trained to follow guidelines acceptable to the Department in order to determine that blood donation will not be detrimental to the donor and to determine that the donor has no evidence of disease transmissible by blood transfusion.

(b) Donors shall be excluded from donating blood for transfusion while their names appear in the latest revision of publications supplied to the blood bank by the Department which prohibit them from serving as a donor.

(c) Before blood is issued for transfusion, test results shall be compared with past records.

8:8-5.4 Information provided to the donor

(a) Consent shall be obtained in writing from the prospective donor after the procedure has been explained in terms the donor can understand and after the donor has had an opportunity to ask questions and refuse consent.

(b) The donor must be instructed in post phlebotomy care and cautioned as to possible adverse reactions.

(c) The blood bank director shall be responsible for a mechanism for notifying the donors of the cause of rejection.

SUBCHAPTER 6. BLOOD AND BLOOD COMPONENTS

8:8-6.1 General criteria

(a) The procedure for the collection, processing, storage and distribution of blood and blood components shall meet

the requirements of this subchapter. Based upon compliance, the Department will grant approval.

(b) All units of blood or blood components found to have positive tests for HB_sAg shall not be issued for transfusion or for the preparation of components for fractions.

(c) Sale or exchange of such material positive for HB Ag shall not be made without the express permission, in writing, of the Department.

(d) Blood banks distributing blood and blood components shall:

1. Have available an information circular with each product explaining its proper indications and usage (thawing, dosage, stability, side effects, adverse reactions, hazards, etc.).

2. Provide accurate expiration dates and hours on the container label for all blood and blood components.

3. Establish criteria, according to current standards acceptable to the Department, for the blood bank including but not limited to the following:

i. The container closure has not been disturbed;

ii. The product has been transported and stored within appropriate containers for the products, especially frozen or labile components;

iii. Records indicate that the product has been reissued;

iv. Pilot samples have remained attached to the container if the product has left the issuing facility;

v. Meets licensed expiration dates for the product.

8:8-6.2 Processing

(a) The processing of all blood and blood components shall be in accordance with the Code of Federal Regulations.

(b) All laboratory tests shall be made on specimens of blood taken from the donor at the time of phlebotomy in properly identified tubes.

1. Syphilis: Current Code of Federal Regulations referring to approved syphilis testing must be observed.

2. Hepatitis:

i. A sample of blood from each donation shall have a serological test for HB_sAg which is acceptable to the Department.

ii. The blood or blood components shall not be used for transfusion purposes unless results of test(s) are clearly negative, except where delay occasioned by testing may result in a serious threat to the health and well-being of the recipient.

iii. In instances where untested units are transfused, the attending physician shall attest in writing to the existence of an emergency and if the test is subsequently positive, the recipient's physician must be notified.

3. Determination of ABO group:

i. Each container of blood shall be properly identified and labeled as to its blood group.

ii. The ABO type of each blood donation shall be determined by testing the red cells of the donor using known Anti-A and Anti-B sera, and by testing the serum or plasma for expected antibodies using known A_1 and B red blood cells.

(1) The two methods of testing shall be recorded and be in complete agreement before any label or release can be effected for the unit of blood.

(2) All Anti-A and Anti-B sera shall meet the Office of Biologics minimum requirements, and the procedures used shall follow the manufacturer's directions.

iii. Previous records of ABO type shall not serve as identification of units subsequently given by the same donor.

(1) New determinations shall be made for each collection.

4. Determination of D type:

i. The D type of each container of donor blood shall be determined with Anti-D reagent.

ii. If the blood is D negative, it shall be tested using a technique designed to detect D^u.

iii. Only anti-sera meeting Office of Biologics minimum requirements for the products shall be used and the technique of typing shall be that recommended by the manufacturer.

5. Determination of antibodies:

i. Each container of blood shall be tested for unexpected antibodies using a screening cell suspension which meets the Code of Federal Regulations minimum requirements.

ii. The techniques employed shall be those which will detect clinically significant antibodies and shall include the anti-human globulin test.

iii. Screening procedures must employ fresh serum not older than 48 hours.

iv. Blood in which antibodies are found shall be used in a manner not detrimental to the recipient.

6. Repeat testing:

The facility at which the transfusion is administered must confirm the ABO type, on a sample obtained from the integral attached segment, of all units of whole blood and red blood cells, and the D type of all D negative units of whole blood and red blood cells.

(c) Any additional testing for product quality and patient safety may be performed under this Chapter.

SUBCHAPTER 7. COLLECTION OF BLOOD

8:8-7.1 Donor's emergency care

(a) Blood shall be drawn from donors only when a physician or donor emergency care personnel are available on the premises.

(b) The qualifications of donor emergency care personnel and the procedures for implementation of donor selection and donor care standards shall be approved by the Department.

(c) This rule does not waive the requirements for physicians' attendance at a location where a plasmapheresis is being performed.

8:8-7.2 Medical contingency plan

(a) Each location for collection of whole blood units shall have a current medical contingency plan specific for that location which will include;

1. Name, address and telephone number of nearest hospital;

2. Route of evacuation to that hospital;

3. Emergency vehicle on hand or telephone number of local ambulance squad and/or local police;

4. Name, address and telephone number of physician on call with hours of coverage, or name, address and telephone number of emergency room of nearest hospital;

5. When a private physician in the area of a mobile whole blood collection site is providing medical coverage, personnel will be responsible for;

i. Notifying the physician of the location and telephone number of the unit and that donor bleeding is being initiated;

ii. Reconfirming the hours of coverage;

iii. Notifying the physician at the end of operation.

(b) When a hospital in the area of the mobile blood collection site is providing medical coverage, personnel will be responsible for;

1. Notifying the hospital emergency room of the location and telephone number of the unit and the hour donor bleeding is being initiated;

2. Notifying the hospital emergency room at the close of operation.

(c) A copy of the Medical contingency plan for each location must be maintained on file on the premises of each licensed blood bank for a period of not less than five years.

8:8-7.3 Donor protection

(a) Preparation of the donor's skin for phlebotomy shall be adequate to afford protection from infection to the donor and to the future recipient.

(b) All equipment used in the collection of blood, such as syringes, needles, lancets or other blood letting devices, capable of transmitting infection to donor or recipient, shall be sterile and pyrogen free.

(c) Oral thermometers shall be used in a sanitary manner.

(d) All personnel concerned with the collection of blood shall be instructed in appropriate first aid procedures in the event of donor reaction.

(e) Suitable drugs, supplies and instructions for use shall be immediately available at all times.

8:8-7.4 Method of routine whole blood collection

(a) The method employed for the removal of blood from the donor must conform to accepted standards of asepsis.

(b) Blood containers and donor sets shall be sterile and pyrogen-free.

(c) A closed system must be used.

(d) If more than one venipuncture is needed, another set and container must be used.

(e) The container into which the blood is collected at one venipuncture shall be the final container.

(f) During bleeding, the anticoagulant solution and the blood shall be thoroughly mixed.

(g) The outside of the container shall be kept clean.

(h) Immediately after bleeding, the blood shall be placed in storage at 1-6°C, unless platelets are to be harvested.

8:8-7.5 Pilot samples

(a) At the time of collection the integral donor tubing must be filled with anticoagulated blood and sealed in such a manner that it will be available for subsequent tests for serologic incompatibility.

(b) The integral donor tubing segments must be separable from the container without breaking the sterility of the container.

(c) At the time of collection additional blood may be collected for laboratory tests provided containers are properly labelled before or at the time of collection, accompany the blood container, and are reidentified with the blood container after filling.

8:8-7.6 Blood containers

(a) Containers for whole blood and blood components used by licensed establishments, shall be identified by recording the manufacturer's lot numbers and shall be sterile and pyrogen-free.

(b) The containers shall be sufficiently colorless and transparent to permit visual inspection of blood.

(c) They shall be provided with closures which maintain a hermetic seal and prevent contamination of the contents.

(d) The container and the closure shall not interact with the contents under customary conditions of storage and use.

(e) The anticoagulant solution and additive solution systems shall be sterile, pyrogen-free in the amount prescribed for the volume of blood collected, and prepared according to the Code of Federal Regulations.

8:8-7.7 Labeling

Labeling shall be consistent with the Code of Federal Regulations.

8:8-7.8 Collection of blood for autologous transfusion

(a) Donor processing for autologous transfusion shall be as follows:

1. Donor qualifications for autologous transfusion may vary from standard donor criteria but this entire procedure must be arranged by consultation between the blood bank director and the donor-patient's physician.

2. If the patient-donor and/or donated unit do not meet the criteria for donor selection listed in this Chapter to protect the recipient, the unit must be labeled "For Autologous Use Only", segregated, and used solely for this purpose.

(b) Criteria for donation shall be as follows:

1. Volume of blood must comply with the Code of Federal Regulations.

2. There are no age limits for autologous transfusion procedures.

3. The hemoglobin concentration of patient-donor should be no less than 11 gms. per dl. The packed cell volume, if substituted, should be no less than 34 percent.

4. Frequency of phlebotomy for autologous transfusion shall be determined by competent medical decision but blood should not be collected from the patient within 72 hours of the anticipated procedure.

5. Phlebotomy concurrent with transfusion of previously collected autologous units should not be undertaken more frequently than once every three days.

(c) Pretransfusion testing of units for autologous transfusion shall be subject to the following:

1. ABO group must be determined by the collection facility. If the transfusion facility is different from the collecting facility, the ABO type must be confirmed.

2. Other factors tested for routine transfusion are optional.

3. Compatibility testing is optional.

8:8-7.9 Intraoperative autologous transfusion

(a) Facilities initiating the intraoperative autologous transfusion procedure must notify the Department in writing within 30 days.

(b) Current guidelines established by the American Association of Blood Banks must be observed.

8:8-7.10 Therapeutic phlebotomy

(a) General criteria for therapeutic phlebotomy follows:

1. Any blood or blood component withdrawn from a patient for therapeutic purposes shall be clearly indicated as such on the blood label.

2. The use of this blood or blood component for allogeneic transfusion purposes shall be determined by the physician in charge of the blood bank, in consulation with the recipient's attending physician.

3. Collection of such blood for transfusion purposes shall be restricted to an institution where the status of both the donor and the recipient are known.

4. The unit shall be labeled to indicate the donor's disease.

(b) There shall be a written procedure describing the technique used.

(c) Records shall be maintained which include patient identification, diagnosis, therapeutic procedure, volume of plasma and cells removed, volume replaced, nature of the replacement fluids, and a record of the administered medications.

(d) Informed written consent of the patient must be obtained.

(e) There shall be provisions for the management of reactions.

8:8-7.11 Routine plasmapheresis

(a) Blood banks wishing to employ these techniques shall file a request in writing with the Department, including their protocol and other relevant details.

(b) Such techniques may be employed upon receipt of written approval from the Department.

(c) The procedures used shall meet with the approval of the Department and shall include as a minimum the following requirements;

1. Within one week prior to the first plasmapheresis, the donor shall be examined and certified to be in good health by a licensed physician.

2. A licensed physician on the premises shall supervise the performance of these procedures, including the reinfusion of red cells.

3. Prior to each procedure, records shall be made and maintained of the major pertinent elements of each donor's physical condition and must also include a determination of the donor's total protein.

4. A donor shall not serve as a source of plasma unless his or her total protein is within normal limits.

5. Quality control records of the total protein determinations shall be maintained.

6. If a second plasmapheresis is to be performed within 30 days of the first procedure, laboratory tests shall be done on samples of the donor's serum to determine that the protein level and ratio of the various protein components, as shown by electrophoresis, fall within normal limits.

7. A donor shall not serve as a source of plasma while there is any significant change in his health, or in the values of these initial determinations.

8. Periodic determinations shall be made as frequently as necessary and at least every four months to monitor these evaluations.

9. The plasma from no more than two liters of blood may be retained in a seven day period and the plasma from no more than one liter of blood may be retained in a 48 hour period.

10. Red blood cell loss should not exceed 25 ml per week during serial plasmapheresis.

11. A plasmapheresis donor may donate a unit of whole blood if 48 hours have lapsed since the last plasmapheresis, but at least eight weeks shall elapse after a regular whole blood donation before starting a donor in a plasmapheresis program.

12. A plasmapheresis donor must, on each occasion of plasmapheresis satisfy all requirements of donor whole blood outlined in N.J.A.C. 8:8-5 Criteria for Donor Selection.

8:8-7.12 Cytapheresis

(a) Blood banks wishing a employ these techniques shall file their protocol and a request in writing with the Department.

(b) Such techniques may be employed upon receipt of written approval from the Department.

(c) The procedures used shall meet with the approval of the Department and shall include as a minimum the following requirements;

1. N.J.A.C. 8:8-5 Criteria for Donor Selection.

2. A licensed physician on the premises shall supervise the performance of these procedures including the reinfusion procedure.

3. The interval between procedures shall be at least 48 hours, and no more than 1,000 ml of plasma should be removed per seven days, or 250 ml of red blood cells per eight weeks.

4. Plasmapheresis requirements as outlined in N.J.A.C. 8:8-7.11 shall apply to donors undergoing cytapheresis at least biweekly over several months.

i. The results of these tests shall be reviewed by a licensed physician to determine suitability for continued donation.

ii. The donor must be tested appropriately to detect developing cytopenia.

5. If a cytapheresis donor donates a unit of whole blood or if it becomes technically impossible to return the donor's red blood cells, at least eight weeks must elapse before a subsequent cytapheresis procedure.

6. Donors may receive drugs before or during leukapheresis.

i. Such drugs shall not be used for donors whose medical history suggests that they may exacerbate previous intercurrent disease.

ii. The blood bank director is responsible for setting appropriate guidelines in such circumstances.

8:8-7.13 Immunized donor

(a) If specific immunization of a donor is to be performed, the selection and scheduling of the injection of the antigen, and the evaluation of each donor's clinical response, shall be by a qualified physician.

(b) Any material used for immunization shall be either a product licensed under Section 351 of the Public Health Service Act for such purpose or one specifically approved by the Director, Office of Biologics.

(c) Immunization procedures shall be on file at each plasmapheresis center where immunizations are performed.

(d) Each donor to be immunized shall be instructed regarding possible hazards associated with use of his blood at other blood banks and each shall agree that he will not donate blood elsewhere without first divulging his immunization status.

(e) Informed consent of the donor must be obtained.

8:8-7.14 Sterility testing

(a) Sterility testing shall be performed at regular intervals and not less than once monthly, where blood is collected in an open system. Such tests shall not be done on blood intended for transfusion.

(b) Culture techniques shall be in accordance with the regulations of the Office of Biologics.

(c) Permanent records of the sterility tests and the results shall be kept.

SUBCHAPTER 8. RECIPIENT BLOOD TESTING

8:8-8.1 General provisions

(a) Forms and requests for blood and blood components and forms accompanying recipient blood samples must have

sufficient information for the positive identification of the recipient.

(b) The recipient's first and last names and identification number are required.

(c) Incomplete or illegible forms shall not be accepted.

(d) The intended recipient and the blood sample shall be identified at the time of collection by a mechanism which positively identifies the recipient.

(e) The sample for compatibility testing shall be;

1. Identified by a label containing at least the recipient's first and last names and identification number, firmly attached to the sample before leaving the side of the recipient.

2. Identified as to the person who drew the recipient's blood sample.

3. Less than 48 hours old when a recipient has been transfused or pregnant in the preceding three months or this information is not known.

(f) Testing of the recipient's blood shall include at least the following;

1. Determination of ABO type:

i. ABO typing shall be performed on each sample of recipient blood as in N.J.A.C. 8:8-6.2(b)3ii and iii.

ii. Serum tests for Anti-A and Anti-B in neonatal patients should be omitted.

2. D typing:

i. It is sufficient to test each blood sample from the recipient with Anti-D typing sera only.

ii. This will determine whether the recipient should receive D positive or D negative blood.

iii. The test for D^u is unnecessary when testing recipient red cells.

iv. A control system appropriate to the typing system used is required.

3. Detection of unexpected antibodies:

i. Each blood sample submitted with a request for transfusion shall be tested prior to, or concurrently with, the performance of the crossmatch.

ii. Methods for testing for unexpected antibodies shall be those which demonstrate clinically significant antibodies and shall include an antiglobulin test.

4. Compatibility testing:

i. Compatibility testing requirements shall be consistent with current regulations of the Office of Biologics but must include at least an immediate spin crossmatch of donor cells and patient serum.

8:8-8.2 Operative blood order schedules

(a) If type and screen procedure is used, there must be prompt availability of ABO compatible blood to meet unexpected transfusion requirements.

(b) If this blood is needed before compatibility testing is completed, an immediate spin crossmatch must be performed before the blood can be released.

1. Testing should be completed promptly and the results documented.

8:8-8.3 Urgent requirement for blood

(a) Urgent requirements for blood are situations in which delay in provision of blood may unduly jeopardize the patient, therefore, blood may be issued before completion of routine tests.

(b) The following standards apply to urgent situations:

1. Recipients whose ABO and D Types have been determined by the transfusing facility without reliance on previous records may receive type-specific blood before required tests have been completed.

2. Recipients whose ABO type is not known shall receive type O red blood cells.

3. The records shall contain a statement of the requesting physician indicating that the clinical situation was sufficiently urgent to require release of blood before completion of required testing.

4. The tag or label shall indicate in a conspicuous fashion that required testing had not been completed at the time of issue.

5. Required tests should be completed promptly.

ii. The warming system must be equipped with a visible thermometer.

iii. Blood must not be warmed above 37°C.

3. Additives to blood shall be regulated as follows:

i. Drugs or medications, including those intended for intravenous use, shall not be added to blood or components with the exception of sodium chloride injection U.S.P (0.9 percent) or additive solution systems.

ii. Other solutions intended for intravenous use may be in contact with blood or components in the infusion set provided adequate evidence of safety is available.

4. Irradiation of blood shall be consistent with current acceptable guidelines of the American Association of Blood Banks.

SUBCHAPTER 9. ISSUE AND ADMINISTRATION OF BLOOD AND BLOOD COMPONENTS FOR TRANSFUSION

8:8-9.1 Issue of blood

(a) A blood transfusion request form indicating the recipient's name, identification number, and ABO and D types shall be completed for each unit of donor blood or component.

(b) A label or tag with the appropriate information to identify the unit with the intended recipient shall be attached to the blood container before its release from the laboratory for transfusion.

(c) Retention of blood samples shall be as follows:

1. A stoppered or sealed sample of each donor blood, and a similar sample of the recipient's blood, shall be stored at 1 to 6°C for at least seven days after tansfusion.

(d) Prior to transfusion the inspection of blood shall be as follows:

1. The blood shall be inspected immediately before issue from the laboratory.

2. If abnormal in color or appearance, the blood shall not be used for transfusion.

8:8-9.2 Administration of blood and components

(a) Identification of the recipient and the blood container shall be as follows:

1. Each transfusion service must have a written procedure for the positive identification of the recipient and the blood container.

2. Immediately prior to transfusion the transfusion form shall be signed indicating that all information identifying the container with the intended recipient has been matched.

3. It is required that a second qualified person check the same information before transfusion and sign the transfusion form.

4. All identification attached to the container shall remain attached at least until the transfusion has been completed.

(b) Blood transfusions shall be conducted as follows:

1. Blood and components shall be transfused through a sterile, pyrogen-free transfusion set equipped with a filter.

2. Warming of blood shall be performed as follows:

i. When warming of blood is performed, it should be accomplished during its passage through the transfusion set.

SUBCHAPTER 10. STORAGE OF BLOOD

8:8-10.1 Refrigerators for the storage of blood

(a) The refrigerator for the storage of blood shall maintain the blood at a temperature between 1-6°C.

(b) Refrigerators for blood or blood component storage shall be provided with a fan for circulating air or be of a design to ensure that the proper temperature is maintained throughout.

(c) Both liquid and air temperature shall be monitored.

(d) The liquid medium used shall reflect the actual temperature of blood in storage.

8:8-10.2 Freezers for blood components

(a) Freezers for blood components stored frozen shall maintain the blood component at a temperature below −18°C.

(b) Liquid nitrogen freezers used to store red blood cells shall maintain them at a gas phase temperature below −120°C.

8:8-10.3 Room temperature storage

Components for room temperature storage shall be maintained at a temperature of 20 to 24°C.

8:8-10.4 Temperature monitoring systems

(a) All refrigerated equipment used to store blood and blood components shall have a system to record temperature continuously.

(b) The temperature recording device shall be calibrated periodically, inspected at least daily and written records of the temperatures shall be kept on file.

(c) Alarms shall be attached to the refrigeration equipment and shall be subject to the following:

1. Visual and audible alarm systems shall be attached to the equipment to indicate whenever the temperature is outside acceptable ranges.

2. Alarms should be installed in location to provide 24 hour coverage by night personnel or switchboard operators.

3. The alarms shall be set to activitate at a temperature which will allow proper action to be taken before the blood or blood components reach undesirable temperatures.

(d) There shall be a written procedure posted prominently for staff to follow in case of electrical or equipment failure.

(e) The equipment shall be kept clean and used only for the storage of blood and blood components, blood banking sera, pilot and patient samples.

(f) No food or potentially contaminated material shall be stored in the refrigeration equipment.

8:8-10.5 Inspection of stored blood

(a) Stored blood shall be inspected daily and records maintained during the entire period of storage and immediately prior to issue or use.

(b) If the color or physical appearance is abnormal or there is any indication or suspicion of contamination, the unit of blood shall not be issued for transfusion purposes.

8:8-10.6 Expiration dates of blood and blood components

(a) The expiration date is the last day on which the blood and blood components are considered suitable for transfusion purposes.

(b) Expiration dates shall be in accord with the Code of Federal Regulations.

8:8-10.7 Packaging and transportation

(a) During periods of transportation the blood shall be maintained at temperatures between 1-10°C in insulated or wet ice containers shown to be capable of maintaining this temperature for a suitable period of time.

(b) Immediately upon arrival, the receiving facility shall transfer the blood to a temperature controlled refrigerator as in N.J.A.C. 8:8-10.1 for further storage.

(a)

HEALTH PLANNING AND RESOURCES DEVELOPMENT

Standards for Residential Health Care Facilities Building Requirement Standards

Proposed Readoption: N.J.A.C. 8:43-2

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health (with the approval of Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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Health Facilities Construction
and Monitoring Program
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CN 360
Trenton, N.J. 08625

The Department of Health thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules expired December 2, 1983. The readoption becomes effective upon publication in the New Jersey Register of a notice of readoption.

This proposal is known as PRN 1984-72.

The agency proposal follows:

Summary

The New Jersey State Department of Health through N.J.S.A. 26:2H-1 has been mandated the responsibility to develop and promulgate building requirements and fire pro-

tection standards for the licensing of Residential Health Care Facilities. This notice is for the readoption of N.J.A.C. 8:43-2, Building requirement standards, required for compliance to the "Sunset" Provision of Executive Order No. 66(1978) which mandates the automatic five year expiration of the regulation unless readopted.

Residential health care facilities provide a vital community service for those who require personal care service by assuring them a safe physical environment in which to live.

The standards at N.J.A.C. 8:43-2 were developed so as to provide a type of facility which will provide shelter for residents who require supervisory care. The Residential Health Care facility provides a vital community service substituting for the actual home of the person who requires shelter, personal care and services. It fills a specific need and renders a public service of great importance. These facilities furnish to four or more adult persons, unrelated to the owner, assistance and services beyond food, shelter and laundry.

A review of the subchapter follows:

N.J.A.C. 8:43-2.1 describes the importance of a site location for a facility.

N.J.A.C. 8:43-2.2 provides guidelines for the type of structure to be built.

N.J.A.C. 8:43-2.3 concerns approval from local municipalities and submission of floor plans.

N.J.A.C. 8:43-2.4 specifies that a conference shall be held with facility surveys and licensing to discuss the building under construction.

N.J.A.C. 8:43-2.5 details inspection of the building by the Department of Health.

N.J.A.C. 8:43-2.6 sets standards for building occupancy.

N.J.A.C. 8:43-2.7, 2.8 and 2.9 sets standards for resident bedrooms, toilets, baths, living and recreation rooms.

N.J.A.C. 8:43-2.10, 2.11, and 2.12 sets standards for dining room, corridors, stairways and storage space.

N.J.A.C. 8:43-2.13, 2.14, 2.15 and 2.16 sets standards for heating, lighting, ventilation and physical maintenance.

The prospective applicant and licensed residential health care facility operator is required to be thoroughly familiar with all of these rules and standards.

These codes and standards over the years have been simplified and written in more specific language to make the regulations more functional, economical and realistic. The changes that have been adopted previously have stressed the fire safety and protection of the residents such as providing an automatic sprinkler system for all facilities of licensed for 20 or more beds.

The Department reviewed and evaluated the standards to assure that they met all the criteria for protection and safety of the resident in these facilities. These standards have resulted in the construction of more efficient and fire safe facilities and are proposed without amendments.

At the present time, the Federal government is studying the possibility of reimbursement of care in these facilities. These existing regulations would at this time meet the proposed criteria for construction.

These facilities and the building requirement standards which maintain safety are a vital part of the health care system. Patients residing in nursing homes but no longer needing this type of care would be able to relocate in residential health care facilities with a lower cost. This would in turn free beds in nursing homes which would be able to accept patients from the hospital who do not require acute care and would therefore reduce the cost to the payors.

Social Impact

N.J.S.A. 26:2H-1 as amended recognizes as public policy of the State that health care services in residential health care facilities of the highest quality in well constructed structures which efficiently provided and properly utilized are of vital concern to the public.

Residential Health Care Facilities provide an alternative for those citizens who require personal care supervision which cannot be provided in their own home. These facilities maintain a home-like atmosphere in recognizing the individual's right to have his personal interests, dignity, and self respect safe guarded.

The current social condition toward de-institutionalization of patients to a more home life atmosphere and the role of residential health care facility has become more important as an alternative to the more costly skilled nursing facility where many of these residents are forced to remain because of the unavailability of space at this lower level of care.

The New Jersey Department of Health has the responsibility to provide for the protection and promotion of health for all inhabitants of the State. In addition, it has the responsibility to provide to its citizens the best possible care at the lowest price.

The Department conducted an internal review of N.J.A.C. 8:43-2 prior to this notice for readoption. In this review it was determined that the rules adequately and reasonably provide the ability to implement the codes and standards necessary to provide a fire safe environments to the residents in such facilities.

The rules since their original adoption have provided a beneficial social impact by insuring citizens that the design and construction of facilities are monitored to insure that the construction of Residential Health Care Facilities will provide quality of care in a safe environment.

Economic Impact

The Residential Health Care Facility is an economically feasible method providing health care to persons who require personal care and services at a reasonable cost. Since there is not any third party reimbursement except Social Security funds at approximately $11.00 a day, it is imperative to keep the cost of these facilities minimal to make them available to the needy citizens of the State.

These uniform standards eliminate unnecessary and duplicative regulations, and are expected to increase the cost-effectiveness of providing this service. Therefore, quality care will be enhanced at no increase in cost.

Existing facilities that complied with physical plant standards as previously adopted would be considered as meeting these standards thus relieving these facilities of the need for additional expenditure.

If these standards were not readopted the State would be without any physical plant standards for Residential Health Care Facilities and facilities would no longer be mandated to provide a fire safe environments for their residents.

Governmental agencies would then be required to place residents in higher level of care institutions in order to insure their safety. This higher level of care would cost more and would create an economic hardship on the residents, their guardians or the taxpayers through having to pay the increased costs.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:43-2.

(a)

HEALTH PLANNING AND RESOURCES DEVELOPMENT

Standards for Hospital Facilities Physical Plant

Proposed Readoption: N.J.A.C. 8:43B-3

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health (with the approval of Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Joseph A. DiCara, Chief
Health Facilities Construction
and Monitoring Program
Department of Health
CN 360
Trenton, New Jersey 08625

The Department of Health thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon acceptance for filing of the notice of adoption by the Office of Administrative Law.

This proposal is known as PRN 1984-71.

The agency proposal follows:

Summary

The Department of Health was granted the authority via N.J.S.A. 26:2H-1 to develop physical plant standards in order to license hospitals and meet minimum requirements for construction and fire safety elements. The basic need for physical plant standards was not to jeopardize the health and safety of the patients.

Prior to the Federal reimbursements for health care services under the Medicare and Medicaid program, the Department of Health's standards were written in very general terms which left the designer with no clear cut guidelines on standards. Since the Federal government at that time issued standards and regulation, the Department of Health in order to make health care facilities in New Jersey eligible for reimbursement of these funds had to pass codes and standards at least equal to the minimum Federal requirement.

The standards for physical plant construction follows:

N.J.A.C. 8:43B-3.1 specifies that building standards shall comply with the United States Public Health Service and New Jersey Standards for Hospital Construction.

N.J.A.C. 8:43B-3.2 concerns standards for fire protection and safety.

N.J.A.C. 8:43B-3.3 and 3.4 specify standards for lighting, ventilation and heating.

N.J.A.C. 8:43B-3.5 and 3.6 specify standards for maintenance, sanitation, pathological and infectious waste disposal.

These codes and standards have been over the years simplified and written in more specific language to make the regulations more functional, workable and realistic. The changes which have been adopted over the years have stressed fire safety and protection of the patients. These rules have been amended in order to comply with the adoption of new Federal requirements for reimbursement and to comply with the State Uniform Construction Code. In addition the design of facilities was planned for a more efficient functional layouts with the emphasis on cutting operational cost and construction of wasted space in Health facilities.

This readoption notice is required due to the "Sunset" provision of Executive Order No. 66 which mandates the five year automatic expiration of regulation. The Manual of Standards for Hospitals, N.J.A.C. 8:43B-3 Physical plant, expired February 1, 1984. The Department reviewed and evaluated the standards to assure that they met all current Federal requirements so as not to jeopardize the loss of any revenue from Federal reimbursement.

These rules with all previous amendments have resulted in the construction of more efficient health facilities which will provide better care for the patient. These rules are necessary and adequately spell out the purpose for which they were originally promulgated since a great deal more planning is being done before a construction project is initiated therefore avoiding in many cases the duplication of services.

Social Impact

N.J.S.A. 26:2H-1 as amended recognizes as public policy of the State that hospitals and related health care services of the highest quality in well constructed facilities which efficiently provide and properly utilize at a reasonable cost are of vital concern to the public health.

Questions from providers of care, architect and engineers regarding the standards and interpretation of standards should be more easily answered due to flexibility of these standards and will give more initiative to health care professionals to provide quality care to patients.

The New Jersey State Department of Health has the responsibility to provide for the protection and promotion of the health for all inhabitants of the State. In addition it promotes the financial solvency of hospitals and contains rising costs of health care services and assures that health care facilities meet all the codes and standards in order to receive Federal reimbursement under medicare/medicaid. It is also important to reduce cost of health care construction by decentralizing services not necessary to be in the core hospital.

The Department conducted an internal review of the rules prior to this notice for readoption. In this review it was determined that the rules adequately and reasonably provide the ability to implement the codes and standards necessary to provide fire safe environment to the patients.

In the event this subchapter is not readopted it would severely jeopardize the Department's ability to protect the health, safety and general well being of the patients who are admitted to hospitals.

These rules since their original adoption have provided a beneficial social impact by insuring New Jersey citizens that the design and construction of facilities is being monitored which ensures quality of care in a safe environment.

The standards which are being proposed for readoption are in conformance with Federal requirements to insure reimbursement under the Medicare-Medicaid program.

Economic Impact

These rules have a great economic impact on the entire hospital system in New Jersey since without the readoption of these standards the Department would jeopardize to health care facilities the receiving of Federal medicare-medicaid reimbursement for the patients served which amounts to in excess of one billion dollars annually to New Jersey hospitals.

The economic impact of the original standards when adopted still prevails today due to the reimbursement mechanism. There have been no changes in the Federal requirement since the rules were adopted and therefore no new requirements for physical plant. Therefore this subchapter is being adopted with no changes.

Existing facilities that comply with physical plant standards and earlier edition of the Life Safety Code would be considered as meeting these rules thus relieving these facilities of the need for additional expenditure without any adverse effect on patient safety.

With these rules the facilities presently have the option of providing equivalent means of compliance with these codes and standards and would therefore save a great deal of construction dollars by utilizing existing plants with minor renovations.

In addition these rules are in compliance with the construction regulations concerning health care facilities as promulgated by the State Department of Community Affairs which administers the State Uniform Construction Code.

If this subchapter were not readopted the State would be without any physical plant standards for hospitals and facilities could be built not meeting any codes and standards and if not in compliance would not receive Federal reimbursement.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:43B-3.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual
Child Support Program

Proposed Repeal: N.J.A.C. 10:81 Appendix D
Proposed New Rule: N.J.A.C. 10:81-11

Authorized By: George J. Albanese, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3 Title IV-D of the Social Security Act, 45 CFR Part 232, 45 CFR Chapter III.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Acting Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on May 3, 1984. The new rule becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-100.

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order No. 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:81, Appendix D, with amendments. However, since the regulations in Appendix D should be more appropriately codified as a subchapter in chapter 10:81, Appendix D is being proposed for repeal to be replaced with a revised new rule codified as N.J.A.C. 10:81-11.

N.J.A.C. 10:81-11 is a compilation of regulations and procedures pertaining to the establishing of paternity and enforcing child support obligations in accordance with P.L. 93-647 which established Title IV-D of the Social Security Act. Title IV-D mandated certain changes in the eligibility requirements of certain AFDC cases, based in part on parental deprivation. The purpose of N.J.A.C. 10:81-11 is to provide county welfare agencies (CWAs) with guidelines to facilitate the performance of Title IV-D functions. Since the original passage of Title IV-D, there have been additions and modifications to the Child Support Program (CSP) which necessitated the amendments to what is now Subchapter 11.

Because of the procedures set forth in N.J.A.C. 10:81-11, counties are able to establish support obligations in order to offset public assistance granted. The same services are made available to non-public assistance cases with the intent to maintain that status and provide potential saving to the county. The continuation of the program expands the potential return on investment and/or savings to the program.

These regulations are under continual review by 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, that agency determined the rules to be adequate, reasonable, and responsive to the purposes for which they were promulgated.

There have been several revisions to the rules since promulgation.

On August 18, 1977, pursuant to authority of N.J.S.A. 44:7-6 and 44:10-3, and in accordance with applicable provisions of the Administrative Procedure Act, the Department adopted revisions concerning enumeration and the child support and paternity program. An order adopting these revisions was filed on August 22, 1977, as R.1977 d.307 and became effective September 1, 1977.

On March 6, 1978, the Department adopted revisions concerning incentive payments to CWAs for CSP collections. An order adopting these amendments was filed and became effective on March 8, 1978, as R.1978 d.88.

On April 30, 1979, the Department adopted revisions concerning good cause for refusing to cooperate in the establishment of paternity and obtaining support. They clarified the conditions under which an AFDC applicant/recipient may refuse to cooperate with a CSP unit without incurring a pen-

alty. An order adopting these amendments was filed and became effective on May 3, 1979, as R.1979 d.171.

Proposed changes to N.J.A.C. 10:81 Appendix D include the following:

N.J.A.C. 10:81-11.4, dealing with assignment of support rights to the agency providing public assistance includes changes in State law (N.J.S.A. 44:10-2) which now provides that this be an automatic process upon application for assistance. Persons receiving public assistance may not collect payments from both a CWA and receive direct child support, but no longer need to complete a separate form to assign support rights to the CWA; the assignment is incorporated in the application form.

N.J.A.C. 10:81-11.5(k) proposes to change reporting requirements to semi-annually rather than monthly in cases involving claims of "Good Cause".

N.J.A.C. 10:81-11.6 reflects changes in Federal financial participation. The amount of incentive payment being retained by the agency(s) enforcing and collecting child support has been reduced by the Federal government from 15 percent to 12 percent effective October 1, 1983. All reference to almony has been removed.

N.J.A.C. 10:81-11.7(a)1viii includes the Tax Offset Program established by the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

N.J.A.C. 10:81-11.9(b) provides instruction for the use of Form CSP-157 (Case Information Exchange Notice) which establishes information sharing between the public assistance agency and the probation department enforcing the support order.

N.J.A.C. 10:81-11.9(d)1 defines agency participation in the consent process to establish paternity and/or obtain support. This process has been initiated and refined by probation departments and county courts.

N.J.A.C. 10:81-11.9(d)2i-ii describes blood testing procedures for establishing paternity. This was never set forth in the past and may be more frequently used because of the New Jersey Parentage Act (P.L. 1983, Chapter 17).

N.J.A.C. 10:81-11.9(d)4 through 10 relieves the client of responsibility for filing a paternity/non-support complaint and gives the welfare agency the authority to do so on behalf of the client. Subsequent sections define specific procedures in cases with extenuating circumstances; i.e., parent is residing out-of-state, incapacitated, bankrupt, or incarcerated.

N.J.A.C. 10:81-11.9(e) provides instruction for the use of Form CSP-158 (Case Preparation Information Sheet) and its incorporation into agency files.

N.J.A.C. 10:81-11.9(f) refines and modifies application for collection of delinquent support by the Internal Revenue Service (IRS), increasing the minimum amount collectable to $750.00 and clarifying the language.

N.J.A.C. 10:81-11.9(g) adds authorization to obtain information from IRS master files and from tax returns. The section specifies the State CSP Unit as the designated requesting agency; defines the data available, fees applicable, and security requirements; and establishes request procedure.

N.J.A.C. 10:81-11.9(h) sets forth procedures for the collection of delinquent support through offset of Federal tax returns. Changes in Federal legislation and regulations necessitated this change. Eligible cases are defined; required forms are introduced and proper use is detailed. Submittal, deletion and correction procedures are identified.

N.J.A.C. 10:81-11.9(i) sets forth procedures for collection of delinquent support through offset of New Jersey State Income Tax and Homestead Rebate. Eligibility requirements are defined. Submittal, deletion and correction procedures are the same as the Federal process.

N.J.A.C. 10:81-11.9(j) adds detailed instruction for county welfare agencies to provide services to non-public assistance clients, including location and establishing of paternity and/or support.

N.J.A.C. 10:81-11.11 provides CSP responsibilities in pursuing support when the income maintenance unit has determined the existence of good cause.

N.J.A.C. 10:81-11.12 provides instruction for notifying the enforcing probation department of deletions, terminations, suspensions and transfers, via Form CSP-157 (Case Information Exchange Notice).

N.J.A.C. 10:81-1.13 through 11.15 expands the definition and responsibilities of both the State and county Parent Locator Service.

N.J.A.C. 10:81-11.17 adds instruction concerning retention and destruction of case records, including time frames for retention and cross references pertaining to destruction.

Social Impact

The provisions of N.J.A.C. 10:81-11 require the establishment of Child Support and Paternity Units. These Units are responsible for locating parents who desert their dependent children, establishing paternity for children born out of wedlock, establishing legal obligations for child support, and distributing collections made on behalf of families receiving public assistance.

In FFY 1982, New Jersey located 30,245 absent parents, established paternity for 9,647 children, and established 25,447 support obligations. During the same period, New Jersey distributed AFDC child support collections totalling $33,606,114.

Of an absent parent caseload approximating 320,000, there are an estimated 86,000 non-public assistance cases. Cooperation with program requirements is a condition of eligibility for AFDC, while non-AFDC families may voluntarily apply for child support services.

Without these procedures the issuance and distribution of assistance would be made without provision for recovery. The amendments presented at this time are made for the purposes of updating obsolete information, eliminating redundant elements or outdated material, and improving presentation and overall clarity. Failure to readopt these procedures would hinder or preclude the provision of services.

Economic Impact

There is no impact on the recipients of public assistance provided that the elements of cooperation are adhered to; assistance will be granted even in cases where paternity and/or support cannot be established. Proposed changes are expected to impact positively on the administration of the program in the form of more cost-efficient operations.

In each year since the inception of the program, support collections have increased. Collections are expected to continue to increase with the implementation of the Tax Offset Program. Failure to readopt the procedures could result in potential loss of revenue.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 10:81, Appendix D.

Full text of the proposed new rule follows.

SUBCHAPTER 11. CHILD SUPPORT AND PATERNITY

10:81-11.1 Introduction

The regulations contained in this subchapter are applicable to the AFDC program in New Jersey. P.L. 93-647 establishes Title IV-D of the Social Security Act, which mandates procedures for enforcing support obligations owed by absent parents to their children, locating absent parents and establishing paternity for children born out-of-wedlock. If any regulations herein contradict or conflict with any previously published portions of this manual, such material shall be superseded by this subchapter, except as stated in N.J.A.C. 10:81-11.16(a)2.

10:81-11.2 Eligibility requirements

(a) In addition to the eligibility requirements contained in N.J.A.C. 10:81-3 and 5, requirements for AFDC eligibility shall include the following:

1. Social Security numbers: Applicants for AFDC (all segments) must provide Social Security numbers for all persons for whom assistance is requested (see N.J.A.C. 10:81-11.3).

2. Assignment of support rights: AFDC-C and F applicants or recipients as a condition of eligibility automatically assign to the county welfare agency all rights to support from the children's absent parent(s) or any other person to which the eligible children, or the applicant when he or she is included in the eligible unit, may be entitled (see N.J.A.C. 10:81-11.4).

3. Cooperation: The AFDC applicant shall be required to cooperate in obtaining support to which members of the eligible unit are entitled (see N.J.A.C. 10:81-11.5).

(b) Child support and paternity regulations contained in this subchapter are not required for the Cuban/Haitian Entrant Program (CHEP) or the Refugee Resettlement Program (RRP). Although county welfare agencies will not receive incentive payments for amounts collected for individuals in those programs, there is no bar to utilizing the methods herein to ensure collection of child support.

10:81-11.3 Social Security numbers

(a) The AFDC applicant shall supply the CWA with the Social Security number of each member of the eligible unit or apply for a Social Security number for any such person who does not already have one (see (c) and (e) below).

(b) Recording the Social Security number: The IM worker shall record, in the appropriate spaces on Form CSP-158 (Case Preparation Information Sheet) or CODES Form 105, as appropriate, and Form PA-1J (Application and Affidavit for AFDC, MA, CPP, RRP, CHEP and Food Stamps) the Social Security number of each person who is included in the AFDC grant.

(c) Obtaining a Social Security number: The CWA shall obtain a supply of Social Security Form SS-5, sufficient to accommodate all AFDC applicants who do not already have Social Security numbers. Upon application or redetermination, such applicant/recipient shall be required to sign Form SS-5. The IM worker shall complete Form SS-5 on the basis of information provided by the applicant/recipient. Completed forms shall be forwarded to the Social Security Administration; Enumeration Branch; 38 Courtright Street; Wilkes-Barre, Pennsylvania, 18702. A copy of the SS-5 form shall be retained in the case record, and a copy given to the client if so requested.

1. Documentation of application for Social Security number: The IM worker shall record in the case record the date upon which Form SS-5 was prepared.

2. Failure to obtain Social Security number: If any recipient has not obtained or applied for the appropriate Social Security number by the time of redetermination, the CWA shall declare such person ineligible. The needs of that individual shall be deleted in accordance with N.J.A.C. 10:82-2.4.

(d) Verification of Social Security number: If the IM worker has reason to believe that the Social Security number supplied by the AFDC applicant/recipient is erroneous, such Social Security number shall be verified by means of Form SS-5.

1. Documentation of request for verification of Social Security number: The IM worker shall record in the case record the date upon which Form SS-5 was prepared.

(e) Benefits pending issuance or verification of a Social Security number: AFDC benefits shall not be denied, delayed, or terminated pending issuance or verification of a Social Security number so long as the applicant/recipient has complied with the provisions of (a) through (d) above.

10:81-11.4 Assignment of support rights

(a) State law provides that application for or receipt of AFDC shall automatically operate as an assignment to the county welfare agency of any rights to support under titles IV-A and IV-D of the SSA, except in those cases in which the only legally responsible relative is a member of the eligible unit or is the incapacitated parent in an AFDC-C case.

(b) Purpose: Upon application for AFDC benefits, each applicant/recipient assigns to the county welfare agency all rights to support form the absent parent of the AFDC children and any other legally responsible relative to which the eligible unit may be entitled and includes any support obligation which has accrued at the time such application is executed.

(c) Applicability: The assignment of support rights applies only to the AFDC program; it is not an eligibility requirement for AFDC Medicaid Only, Cuban/Haitian Entrant Program, or the Refugee Resettlement Program.

(d) IM worker's responsibility: The IM Worker shall advise the AFDC applicant/recipient that upon signing an application (PA-1J) for AFDC he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC applicant/recipient shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CSP Unit: The IM worker, at the time of application for AFDC-C, shall complete the appropriate parts of the CSP referral document and route this form to the CWA/CSP Unit within two working days of issuance of an assistance check.

i. Relationship to application process: The fact that eligibility is not immediately established shall not delay routing of the CSP referral document to the CSP Unit. However, when a case is determined ineligible the IM worker shall notify the CSP Unit promptly.

ii. Direct support payments: The IV-A Unit shall treat assigned support payments retained in the current month as income in determining need and amount of assistance payments.

iii. Overpayment resulting from direct support payments: When a full grant has been issued, any support payments received directly by the applicant/recipient shall upon receipt be returned to the CWA/CSP Unit. If the support payment is

not returned, it must be collected by the CWA/CSP Unit, upon termination of the client from AFDC if not sooner.

iv. Termination or suspension of assistance: In the case of termination or suspension of assistance the IM worker shall concurrently send a copy of the adverse action notice to the AFDC recipient and the CWA/CSP Unit (see N.J.A.C. 10:81-11.12). The CSP Unit shall be notified immediately if assistance is continued pending or following a fair hearing.

10:81-11.5 Cooperation in establishing paternity and obtaining support

(a) Cooperation in obtaining support and establishing paternity whenever necessary is a condition of eligibility for AFDC for each applicant and recipient. The IM worker (and supervisor) has responsibility for the determination of whether or not good cause for refusal to cooperate exists. This determination shall be based on evidence provided by the client and on consultation, where appropriate, with the CSP Unit.

(b) Notice to applicant or recipient: At the time of application, the IM worker will explain to the client the requirements for cooperation in connection with establishment of paternity and collection of support. The worker shall also provide a written notice (PA-46) of the client's right to claim good cause for refusal to cooperate. Should the client claim to have good cause for noncooperation or request further clarification, he or she shall be given a further written notice (PA-47) describing the circumstances and evidence necessary for a finding of good cause.

1. Acknowledgement of notice: The client and the IM worker shall both acknowledge that the client received the notice(s) by signing and dating two copies of Form PA-46 (and PA-47). One copy of each notice will be given to the client and one placed in the case record.

(c) Cooperation requirements: Each applicant/recipient is required to cooperate with the CWA/CSP Unit, probation department, county prosecutor's office and other child support agencies in the following:

1. Assisting in identifying and locating the parent of each child for whom aid is requested;

2. Assisting in the establishment of paternity of each child born out-of-wedlock for whom aid is requested;

3. Assisting in obtaining support payments for each individual for whom aid is requested; and

4. Assisting in obtaining any other payments or property due any individual for whom aid is requested.

(d) Cooperation explained: The term "cooperation" includes the following actions by the client:

1. Appearing at the offices of the appropriate child support agencies as necessary to provide oral or written information, or documentary evidence relevant to obtaining support, which is known to, possessed by or reasonably obtainable by the client;

2. Appearing as a witness at court or other hearings or proceedings necessary to obtain support;

3. Providing information, or attesting to the lack of information, under penalty of perjury; and

4. After receipt of a grant, paying to the CWA any child support payments which are received directly from either the absent parent or through the probation department.

(e) Good cause for refusal to cooperate: A client who claims to have good cause for refusal to cooperate has the burden of establishing the existence of a good cause circumstance.

1. Client requirements: To establish good cause, the client will be required to:

i. Specify the circumstances which he or she believes provide sufficient good cause for noncooperation;

ii. Corroborate the good cause circumstance; and

iii. If requested, provide sufficient information (such as name and address, if known, of putative father or absent parent) to permit an investigation.

2. Good cause circumstances: Only when one of the following circumstances exists will the CWA determine that the client's cooperation is against the best interests of the child and there is good cause for refusal to cooperate:

i. The client's cooperation is reasonably anticipated to result in physical or emotional harm to the child for whom support is to be sought;

ii. The client's cooperation is reasonably anticipated to result in physical or emotional harm to the parent or parent-person of such nature or degree that it reduce such person's capacity to care adequately for the child; or

iii. Proceeding to establish paternity or collect support in the particular case would be detrimental to the child because:

(1) The child was conceived as a result of incest or forcible rape;

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(3) The client is currently (for a period of not more than three months) being assisted by a public or licensed private social agency to decide whether to keep the child or relinquish him or her for adoption.

3. Physical and emotional harm: Physical and emotional harm must be of a serious nature in order to justify a finding of good cause. A finding for good cause for emotional harm may only be based upon a demonstration of an emotional impairment which substantially affects the individual's functioning.

i. Anticipated emotional harm: When the good cause determination is based in whole or in part upon anticipated emotional harm to the child, parent or parent-person, the CWA will consider the following:

(1) The present emotional state and the emotional health history of the individual;

(2) The intensity and probable duration of the emotional impairment;

(3) The degree of cooperation to be required; and

(4) The extent to which the child will be involved in the paternity establishment or support collection activity.

(f) Proof of good cause claim: The applicant/recipient who claims good cause must provide corroborative evidence within 20 days from the day the claim was made. In exceptional situations, the CWA may allow a reasonable additional period of time if it determines the client requires additional time because of the difficulty of obtaining the evidence.

1. Corroborative evidence: The CWA will make a good cause determination within 45 days of the date of the claim by the client, based on the corroborative evidence supplied by the client, but only after it has examined the evidence and finds that it actually verifies the good cause claim. The CWA will make an entry in the case record regarding the decision and will document the basis of its decision. The claim may be corroborated by the following types of evidence:

i. Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape;

ii. Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;

iii. Court, medical, criminal, child protective services, social services, psychological or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child, parent, or parent-person;

iv. Medical records which indicate emotional health history and present emotional health status of the child for whom support would be sought; or, written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the parent, parent-person or the child for whom support would be sought;

v. A written statement from a public or licensed private social agency that the applicant/recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish him or her for adoption; and

vi. Sworn statements from individuals other than the applicant/recipient with knowledge of the circumstances which provide the basis for the good cause claim.

2. Additional information: If, after examining the corroborative evidence, the CWA finds additional information is necessary in order to make a good cause determination, it will promptly notify the client, specifying the type of document which is needed.

i. Upon request by the client, the CWA will make a reasonable effort to obtain specific documents the client is not reasonably able to obtain without assistance.

3. Corroborative evidence not submitted or inadequate:

i. Claim based on client's anticipation of physical harm: The CWA will evaluate the good cause claim when the agency believes the claim is credible without corroborative evidence and such evidence is not available. A decision will be made based on the client's statement and the results of the investigation. This determination will be reviewed, approved or disapproved by supervisory personnel and the findings recorded in the case record.

ii. Corroborative evidence insufficient for determination: The CWA may further verify the good cause claim and, where necessary for a final determination, conduct an investigation. The investigation will include contact of the absent parent or putative father. Prior to such contact, however, the client will be notified so that he or she may:

(1) Present additional corroborative evidence to make the contact unnecessary;

(2) Withdraw the application for assistance or have the case closed; or

(3) Have the good cause claim denied.

(g) Granting or continuation of assistance: If the client has complied with the requirements of (f) above for providing corroborative evidence, assistance shall not be denied, delayed or discontinued pending the determination of whether or not good cause for refusal to cooperate exists.

1. Periodic review: Determinations of good cause which are based on circumstances subject to change such as those discussed in (e)2 above will be reviewed not less frequently than at each redetermination. If the CWA determines that circumstances have changed and good cause no longer exists, it will rescind its findings and enforce the cooperation requirements delineated in (c) above.

(h) Refusal to cooperate: If the CWA determines that no good cause exists for the client's refusal to cooperate, the client shall be notified of the determination and given an opportunity to cooperate, withdraw the application for assistance, or have the case closed. The client shall also be advised of his or her rights to a fair hearing to appeal this adverse decision in accordance with N.J.A.C. 10:81-7.1(c).

1. In the event of continued refusal to cooperate, the parent or parent-person will be denied eligibility without regard to other eligibility factors (see N.J.A.C. 10:82-2.4). Any aid for which the child is eligible shall then be provided in the form of protective payments (see N.J.A.C. 10:81-4.9). The noncooperating parent or parent-person may not be named as the protective payee. The appointment of a protective payee may be appealed in accordance with provisions of N.J.A.C. 10:81-4.14.

2. If the CSP Unit determines that the client has refused to cooperate and has not claimed good cause for that refusal, his or her needs will be deleted from the assistance grant.

i. In the event the custodial parent is initially uncooperative and later becomes cooperative, the needs of the custodial parent will be deleted retroactively for the actual period of noncooperation.

ii. In the event the custodial parent refuses to cooperate but the CSP Unit is successful in its efforts, the needs of the custodial parent will be deleted retroactively for the period during which the refusal to cooperate frustrated the CSP Unit's efforts.

3. Maintenance of CSP effort: The deletion of the AFDC parent or parent-person from the eligible unit shall not be construed as a bar to continuing effort by the CSP Unit to establish paternity or obtain support for the AFDC children.

(i) CSP interaction:

1. Review of CSP Unit: Prior to a final determination of good cause for refusing to cooperate, the Income Maintenance Unit will provide the CSP Unit an opportunity to review and comment on the findings and will consider recommendations from that unit. Additionally, the CSP Unit may participate in any fair hearing resulting from a good cause determination.

2. Notice to CSP Unit: If the CSP referral form has already been routed to the CSP Unit, the IM worker shall promptly notify the CSP Unit that good cause has been claimed. The worker shall also report promptly to the CSP Unit as soon as a determination in the good cause claim has been made and shall advise whether or not child support enforcement may proceed without the participation of the parent or parent-person (see (j) below).

(j) Enforcement without parent's cooperation: When the CWA makes a determination that good cause for refusal to cooperate exists, it will also determine whether or not child support enforcement and/or establishment of paternity can proceed without risk of harm to the child or parent with whom he or she lives if the enforcement or collection activities do not involve their participation. This decision, with the basis for the determination, will be recorded in the case record.

1. CSP recommendation: The CSP Unit will be given the opportunity to review the proposed determination and will be notified promptly regarding the decision.

2. Notification of client: The client will be notified that child support enforcement or establishment of paternity will proceed without the client's cooperation. The client may choose to withdraw his or her application or have the case closed. The client must also be advised of his or her rights to appeal this decision in accordance with N.J.A.C. 10:81-7.1(c).

(k) Record keeping: The CWA shall maintain records of activities relative to good cause claims and shall make them available for Federal or State review upon request. Form PA-48, Summary of Good Cause Claims, shall be used for maintaining records of activities connected with good cause claims.

Form PA-48A, Report on Claims of Good Cause for Refusing to Cooperate in Establishing Paternity and Securing Child Support, shall be prepared semi-annually. It shall cover the October-March and April-September report periods and must be sent to the Division by April 15 and October 15, respectively.

10:81-11.6 Incentive payment

(a) Twelve percent incentive: An amount equal to 12 percent of all support collections shall be retained by the CWA with the exception of those collections made on behalf of or in conjunction with other jurisdictions (intrastate or interstate).

1. Support collection defined for the purpose of calculating the 12 percent incentive shall include court ordered child support, court ordered alimony or spousal support collected in conjunction with child support and voluntary support payments.

2. Incentive payments for collections on behalf of other jurisdictions will be forwarded by that jurisdiction to the appropriate agency. Accordingly, CWAs are to pay 12 percent incentives to other CWAs within the State and calculate incentive owed to appropriate out-of-state jurisdictions for child support collections received from those jurisdictions, for payment via the State IV-D Agency.

3. Incentive payments will be divided evenly between jurisdictions when more than one jurisdiction within the State is involved in the enforcement or collection of any child support obligations. Incentives on collections processed through the State CSP Unit will be divided evenly between the State and local jurisdiction.

(b) Deduction of the incentive payments: The CWA will be responsible for the calculation of incentive payments. Any such payment shall be deducted from the Federal share of the amount of support collected. All incentive monies retained by the CWA will be deposited in the administration account.

10:81-11.7 Child support collection and establishment of paternity under Title IV-D

(a) State agency responsibilities: The State Bureau of Child Support and Paternity Programs, located in the Division of Public Welfare, shall be the single organizational unit responsible for the supervision of the administration of the Child Support and Paternity Program. This unit shall be referred to as the Bureau of CSP Programs.

1. Responsibilities of the Bureau of CSP Programs include but are not limited to the following:

i. The coordination of activities involving CWA/CSP Units, the county probation departments, county prosecutor's offices, the county adjuster's offices (for URESA activity), the county sheriff's offices, the State Attorney General's Office, and the Administrative Office of the Courts;

ii. The operation of the State Parent Locator Service (SPLS) and the coordination of the local parent location efforts;

iii. The transmittal of regulatory and procedural information to the CWA/CSP Units;

iv. The supervision of the Child Support and Paternity Program including monitoring activities;

v. Application to the U.S. Department of Health and Human Services for use of Federal courts with regard to the collection of child support;

vi. The initiation of collection action through the U.S. Secretary of the Treasury;

vii. Provision of technical aid to county agencies encountering problems;

viii. The coordination of activities involving collection of past due child support through Federal/State tax refunds.

10:81-11.8 Responsibilities of the CWA

(a) Each CWA shall maintain a Child Support and Paternity (CSP) Unit.

(b) Staffing requirements: The CWA shall allocate and/or hire staff for the CSP Unit in quantity sufficient to effectively and efficiently carry out the provisions of N.J.A.C. 10:81-11.9 and parent locator functions outlined in N.J.A.C. 10:81-11.13 through 14. No CSP functions may be performed by staff that also performs income maintenance or social service functions. The CWA must maintain a separate line of authority for CSP staff. Exceptions may be granted to the staff separation requirement if it can be documented that such separation is not administratively feasible in sparsely populated counties. Approval for such exception must be granted by the Director of the Division of Public Welfare and the U.S. Department of Health and Human Services.

10:81-11.9 Responsibilities of the CWA/CSP Unit

(a) This unit shall be responsible for taking appropriate action to locate absent parents, to establish paternity and/or secure child support due AFDC recipients; for referral of cases, when the whereabouts of the absent parent is unknown, to the State Parent Locator Service; and for providing services for location, filiation and obtaining support for non-public assistance persons.

(b) Notification to remit support payments to the CWA-Form CSP-157, Case Information Exchange Notice:

1. Purpose: All support rights due AFDC-C recipients are assigned to the CWA and paid through the appropriate county probation department. Form CSP-157, Case Information Exchange Notice, shall be used to facilitate notification to the county probation department.

2. Completion and routing of Form CSP-157: Form CSP-157 must be completed in duplicate by the CSP Unit for any case in which a court order for child support exists and the beneficiary listed is someone other than the CWA. The original of this form shall be immediately forwarded to the appropriate probation department responsible for collection of the support order and the copy placed in the CSP Unit's case file.

3. Appropriate probation department defined: The appropriate probation department shall be defined as the probation department which is currently collecting support payments for the AFDC recipient pursuant to a court order or in direct pay cases the probation department in the county in which the absent parent resides.

4. Return receipt of Form CSP-157 from the probation department: Upon return receipt of Form CSP-157 from the county probation department, the CWA/Fiscal Unit shall be notified to initiate an account.

(c) Investigative interview: In cases where a court order does not exist and sufficient current information is not already available, the CSP Unit shall arrange for an interview with the AFDC recipient no later than 10 working days after receipt of the referral document.

1. Purpose of interview: The purpose of the interview shall be to obtain any information which may be necessary to assist the CSP Unit in the establishment of paternity and/or support and/or in its search for an absent parent (see N.J.A.C. 10:81-11.13 through 14). Such information shall be recorded in the case record (see (e)5 below).

2. Action resulting from the interview:

i. If the information provided by the AFDC recipient is sufficient to warrant legal action, such action shall be taken in accordance with (d) below.

ii. If the AFDC recipient refuses to cooperate (see N.J.A.C. 10:81-11.5), the CSP Unit shall immediately contact the IM worker and such recipient's needs shall be deleted from the grant, subject to the requirements of adverse notice (see N.J.A.C. 10:81-7.1(k)).

iii. If the probation department refers an AFDC parent or parent-person to the CSP Unit for refusal to cooperate (see N.J.A.C. 10:81-11.5), the CSP Unit shall conduct an interview with such client to ascertain if there exists actual refusal to cooperate, the CSP Unit shall proceed in accordance with (c)2ii above. If it is determined that such person has cooperated, any pertinent information shall be forwarded to the probation department.

(d) Legal action taken by the CSP Unit: If the CSP Unit collects information sufficient to locate the absent parent, legal proceedings shall be initiated for the purpose of establishing paternity and/or obtaining support.

1. Consent process: For all cases in which sufficient information is available to initiate proceeding for the purpose of establishing paternity and/or obtaining support, a consent order will be attempted in accordance with individual county procedures.

i. Purpose: The consent process is to facilitate time efficient and cost effective methods to establish paternity and/or support orders.

ii. Definition: The consent process is a conference between the plaintiff and the defendant before a hearing officer, to agree to a specific amount of child support based on an approved support formula, to be paid through the appropriate probation department.

iii. Results: If paternity is acknowledged and/or support is agreed upon, an order is established and forwarded to the appropriate court for review and approval by the judge.

2. Filiation proceedings: With regard to cases in which paternity has not been acknowledged, the CSP Unit shall file a complaint to establish paternity in a court of competent jurisdiction.

i. Blood test scheduling: If paternity is denied and the court orders blood tests, the CWA/CSP Unit shall schedule the test at the appropriate facility.

ii. Payment for blood test: The CWA/CSP Unit shall have the court stipulate that the defendant is responsible for payment of the blood test. The only exceptions would be for the following reasons:

(1) The court specifies that the defendant is not financially responsible, if he is excluded.

(2) The defendant has been declared indigent by the court.

(A) Note: Defendant can be held liable for the cost in cases where he is found indigent, for possible future payment.

iii. Legal proceedings waived: Filiation proceedings may be waived in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the judgment of the CWA, it would not be in the best interest of the child to establish paternity.

iv. Order of filiation: If the court finds that the person charged is the father, an order of filiation is made which also specifies the support to be paid by the father for the maintenance of the child.

v. Refusal or inability to identify father: In cases where the mother refuses, or claims inability, to reveal the identity of the reputed father, a complaint may be filed naming the defendant as follows:

(1) "John Doe, reputed father of (name of child) said name John Doe being fictitious". Such a complaint must be accompanied by the affidavit of inquiry made by the CWA director or duly authorized representative, stating the mother's refusal or inability to identify the reputed father and that other diligent inquiry has failed to reveal the identity. The court may then hold an examination of the mother who withheld disclosure of the name of the reputed father. If she refuses to cooperate, the court may hold her in contempt.

(A) Normally after such a complaint is filed and an examination held as required for disclosure or identity of the reputed father, a warrant will be issued against the reputed father so that when he is personally served, he may be subject to the jurisdiction of the court. This is followed by a hearing where testimony is given by the parties, on the basis of which the court decides the issue of paternity.

vi. Order of filiation denied: If a court of competent jurisdiction denies an order of filiation against an individual, the CSP Unit shall take no further action with regard to that alleged absent parent, except for appeal of the decision of the court, if warranted.

3. Support proceedings: In cases where paternity has been legally established through marriage and an agreement cannot be reached at the consent conference, a nonsupport complaint shall be filed in a court of competent jurisdiction.

4. Filing of complaint: The applicant/recipient is not required, as a condition of eligibility for assistance, to sign a complaint to establish paternity or obtain support. Such complaints shall be filed in the name of the CWA by the director or his or her authorized representative. Whenever possible, the complaints should be filed in the name of both the CWA and the client to ensure continuation of the court action should the client's assistance be terminated.

5. Treatment of cases in which the absent parent resides out-of-state: In cases where the absent parent resides out-of-state, proceedings to establish paternity and/or secure child support shall be in accordance with the Uniform Reciprocal Enforcement of Support Act (1968)(URESA). The CWA shall file a URESA nonsupport complaint in accordance with individual county procedure (see (d)4 above).

6. Treatment of cases in which the absent parent is incapacitated: In cases where it has been verified that the absent parent is permanently disabled, the case shall be processed in the routine manner for obtaining or enforcing a court order, thus ensuring periodic financial evaluation.

7. Treatment of cases in which bankruptcy has been declared: The discharge of any child support obligation in bankruptcy proceedings conducted under Title II of the U.S. Code is prohibited. Therefore, cases in this category shall be brought to the attention of the county probation department for appropriate action.

8. Treatment of cases in which the absent parent is incarcerated and involved in a work release program: If the absent parent is incarcerated in a prison that has a work release program, the CWA shall notify the work release coordinator that the prisoner is liable for child support.

9. Treatment of case in which the absent parent is deceased: In cases where the absent parent is deceased, verification of death must be obtained and a copy of the death certificate placed in the IV-D file. The case shall be designated as a closed IV-D case for statistical purposes.

10. Treatment of a case in which the absent parent is in the military: In cases where the absent parent is serving in the military, formal legal proceedings should be initiated (see (d)1 through 5 above).

i. If the absent parent is temporarily stationed out of the country and New Jersey does not have reciprocity with the particular country, the absent parent's commanding officer shall be contacted to obtain a voluntary admission of paternity and/or a military allotment for child support.

ii. In cases where the absent parent is serving in the military and there is a valid court order under the jurisdiction of a probation department within the State, a request for an allotment shall be made through the appropriate probation department, provided the absent parent has failed to make payments equal to the support payable for two months or longer.

(e) Documentation by the CSP Unit-Form CSP-158, Case Preparation Information Sheet:

1. Purpose: The Case Preparation Information Sheet, Form CSP-158, shall be used to record all identifying information concerning the client, that absent parent and the children of the absent parent, and as a referral to the Intake Unit for initiation of legal action.

2. Completion of Form CSP-158: A Form CSP-158, Case Preparation Information Sheet, shall be completed in duplicate for each absent parent.

3. Routing of Form CSP-158: In cases where there is a valid address for the absent parent, the original of form CSP-158 shall be forwarded to the appropriate agency for initiation of legal action. A copy shall be retained in the CSP case file.

4. Return receipt of Form CSP-158: Upon return receipt of CSP-158, a copy shall be forwarded to the CWA/Fiscal Unit to initiate an account if appropriate. The disposition of the case shall be noted in the CSP case file.

5. CSP case record: Separate CSP case records shall be maintained for all AFDC cases referred to the CSP Unit. This regulation does not necessarily require a separate case folder but at a minimum, income maintenance records and CSP records must be physically segregated within the containing binder.

i. Purpose of CSP case record: The purpose of the CSP case record is to compile, in one easily accessible location, all information relevant to CSP activities.

ii. The CSP case record shall contain the following information as applicable to each case:

(1) The referral from income maintenance to the CSP Unit for each AFDC applicant/recipient or an application for those individuals requesting nonpublic assistance (NPA) services.

(2) A copy of the Case Preparation Information Sheet, Form CSP-158.

(3) A record of any contact with the AFDC applicant/recipient or NPA individual. The date and reason for contact, and the result thereof shall also be documented.

(4) A record of any contacts with the absent parent, the date and reason therefore, and the results of such contacts.

(5) A record of efforts to utilize local locate sources, including dates and results of these efforts.

(6) A record of referral to the State PLS, including the dates and results of such referral.

(7) A record identifying the court order.

(8) A record of communications to and from the Bureau of CSP Programs or any other CSP agency.

(9) A record of communications to and from income maintenance staff concerning the case.

(10) A record of deletions, terminations, suspensions or transfer of case/individual, the date and the reason for such action.

iii. Legal proceedings waived: If legal proceedings are waived in accordance with (d)2iii above, that fact shall be noted in the CSP case record and no further action shall be taken by the CSP Unit.

(f) Application for IRS collection: Application for full collection by the IRS may be made only in those cases which involve a delinquent amount of a child support obligation under the order of a court of competent jurisdiction. Applicants/recipients of AFDC may be eligible for this service under Section 402(a)26 of the Social Security Act and 45 CFR 232.11 since the application for assistance assigns support rights to the State. Under Section 454(6) of the Social Security Act, non-AFDC families may also be eligible for this service when a signed "Application for IV-D Services" is obtained from the client.

1. Minimum amounts for IRS collection: Application for collections by IRS may be made only when the delinquent amount owed exceeds $750.00.

2. Fee chargeable to CWA: The CWA in the county in which the application was initiated (whether for AFDC or non-AFDC case) will be billed a collection fee of $122.50 for each application certified by DHHS.

3. Frequency of application: No application for certification can be made within six months of a previous application in the same case except to correct an error or to make an adjustment to a prior application.

4. Approval or disapproval of application: If the Bureau of CSP Programs approves the application, it will then be submitted to the DHHS Regional Office of Child Support Enforcement, which will approve or disapprove the application. The CWA or county probation department (CPD) will be notified, in writing, by the Bureau of CSP Programs with regard to approval or rejection of the application.

5. Diligent effort to collect delinquent child support: The local CWA/CPD IV-D Unit must first make diligent and reasonable efforts to collect the delinquent amounts utilizing the State collection mechanisms. These efforts should include, among others, appropriate steps to locate the delinquent support obligor, to ascertain that person's current or last known employer, and to locate and levy against that person's assets.

6. Form CSP-109, Application for IRS Collection: Application for such services is made via Form CSP-109, Application for IRS Collection of Child Support. Applications may be submitted by the director of the CWA or his or her designee, or the chief probation officer or his or her designee. Certification and authorization of pertinent court order information and arrearage amounts must also be signed by the chief probation officer or any individual so designated by the chief. The application shall be submitted to the Bureau of CSP Programs and a copy retained in the case record.

(g) Access to IRS data for child support enforcement: Upon written request, the IRS is authorized to disclose individual income tax return information to state and local child support enforcement agencies. The State CSP Unit has been designated the single State unit responsible for requesting information and ensuring adequate safeguards against wrongful disclosure in accordance with Federal requirements. Records that may be accessed include master file information and tax return information.

1. Master file information: This information includes filing status, dollar amounts, nature of income, and the number of dependents. The State will record this information and then forward it to the requesting county.

2. Tax return information: This information includes gross income, names and addresses of payers of income, and names of dependent(s) claimed. The IRS will supply this information only if it is not reasonably available from any other source.

The State will attempt to verify this information through third party sources. Only third party verification will be forwarded to the requesting CSP Unit.

3. Fee chargeable to CWA: The fee to the CWA for master file information is $.20 per name search and $2.65 per name for tax return information. The CWA will be billed at the end of each report quarter for the number of requests received by the State Child Support Unit. These expenses are reimbursable at the 70 percent Federal matching rate.

4. Restrictions against use of IRS data: Tax information disclosed to child support enforcement agencies shall not be used in litigation and shall not be divulged to third parties.

5. Security requirements: The Federal Government has issued the following security requirements for IRS tax information.

i. Minimum security required will be that of a locked container stored in a room that is locked when not in use and located in a building that is either locked or under security guard protection when not occupied. No more than two authorized personnel are permitted to have keys or the lock combination of the container. Only authorized personnel may be allowed access to the tax information on a "need-to-know" basis.

ii. An access list of persons authorized to process and request IRS data must be submitted to the New Jersey Bureau of Child Support and Paternity Programs (State CSP Bureau) before any information can be released. Access to areas where IRS information is stored or processed must be controlled to the degree that unauthorized personnel, to include janitorial staff, must be escorted there by an authorized individual during non-working hours. Locks or combination to the security container must be changed yearly or upon departure or reassignment of authorized personnel. When written material containing IRS data is no longer needed, it must be returned to the State CSP Bureau. No information provided by IRS may be copied in any manner. Records must be maintained as to the disposition of such material. Periodic inspections of State and local facilities by the IRS will be conducted to ensure that security precautions and confidentiality requirements are being met.

6. Unauthorized disclosure of information: It shall be unlawful for any officer, employee or agent, or former officer, employee or agent of any state or any local child support enforcement agency to disclose to any person, except as authorized in this title, any return or return information acquired by him or another person. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than five years, or both, together with the costs of prosecution.

7. IRS data request procedures: A request for IRS data is accomplished by submission of CSP Form-122, Request for IRS Master File Information, or CSP Form-123, Request for IRS Return Information.

i. Completion of Form CSP-122: Form CSP-122 shall be completed in duplicate and shall include the name(s) and title(s) of the designated official(s) authorized to maintain IRS master file data, the name(s) and title(s) of agency personnel authorized access to IRS information, a signature of the agency's director or designated representative, and the name, Social Security number, and welfare case number (WC#) (or probation case number) for each case requested.

ii. Completion of Form CSP-123: Form CSP-123 shall be completed in duplicate and shall include the name(s) and title(s) of the designated official(s) authorized to maintain IRS return information, the name(s) and title(s) of agency personnel authorized access to IRS information, the signature of the agency's director or designated representative, the taxpayer's name, welfare case number (WC#) (or probation case number), address, SSN, and tax period requested. In addition, a statement shall be included outlining the need for this request.

iii. Routing of Form CSP-122 and Form CSP-123: Forms CSP-122 and CSP-123 shall be submitted in duplicate to the State CSP Unit.

8. Documentation by CWA/CPD: The CWA/CSP Unit or CPD IV-D staff shall maintain individual records noting the dates when the information was received, who received the information, who had access to the information, and the date the information was returned to State.

(h) Collection of delinquent child support payments through offset of Federal income tax: Federal income tax refunds shall be offset when court ordered child support payments owed to county welfare agencies are delinquent.

1. Eligible cases: Court ordered child support payment must be at least three months in arrears and the delinquency must total at least $150.00 to be eligible for Federal Tax Refund Offset.

2. CWA responsibilities: CWA/CSP Unit shall be responsible for submitting cases to the IRS Offset process where child support or a judgment has been ordered payable directly to the CWA by a court of competent jurisdiction via Form CSP-152, Tax Refund Offset Data Form. The CPDs will be responsible for submittal of those public assistance cases under their supervision which meet the eligibility requirements.

i. Completion of Form CSP-152, Tax Refund Offset Data Form: Form CSP-152 must be completed for each absent parent to be submitted for IRS Offset in accordance with instructions listed on the form. It should be noted that if the absent parent is under multiple court orders, only one Form CSP-152 should be completed.

ii. Completion of Form CSP-151, Batch Transmittal Tax Refund Offset Form: A CSP-151 form will be completed to transmit a batch of CSP-152 forms. Batches will include up to 25 cases. Each CSP-151 form must include a batch control number. The batch control number must be three digits and is to be prefaced with the submitting county's local code as outlined on Form CSP-152. Batches should be numbered consecutively (for example Atlantic: 001-001, 001-002, 001-003).

iii. Routing of Form CSP-152 and Form CSP-151: Forms CSP-151 and CSP-152 are to be forwarded to the State CSP Unit.

3. Automated submittal of cases for IRS Offset: Those county probation departments that are automated may submit cases for IRS Offset via magnetic tape. Specifications for magnetic tape layout will be issued annually.

4. Submittal date: The State CSP Unit must submit all requests for collection annually by October 1 of each tax year to the Office of Child Support Enforcement (OCSE).

5. Notification procedure for cases potentially eligible for offset: All taxpayers submitted for offset against their Federal income tax refund due to child support arrearages will receive notification of the offset prior to the end of the current tax year.

6. Inquiries or appeals pertaining to the offset: Taxpayers will be notified that any inquiries or appeals regarding the offset of their Federal income tax refund should be directed to the State CSP Unit.

7. Update of cases submitted for offset: Necessary updates (deletions or corrections) of cases submitted for offset, will be

submitted via Form CSP-152 to the State CSP Unit. All updates must be received by OCSE prior to December 15 of the current tax year.

i. Completion of Form CSP-152; Deletions: If the original arrearages figure submitted for offset has been paid in full, the original amount of arrearage will be placed in "amount owed" (blocks 68 through 75) on Form CSP-152 and a "D" will be placed in the "Action Code" (block 80). A deletion may be submitted immediately provided the arrears have decreased to 49 dollars or less.

ii. Completion of Form CSP-151; Deletions: Deletion forms should be batched in the same manner as initial submittals (see (h)2ii above). These batches should contain only deletions and the batch transmittal must be identified as containing only deletions by printing a large "D" above the batch information area.

iii. Completion of Form CSP-152; Corrections: If the arrears have been reduced since the original submittal of the case, the new arrearage figure will be placed in "Amount Owed" (blocks 68-75) of Form CSP-152 and a "C" will be placed in the "Action Code" (block 80).

iv. Completion of Form CSP-151; Corrections: Correction forms should be batched the same number as original submittals (see (h)2ii above). These batches should contain only corrections and the batch transmittal must be identified as containing corrections by printing a large "C" above the batch information area. Multiple corrections should be tracked to ensure submittal of the most current information possible.

(1) Note: Batches should be numbered sequentially in order of submittal regardless of the type of batch.

v. Routing of Forms CSP-151 and CSP-152 for update: Forms CSP-151 and CSP-152 are to be routed in the same manner as original submittals (see (h)2iii above).

vi. Automated submittal of deletions and corrections for IRS offset: Those counties that are automated and have submitted original request for offset via magnetic tape, will submit request for deletion or correction via magnetic tape in accordance with annual instructions for tape layout.

8. Joint returns for cases submitted for Federal IRS tax refund: In situations where a taxpayer and his employed spouse have filed a joint return and the spouse is not responsible for the child support debt, the involved parties should be referred to their nearest IRS Service office to complete a 1040X Form for a prorated refund. The parties should bring a copy of their completed tax return and copies of all W-2 forms.

9. Interstate notification: In interstate cases, only the state that has been assigned the support rights may request offset of IRS refunds. The submitting state must inform the reciprocating state of the submittal and advise that state when a collection is received so that accurate accounts can be maintained.

(i) Collection of delinquent child support payments through the New Jersey State Income Tax/Homestead Rebate (SOIL) Project: Delinquent child support payments owed to the county welfare agency may be offset through the New Jersey State Income Tax/Homestead Rebate (SOIL) Project.

1. Eligible cases: Cases with a minimum arrearage of $25.00 may be submitted for offset under this program.

i. Note: Cases submitted under the Federal IRS Offset Project should not be submitted under this program. Cases submitted for the Federal Offset Project will automatically be forwarded for offset under the SOIL Project.

2. Submittal of eligible cases: CWA/CSP Unit shall be responsible for submitting cases to the SOIL Project where child support or a judgment has been ordered payable directly to the CWA by a court of competent jurisdiction. The CPDs shall be responsible for submittal of those public assistance cases under their supervision which meet the eligibility requirements. Cases will be submitted via Form CSP-152.

i. Completion of form CSP-152, Tax Refund Data Form: form CSP-152 shall be completed in the same manner used when submitting for the Federal Tax Refund Offset (see (h)2i above).

ii. Completion of Form CSP-151, Batch Transmittal Tax Refund Offset Form: Form CSP-151 shall be completed in the same manner used when submitting for the Federal Income Tax Refund Offset (see (h)2ii above). Each batch should contain only cases submitted for the SOIL Project and must be indicated as such by printing a large "S" above the batch information area on the batch transmittal form.

(1) Note: Batches should be numbered sequentially, in order of submittal, regardless of the type of batch.

iii. Routing Forms CSP-151 and CSP-152: forms CSP-151 and CSP-152 shall be routed to the State CSP Unit in the same manner used when submitting for the Federal Income Tax Refund Offset (see (h)2iii above).

3. Automated submittal of cases for collection of delinquent child support payments through the N.J. State Income Tax/Homestead Rebate (SOIL) Project: Counties that are automated may submit cases for State Income Tax/Homestead Rebate Offset via magnetic tape in accordance with specifications issued annually.

4. Submittal date: The State CSP Unit must submit all requests for collection of delinquent child support through the N.J. State Income Tax/Homestead Rebate (SOIL) Project annually by January 1.

5. Additions for collections of child support payments through Homestead Rebate: The State CSP Unit must submit all additional requests for Homestead Rebate Offset annually by June 1.

6. Notification procedure for cases potentially eligible for offset of State Income Tax/Homestead Rebate: All taxpayers submitted for offset against their State Income Tax/Homestead Rebate due to child support arrearages will receive notification of the offset from the Division of Taxation.

7. Inquiries or appeals pertaining to the offset: Taxpayers will be notified that any inquiries or appeals regarding the offset of their State Income Tax/Homestead Rebate should be directed to the State CSP Unit. Taxpayers will have 35 days from the date of the notice to appeal the offset.

8. Update of cases submitted for offset, State Income Tax Refund/Homestead Rebate: Necessary updates (deletions or corrections) will be processed in the same manner as cases submitted for Federal Income Tax Refund Offset (see (h)7 above).

i. Note: Cases submitted should be identified as Offset of State Income Tax Refunds/Homestead Rebate by printing a large "S", in addition to the "D" for deletions or "C" for correction, on the CSP-151, Batch Transmittal Tax Refund Offset Form.

9. Joint returns for cases submitted for State Income Tax Refund/Homestead Rebate: In situations where the debtor and his employed spouse may have filed a joint return and the spouse is not responsible for this child support debt, a written request for an appeal must be forwarded to the state CSP Unit and must include taxpayer's name, spouse's name, and

both Social Security numbers. This appeal will be referred to the Division of Taxation for appropriate action.

(j) Title IV-D services available to non-public assistance persons: Appropriate child support services are to be made available to non-public assistance persons upon application filed by such individual with the IV-D Agency. These services shall include locating absent parents, establishing paternity and securing support.

1. Form CSP-111, Application for Non Public Assistance Child Support and Paternity Services: Non-public assistance individuals requesting services from the CWA shall apply for such services by signing Form CSP-111. This form shall be executed in duplicate.

i. Purpose: In order for the CWA/CPD to obtain FFP for non-public assistance child support and collection activities, an individual must sign an application for such services.

ii. Routing of Form CSP-111: This form must be executed in duplicate. The original shall be filed in the NPA applicant's case record and the duplicate given to the client at the time of application.

2. Parent Location Services: NPA persons are entitled to receipt of PLS services to the same extent and for the same purposes as public assistance persons.

i. No active intrastate order: If no active intrastate order exists, the parent locator service shall be utilized by the county welfare agency to locate the absent parent for the purpose of obtaining child support (see N.J.A.C. 10:81-11.14).

ii. Active intrastate support order: If an active intrastate order exists, the county probation department charged with enforcement of the order will be responsible for providing parent locator service to the non-public assistance person.

3. Establishing paternity: Non-public assistance persons are entitled to receipt of services regarding the establishment of paternity to the same extent as public assistance persons.

4. Obtaining an order: Non-public assistance persons seeking support payments shall be referred to the county intake unit responsible for initiating consent conference.

5. Documentation of action taken by CSP Unit: All action taken by the CSP Unit on behalf of a non-public assistance person shall be documented in a CSP case file in accordance with (e) above.

10:81-11.10 Fiscal record maintenance

The CWA shall be responsible for the maintenance of records involving receipt of child support payments. Procedures contained in Chapter IV of the Accounting Manual shall be followed.

10:81-11.11 Good cause determination

(a) The CSP Unit shall not undertake the establish paternity or secure child support when the unit has received notice from the income maintenance unit that there has been a finding of good cause for noncooperation (N.J.A.C. 10:81-11.5), except as noted in N.J.A.C. 10:81-11.5(j)2.

1. Activities suspended: Upon receipt of notice from the IM Unit that an applicant/recipient has claimed good cause (see N.J.A.C. 10:81-11.5(i)2), the CSP Unit will, until notified of a final determination, suspend all activity in regard to collection of support and/or establishment of paternity.

2. CSP activity without client participation: When there has been a finding that good cause exists but the IM Unit notifies the CSP Unit that child support enforcement may proceed without participation of the applicant/recipient, the CSP Unit will undertake to establish paternity or secure child support without involvement in any way of the applicant/recipient (see N.J.A.C. 10:81-11.5(j)).

10:81-11.12 Notification of deletions, terminations, suspension or transfer of case/individual

(a) In the case of termination, deletion or transfer, the appropriate probation department shall be notified of such action no later than 10 days after the effective date via Form CSP-157, Case Information Exchange Notice. In the event of a case suspension beyond three months, the appropriate probation department shall likewise be notified.

1. Completion and routing of Form CSP-157, Case Information Exchange Notice: The appropriate section(s) of Form CSP-157 shall be completed in duplicate and the original of this form shall be forwarded to the appropriate probation department responsible for collection of the support order and the copy placed in the CSP Unit's case file (see N.J.A.C. 10:81-11.9(b)(3).

2. Return receipt of form CSP-157: Upon return receipt of Form CSP-157 from the probation department a copy shall be forwarded to the CWA/Fiscal Unit, if appropriate, and a copy shall be placed in the CSP case file.

10:81-11.13 Parent Locator Service

(a) The locating of absent parents for the purpose of establishing paternity and enforcing child support obligations is a CWA responsibility. To fulfill this requirement, the CWA shall establish a parent locator service within the CSP Unit to perform parent locator services as described in N.J.A.C. 10:81-11.14.

1. The CSP Unit will conduct parent location activity in all cases for which no court order exists. In cases where a court order does exist, the probation department has responsibility for parent location activities; however, it is recommended that on cases where court ordered support is not being received the CWA notify the probation department of the need for enforcement.

10:81-11.14 CWA Parent Locator responsibilities

(a) Form PA-450A, Parent Locator Request Form: Referrals to the State PLS and Federal PLS for parent location activity are accomplished via Form PA-450A.

1. Completion of Form PA-450A: When the whereabouts of a parent is unknown, the CSP Unit shall complete a PA-450A from information obtained during the investigative interview and ensure that the six critical data elements described in the data entry guide are completed.

2. Routing Form PA-450A: The CSP Unit shall immediately transmit PA-450As to the State PLS. Batches will contain no more than 40 cases. Bundles should contain no more than 20 batches.

3. Updated PA-450As: When additional location information is obtained by the CSP Unit after the original Form PA-450A has been forwarded to the State PLS, an updated Form PA-450A shall be sent.

(b) Local investigation: The CSP Unit shall conduct a concurrent investigation with the State PLS in an effort to locate the absent parent at the county level. The State PLS shall be notified immediately if the absent parent is located after such referral. If the investigation reveals additional location information, such new information shall be forwarded to the State PLS (see (a)3 above).

1. Sources: The following sources are to be used by the CWA/CSP Units during its investigation, as appropriate. All

of these sources may not be available in every county. This list of sources is not exclusive.

i. Gas and electric utilities (regarding disconnections or transfer of services);
ii. Telephone company;
iii. Neighbors and landlords;
iv. Last known employer of absent parent regarding:
(1) Current employment;
(2) Date and reason for termination;
(3) Social Security number;
(4) Address to which last W-2 form was mailed;
v. Friends of absent parent;
vi. Local post office for change of address;
vii. Absent parent's relatives;
viii. Recipient's relatives;
ix. Loan companies;
x. County court house records:
(1) Loan agreements;
(2) Mortgages;
(3) Real property ownership;
xi. Voter registration records;
xii. Local law enforcement agencies; and
xiii. Credit bureaus and credit reporting agencies.

(c) Inter-county cooperation requirement:

1. When an absent parent is believed to be in another county within the State, the CSP Unit shall send a request to such county's CSP Unit for assistance in locating the parent.

2. The CSP Unit must take action (including contact of sources enumerated in (b)1 above) as appropriate in response to direct requests received from other counties within the State when the requesting county has reason to believe that the absent parent may be located in that county.

(d) Absent parent located at client's address: If the absent parent is located and is residing at the same address as the client, an immediate referral from the CSP Unit to the appropriate IM Unit and the Fraud Unit is required. Such referral shall be recorded in the CSP file and shall include the date and reason for the referral.

10:81-11.15 State PLS

(a) The State PLS shall be responsible for absent parent searches at the State agency level, coordination of interstate location activities, and referrals to the Federal PLS.

1. Sources to be utilized by State PLS: The following sources are to be utilized by the State PLS, as appropriate. This list is not exclusive.

i. State Division of Motor Vehicles;
ii. State Division of Unemployment and Disability Insurance;
iii. Records of public assistance agencies;
iv. Parent Locator Services of other states;
v. Federal PLS;
vi. State Department of Treasury; and
vii. State Division of Correction and Parole.

2. Notification of results of State PLS efforts: The State PLS will notify the CSP Unit immediately via Form PA-450A and PA-450B Parent Locator Source Response Form, of information obtained on a case.

10:81-11.16 Disclosure of information

(a) The use or disclosure of information concerning applicants or recipients of child support services is limited to purposes directly connected with the administration of public assistance as it relates to the establishment of paternity and collection of child support.

1. Information concerning this program may be provided in connection with:

i. Administrative requirements of the Child Support and Paternity Program including Parent Locator activities;
ii. The administration of any Federal or federally assisted program which provides assistance, in cash or in kind, or services directly to individuals on the basis of need;
iii. Any investigations, prosecutions, criminal or civil proceedings conducted in connection with the administration of this program.
iv. Probation department activities as they relate to the Child Support and Paternity Program.

2. Nothing in this subchapter is to be construed to be in conflict with the regulations on safeguarding information as stated in N.J.A.C. 10:81-7.30 through 7.35.

10:81-11.17 Retention and destruction of case records

(a) Authorization: Each county welfare agency will retain all material normally kept in the IV-D case folder for the time periods indicated below. At the expiration of such time period the Child Support and Paternity Unit may, at its option destroy records in accordance with the retention period indicated below, continuing to retain those portions as indicated in (b) below. In permanent available archives, the CSP Unit will retain information showing the date and manner of destruction of each "IV-D case folder" destroyed.

1. NOTE: "IV-D case file" can be construed to mean the referral document from the IV-A Unit, and any and all other documents and information relevant to the client and the absent parent(s).

(b) Retention periods:

1. No arrears owed to CWA "Closed Case": In destroying records in which no arrears are owed in the court order, the CSP Unit should provide for the permanent retention of information by which to assure itself in the future of the absence of any claim and the reason(s) therefore.

CASE FOLDERS	RETENTION PERIOD
i. Absent parent has died during which period a court order for child support existed. ii. Client terminates her assistance grant and no court order for child support existed at any time. iii. Client terminated assistance grant and all arrears owed to the CWA have been satisfied.	Three and one-third (3 ⅓) years after agency action or court action, or all arrears have been satisfied.

2. Reimbursement owing "Open Cases": In each instance of unresolved "suits and claims" matters, open and unpaid assigned support or unpaid arrearage amounts, retain all records in each case until the question is resolved, then retain accordingly.

CASE FOLDERS	RETENTION PERIOD
i. Client terminates assistance.	Three and one third (3 ⅓) years after recovery of all arrearage owed to the CWA is satisfied.
ii. Client is receiving an assistance grant, order for support exists or efforts are continuing to establish an order for support.	

(c) Requests for destruction of case records will be in accordance with N.J.A.C. 10:81-7.13(c).

(d) When disposal is authorized records must be destroyed in accordance with N.J.A.C. 10:81-13(d).

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Group Self Insurance

Hospital Workers' Compensation Group Self Insurance Regulation

Proposed New Rule: N.J.A.C. 11:15

Authorized By: Joseph F. Murphy, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and P.L. 1983, c.376.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

W. Morgan Shumake
Executive Director of Insurance
Department of Insurance
CN 325
Trenton, New Jersy 08625

At the close of the period for comments, the Department of Insurance may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-105.

The agency proposal follows:

Summary

P.L. 1983, c.376 authorized hospitals licensed in this State to pool their workers' compensation liabilities through the formation of self insurance groups. This proposal implements that act by establishing criteria for: (1) the organization and administration of such groups; (2) obligations of the group and its members; (3) ways in which rates are established and profits and losses distributed; and (4) methods to guard against insolvency or financial deterioration. Many of the recommendations contained in the Workers' Compensation Group Self Insurance Model adopted by the National Association of Insurance Commissioners are incorporated in this rule.

The proposal provides that each group must consist of at least 10 hospitals and must obtain a certificate of approval from the Commissioner of Insurance. In order to qualify for a certificate, each group must submit an application on a form prescribed by the Commissioner along with a non-refundable fee. In addition to the application, the indemnity and trust agreement, operating rules, agreements with the administrator and any service organization as well as other relevant documents must be submitted. Each group must have a combined net worth of at least $1,000,000 and provide security in a form and amount prescribed by the Commissioner. The minimum security is $100,000 but the Commissioner can vary the amount depending on the group's size, years in existence and other relevant factors. A fidelity bond for the administrator must be provided and the group must present confirmation of the availability of specific and aggregate excess insurance. Any change in the information supplied to the Commissioner in the application or other documents must be reported within 30 days of the change.

To ensure the financial ability of the group to pay claims, financial statements must be submitted to the Commissioner at least annually. In addition, examination of each group's business affairs will be conducted at least once every three years. Specific prohibition against certain inter-relationships between an administrator and service companies is provided as well as restrictions on the use of group funds. Each member of a group becomes jointly and severally liable for any claims against the group. Any deficiency must be assessed within 30 days or the Commissioner can order it done. If the deficiency is still not corrected than the group will be considered to be in financial deterioration enabling the Commissioner to revoke the certificate of approval. Each group is required to maintain rating information during its first five years that is in accord with the uniform classification system, uniform experience rating plan, and manual rates filed with the Commissioner.

Provision is made for the termination of a group or a member's participation in the group as well as revocation of the certificate of approval.

Social Impact

It is anticipated that there will be little actual impact upon the workers' compensation system. Employees are assured of payment of workers' compensation benefits since group members are jointly and severly liable for any workers' compensation claims against members. However, by forming self insurance groups, hospitals may collectively attain savings and services not possible individually.

Economic Impact

Utilization of self insurance may produce greater savings and cost efficiencies for hospital groups. Retention of investment income could benefit group members. Any substantial savings could be expected to help in containing hospital operating costs.

Additional costs are expected to be associated with implementation and enforcement of this rule. However, they are expected to be absorbed by the Department.

Full text of the proposed new rule follows.

CHAPTER 15

HOSPITAL WORKERS' COMPENSATION
GROUP SELF-INSURANCE REGULATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

11:15-1.1 Purpose

P.L. 1983, c.376, approved November 10, 1983, authorizes 10 or more employers licensed by the state as hospitals under the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., to apply to the Commissioner of Insurance, pursuant to rules and regulations established by him, for his permission to enter into agreements to pool their liabilities under the New Jersey Workers' Compensation Law for the purpose of qualifying as self-insurers. The general purpose of this chapter is to promulgate such rules and regulations as are deemed by the Commissioner to be necessary to implement, supplement, and effectuate the minimum conditions and provisions of P.L. 1983, c.376.

11:15-1.2 Definitions

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

"Act" means the provisions of the New Jersey Workers' Compensation Law regarding self-insurance as contained in N.J.S.A. 34:15-77, as amended and supplemented by P.L. 1983, c.376.

"Actuary" means a person who is a member of the American Academy of Actuaries qualified in loss reserves and rate making according to professional guides, recommendations, interpretations, and opinions of the Academy.

"Administrator" means an individual, partnership, or corporation engaged by a group to carry out the policies established by the group and to provide day-to-day management of the group.

"Bona fide hospital association" means any association of more than 10 hospitals which has been in existence for more than five years.

"Commissioner" means the Commissioner of Insurance of the State of New Jersey or an employee of the New Jersey Department of Insurance designated by him to act on his behalf.

"Contribution" means the amount contributed by each member of a group.

"Excess insurance" means insurance, purchased from an insurance company appropriately licensed in the State of New Jersey or qualified by the Commissioner as a surplus lines insurer, covering losses in excess of an amount established between the group and the insurer up to the limits of coverage set forth in the insurance or indemnity agreement on a specific per occurrence or per accident or annual aggregate basis.

"Group" means a self-insurance group organized by 10 or more hospitals which enter into agreements to pool their liabilities for worker's compensation benefits and employer's liability obligations in a manner approved by the Commissioner under the authority of the Act and these regulations.

"Hospital" means a health care facility licensed as a hospital by the New Jersey Department of Health pursuant to N.J.S.A. 26:2H-1 et seq.

"Indemnity and trust agreement" means a written contract signed by the members of the group under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement for workers' compensation benefits, which agreement shall also create a trust and govern the operation thereof under which monies shall be held by one or more trustees as fiduciaries for the benefit of persons qualifying to receive workers' compensation awards or payments from employers participating in the group.

"Workers' compensation", when used as a modifier of "benefits", "liabilities", or "obligations", means both workers' compensation and employer's liability.

11:15-1.3 Qualifications for initial approval and continued authority to act as a group

(a) A proposed group shall file its application with the Commissioner for his approval on a form prescribed by him and accompanied by a non-refundable processing fee in the amount of $1,000. The application shall include the group's name, location of its principal office, date of organization, name and address of each of its trustees and its administrator or general manager, and service organizations, the name and address of each member hospital, and such other information as the Commissioner may reasonably require, together with the following:

1. Proof of compliance with the provisions of subsection (b) below;

2. A copy of the articles of association, if any;

3. A copy of agreements with the administrator and with any service organizations maintained by the group for the prevention of injuries, underwriting, and claims administration services;

4. A copy of the group's operating rules, including, but not limited to, by-laws, if any;

5. A copy of the indemnity and trust agreement between the group and each member of the group;

6. The address in New Jersey where the books and records of the group will be maintained at all times and the designation and appointment of a person in New Jersey upon whom service of process for the group might be made;

7. A pro forma financial statement, on a form acceptable to the Commissioner, providing him satisfactory proof of its financial ability to pay such compensation for the members of the group;

8. A statement from an actuary that the proposed group plan of operation is actuarially sound;

9. A listing of the estimated annual contributions to be paid by each member of the group;

10. Proof of payment to the group by each member of not less than 25% of that member's first year estimated annual contributions.

(b) To obtain and to maintain its certificate of approval, a group shall comply with the following requirements, as well as any other requirements established by law or regulation:

1. A combined net worth of all members of the group of at least $1,000,000;

2. To provide assurance that such benefits as are payable by the group will continue to be paid and that the group will meet its statutory obligations, security in a form and amount prescribed by the Commissioner shall be posted by either a surety bond, security deposit, letter of credit, or financial security endorsement, or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this State. If a security deposit is used to meet the security requirement, securities shall be limited to bonds or other evidences of indebetedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposit in a federally insured savings and loan association or credit union, or any bond or security issued by a State of the United States of America and backed by the full faith and credit of the State. If a letter of credit is used, it shall be issued by a banking association authorized to transact business in New Jersey and in a form acceptable to the Commissioner. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit, letter of credit, or financial security endorsement shall be:

i. For the benefit of the State solely to pay claims and associated expenses; and

ii. Payable upon the failure of the group to pay workers' compensation benefits it is legally obligated to pay. The Commissioner may establish requirements for the amount of security based on differences among groups in their size, years in existence, and other relevant factors; however, the Commissioner may not require an amount lower than $100,000 for any group during its first year of operation and may subsequently increase such amount as he deems necessary;

3. Confirmation of the availability of specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the Commissioner. The Commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on difference among groups in their size, years in existence, and other relevant factors and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in paragraph 2 of this subsection;

4. Estimated annual standard contributions of at least $250,000 during the group's first year of operation. Thereafter, the annual standard contributions shall be at least $500,000;

5. An indemnity and trust agreement, in a form satisfactory to the Commissioner, jointly and severally binding the group and each member thereof to meet the workers' compensation obligations of each member, and establishing a trust for the benefit of persons qualifying to receive workers' compensation awards or payments from employers participating in the group;

6. A fidelity bond for the administrator in a form and amount prescribed by the Commissioner;

7. A listing of any underwriting, claim, loss prevention, or other service organization used by the group.

(c) A group shall notify the Commissioner of any change in the information required to be filed under subsection (a) above or in the manner of its compliance with subsection (b) above no later than 30 days after such change.

11:15-1.4 Issuance of certificate of approval

(a) The Commissioner shall issue a certificate of approval to the group upon finding that the group:

1. Guarantees benefit levels equal to those required by the Workers' Compensation Law;

2. Demonstrates sufficient aggregate financial strength and liquidity to assure that all obligations under the Workers' Compensation Law will be promptly met;

3. Proposes a plan for the prompt payment of such benefits; and

4. Has satisfactorily met all requirements of the Act and these regulations.

(b) Such certificate shall remain in effect until terminated at the request of the group or revoked by the Commissioner.

(c) If the Commissioner determines that an application does not satisfactorily meet all requirements, he shall notify the group of the reasons for rejection and requirements to be met for approval to be granted.

(d) No person or entity shall act as a group except as so authorized by the Commissioner.

11:15-1.5 Financial statement and other reports

(a) Annually (or more frequently if the Commissioner deems it necessary), each group shall submit to the Commissioner, on or before the last day of the sixth month following the end of the group's fiscal year, a sworn statement of financial condition audited by an independent certified public accountant in accordance with generally accepted accounting principles. The financial statement shall be on a form prescribed by the Commissioner and shall include, but not be limited to, actuarially appropriate reserves for:

1. Known claims and expenses associated therewith;

2. Claims incurred but not reported and expenses associated therewith;

3. Unearned contributions; and

4. Bad debts, which reserves shall be shown as liabilities.

(b) The opinion of an actuary regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be submitted with the audited financial statement. The opinion shall comply with the provisions of Rule 9 (other than paragraph (1) thereof) for completing the fire and casualty annual statement blank as promulgated for this State.

(c) The Commissioner may prescribe a uniform accounting system for all groups to ensure the accurate and complete reporting of groups' financial information.

(d) The Commissioner may prescribe the format and frequency of other reports, which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

(e) An annual filing fee of $100.00 times the number of members of the group.

11:15-1.6 Examinations

The Commissioner shall examine the affairs, method of conducting business, transactions, account, records, and assets of each group as often as the Commissioner deems advisable, but not less often than once every three years. The expense of such examinations shall be assessed against the group and paid by it in the same manner that insurers are assessed for examinations.

11:15-1.7 Trustees: qualifications, powers, duties, and prohibitions

(a) Each group shall be operated by not fewer than five trustees whom the members of a group shall elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, directors, or trustees of members of the group. Except in the case of bona fide hospital associations, or organization affiliated therewith, as determined by the Commissioner, the group's administrator, service company, or any owner, officer, or employee of, or any other person affiliated with, such administrator or service company shall not serve as trustees of the group. In the case of bona fide hospital associations, the proceding sentence shall apply only to any compensated employee of such association, or organization affiliated therewith, who is not also an officer, director, or trustee of a hospital. All trustees shall be residents of this State or officers of corporations authorized to do business in this State. The trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

1. The trustees shall:

i. Maintain responsibility for all monies collected or disbursed from the group and allocate all monies to a claims fund account and an administrative fund account. At least 70% of the net contributions shall be allocated on the books of the group for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions. This shall be called the claims fund account. The remaining net contributions shall be allocated on the books of the group for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The Commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the Commissioner's satisfaction that:

(1) more than 30% is needed for an effective safety and loss control program or

(2) the group's aggregate excess insurance attaches at less than 70%. The Commissioner may require that the accounts be segregated;

ii. Maintain minutes of their meetings and make such minutes available to the Commissioner;

iii. Designate an administrator to carry out the provisions of the indemnity or trust agreement and the operating rules of the group. The authority of the administrator shall be set forth in such indemnity or trust agreement or operating rules or in the minutes of the trustees;

iv. Retain an independent certified public accountant and an independent actuary to prepare the required statements of financial condition.

2. The trustees shall not:

i. Extend credit to individual members for payment of a contribution, except pursuant to payment plans approved by the Commissioner;

ii. Borrow any monies from the group or in the name of the group, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner.

11:15-1.8 Group membership; termination; liability

(a) An employer joining a group after the group has been issued a certificate of approval shall:

1. Submit an application for membership to the trustees or the administrator and

2. Enter into the indemnity and trust agreement. Membership shall take effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the group and copies shall be filed with the Commissioner.

(b) Individual members of a group shall be subject to cancellation by the group pursuant to the provisions of the indemnity and trust agreement or operating rules of the group. In addition, individual members may elect to terminate their participation in the group. The group shall notify the terminating member, all other members, and the Commissioner, by registered or certified mail, of the termination or cancellation of a member at least 10 days prior to the effective date and shall maintain coverage of each cancelled or terminated member for 30 days after such notice, unless, after such notice, the group is notified sooner that the cancelled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another approved group.

(c) The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for workers' compensation obligations of the group and its members which were incurred during the cancelled or terminated member's period of membership and shall be subject to and liable for supplemental assessments appropriate to its period of membership.

(d) A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment of required workers' compensation benefits by the group or the member.

(e) The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

11:15-1.9 Voluntary dissolution of group

(a) A group may not voluntarily dissolve, or otherwise cease to do business, and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the group's members must have voted in favor of a resolution to dissolve the group pursuant to a written plan of dissolution at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all incurred expenses and losses of the group and its members, including all incurred but not reported losses and associated expenses, before any assets of the group may be used for any other purposes.

3. Such plan of dissolution shall contain a statement of the group's current financial condition computed according to

generally accepted accounting principles as attested to by an independent certified public accountant;

4. The plan of dissolution, and such other information as may be required by the Commissioner, shall be filed with and approved by the Commissioner.

(b) If such a group self-insurance plan is terminated, the securities or surety bond on deposit with the Commissioner shall remain in the custody of the Commissioner for a period of at least 26 months. At the expiration of such time or such further period as the Commissioner may deem proper and necessary, he may accept, in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers which warrant awards for additional compensation, a policy of insurance furnished by the group self-insurer, its successor, assigns, or others carrying on or liquidating such self-insurance group.

11:15-1.10 Service organizations

(a) Except with the approval of the Commissioner, no service organization or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, an administrator, and no administrator or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company.

(b) Unless the Commissioner otherwise permits, the service contract shall require the service company to handle to their conclusion all claims and other obligations incurred during the contract period.

11:15-1.11 Misrepresentation or unfair acts or practices prohibited

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a membership in a group or engage, with respect to membership in or the business and affairs of a group, in any activities of the type prohibited by N.J.S.A. 17:29B-4 and the regulations of the Department of Insurance promulgated thereunder when engaged in by persons engaged in the business of insurance.

11:15-1.12 Investments

Funds not needed for current obligations may be invested by the trustees in accordance with N.J.S.A. 17:24-1 et seq.

11:15-1.13 Rates and reporting of rates

(a) For the first five years of its existence, except as otherwise approved by the Commissioner, each group shall maintain information in accord with the uniform classification system, uniform experience rating plan, and manual rules filed with the Commissioner.

(b) Contributions to the group shall be determined by applying its rates and rules to each member.

11:15-1.14 Refunds

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year.

(b) Each applicant for membership in the group shall be given a written description of the refund plan at the time of application for membership. Each member shall be given a written description of any changes in the refund plan prior to its being put into effect. A refund for any fund year shall be paid only in proportion to participation in the group for the fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

11:15-1.15 Contribution payment; reserves

(a) The group shall establish to the satisfaction of the Commissioner a contribution payment plan.

(b) The group shall establish and maintain actuarially appropriate loss reserves, which shall include reserves for: (1) known claims and expenses associated therewith; and (2) claims incurred but not reported and expenses associated therewith.

(c) The group shall establish and maintain bad debt reserves based on the historical experience of the group.

11:15-1.16 Deficits

(a) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under the Act and these regulations, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

(b) In the event of a deficiency in any fund year, such deficiency shall be made up immediately.

(c) If the group fails to assess its members or to otherwise make up such deficit within 30 days, the Commissioner shall order it to do so.

(d) If the group fails to make the required assessment of its members within 30 days after the Commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, or within such longer period of time as may be specified by the Commissioner, the group shall be deemed to fall within the condition in N.J.S.A. 34:15-77.8c.

11:15-1.17 Revocation of certificate of approval

(a) After notice and opportunity for a hearing as in a contested case (N.J.S.A. 52:14B-9), the Commissioner may revoke a group's certificate of approval if it is found that:

1. There has been deterioration of the financial condition of the group to such an extent that such deterioration would have an adverse affect on the ability of the group to pay expected losses;

2. The group has failed to pay any regulatory fee or assessment, or special fund contribution imposed upon it;

3. The group has failed to comply with any of the provisions of the Act, any regulations promulgated thereunder, or with any lawful order of the Commissioner within the time prescribed;

4. Any certificate of approval that was issued to the group was obtained by fraud;

5. There was a material misrepresentation in the application for the certificate of approval; or

6. The group or its administrator has misappropriated, converted, illegally withheld or refused to pay over, upon proper demand, any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator.

11:15-1.18 Public record

Any document filed with the Commissioner pursuant to the Act or these regulations shall be deemed a public record and

available for inspection at the New Jersey Department of Insurance during usual business hours.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Filing and Advertising Notice of Application for Municipal License

Proposed Readoption: N.J.A.C. 13:2-2.1, 2.2 and 2.4 through 2.16
Proposed Readoption with Amendment: N.J.A.C. 13:2-2.3

Authorized by: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-5, 12, 19, 20, 22, 23, 24, 25, 26, 27, 34, 35, 39 and 74.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on April 30, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption. The readoption with an amendment becomes effective upon publication in the Register of a notice of its adoption.

This proposal is known as PRN 1984-96.

The agency proposal follows:

Summary

Division records indicate that the early activities of the first Commissioner after the enactment of the Alcoholic Beverage Law in New Jersey on December 6, 1933 involved the manner and procedures for acquiring a liquor license to lawfully manufacture, distribute and sell alcoholic beverages. The second general regulation adopted was the specification of "Rules for Advertising Notice of Intention to Apply for License" Bulletin 9, Items 1 through 14 (January 9, 1934). (The first regulation also set forth the application form for licensure with instructions).

The scope and content of this initial regulation on advertising for licensure closely parallels the current provisions in N.J.A.C. 13:2-2.1 et seq. now submitted for readoption with one amendment. Addressed as areas of concern in 1934 were the publication requirement and its content, appropriate newspaper for publication and frequency; specification of license type involved and issuing authority which would review application; ability and manner in which persons who object to the application could express their concerns to the issuing authority; procedure and time requirements for holding hearings on applications and providing objectors with opportunity to be heard; and identification of the specific individuals applying for licensure when the applicant is a partnership or corporation.

The basic objective of a subchapter dealing with the filing and advertisement of applications for municipal licenses is to establish a structured, uniform method to be used by all municipalities to comply with specific statutory provisions; afford notice to the public so that objections may be lodged with the issuing authority whenever a new license is to be issued, an existing license is submitted for renewal or new individuals acquire shares of a corporate licensee; and delineate the essential procedures for hearing applications and rendering decisions. These objectives continue to be important today and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

Comparison of the initial regulatory provisions with the current regulations proposed for readoption with amendments indicates that the modifications that have occurred basically addressed changes in the law, semantic or structure modifications or added provisions further defining or expanding on basic concepts. A brief explanation of the specific sections in subchapter 2 and significant changes follows.

Section 1, advises license applicants that a specific form must be filed with the issuing authority with appropriate fees. An increase of the State fee from $25.00 to $50.00 in 1976 caused an appropriate amendment in this regulation to be effected.

Section 2, provides the specific form for the advertisement which includes information about the applicant and where written objections should be sent.

Section 3, defines the issuing authority so applicants and objectors know who will be making the decision and where to object. The section also advises that the State Director must rule on applications where issuing authority members are applicants, consistent with the provisions of N.J.S.A. 33:1-20.

Section 4, provides an instruction for the form provided in Section 2 so that an applicant strictly follows the statutory language in identifying the kind of license in the application.

Section 5, notifies applicants where to publish the notice and how often to conform to the requirements of N.J.S.A. 33:1-25. A specified form indicating proof of publication is required to verify the notice and publication mandates.

Section 6, indicates that the publication and notice requirements for the annual renewal of most retail licenses shall be done by the State Director. This regulation became effective March 4, 1976 and was a mandated response to an amendment to N.J.S.A. 33:1-25 which established this procedure.

Section 7, insures that a written objector to a license application be given an opportunity to meaningfully express his/her views by requiring the municipal clerk to schedule a hearing and notify the objector and applicant of the date, hour and place of the meeting. This section also requires that the hearing be stenographically or electronically recorded, which recording can be useful in the event of appeal from a decision on an application.

Section 8, sets out timetables when hearings can or must be held. This insures that objectors will have adequate time after the second advertisement to object and the applicant obtains an expeditious hearing.

Section 9, provides that no formal hearing is required if no written objections are received unless the issuing authority desires same or has reason to suspect that the application might be denied. A new subsection was added effective May 1, 1979 (11 N.J.R. 257(c)) which sets forth a mandatory requirement for the local issuing authority to affirmatively find and include in any resolution approving an application that (a) the application is complete in all respects, (b) the applicant is qualified under law and regulations and (c) sources of funds to purchase the license and licensed business or additional financing obtained in connection with the licensed business have been disclosed and reviewed. This amendment embodied obligations imposed by law but was more strongly emphasized by specific inclusion in the regulation to foster full, complete and comprehensive review of all applicants by the municipal issuing authority.

Section 10, sets time limits upon the municipal issuing authority to make a decision on an application, which provisions protect applicants from undue non-consensual delays in having a decision rendered.

Section 11, reiterates the provisions of N.J.S.A. 33:1-25 concerning refunds of portion of license application fees when an application is denied.

Section 12, reiterates the provisions of N.J.S.A. 33:1-26 concerning the pro-rating of annual license fees from the effective date of issuance.

Section 13, provides a flexibility to the municipal issuing authority to approve an application before five full business days have passed after the second publication of the notice of application. Such early approval, however, must bear a Special Condition that the license will not be issued until the full five business days have passed and, if a written objection is received within that period or anytime before the license is issued, the license will not then be issued pending further hearing and resolution. This regulation insures that potential objectors will have adequate time to formally object, yet also allows municipal issuing authorities to act where necessary at regularly scheduled public meetings and not have to either delay approval for weeks or a month or call special meetings to act on an application.

Section 14, reiterates provisions contained in N.J.S.A. 33:1-34 and N.J.S.A. 33:1-12.36 requiring notification within ten days after the occurrence of any change in the facts set forth in the last filed license application. Excluded from this requirement is stockholder change of 10 percent or less in corporate retail licensees where the stock of that corporation is traded on a national securities exchange or regularly traded in an over-the-counter market by one or more members of a national or affiliated securities association.

Section 15, sets forth the requirement and form for publication of a notice of change in stockholders in a corporate licensee, which is required by N.J.S.A. 33:1-34.

Section 16, outlines the frequency and location for publication of the notice of corporate stockholding changes and verifies compliance by requiring an affidavit of publication.

By virtue of the amendment to N.J.A.C. 13:2-2.9, previously noted which amendment became effective May 1, 1979, the entire Subchapter will expire on April 30, 1984. In compliance with Executive Order No. 66, all of the specific Sections in Subchapter 2 have been reviewed individually by the Director and Bureau Deputy Directors and collectively within the Agency. The only amendment proposed in this readoption involves N.J.A.C. 13:2-2.3 wherein the former address of Division offices will be deleted.

Social Impact

In New Jersey there are approximately 11,700 licensees privileged to sell alcoholic beverages at retail to citizens of the State of New Jersey and its visitors in 525 municipalities. The need to have a uniform method throughout the State to process and standardize review, hearing and decision making is both necessary and critical to a fair, impartial, stringent and comprehensive administration of the law (N.J.S.A. 33;1-23). Additionally, the ability of citizens to have a mechanism to express concerns about a license issuance, renewal or change in stockholders recognizes the public's right to object to and be meaningfully heard on the fitness of holders of the liquor license privilege. The input of citizens to the municipal issuing authority is a significant factor in reinforcing a licensee's awareness that unacceptable social conduct at the licensed premises may result in a denial of the ability to continue to exercise the privileges of a retail licensee. Such input also helps to assure that individuals unsuitable for licensure will not be granted a license or permitted to retain a stockholder status in a corporate licensee.

Absent the provisions in N.J.A.C. 13:2-2.1 et seq., a fragmented and chaotic licensure and renewal system would prevail and citizens would lose a significant right to express concerns and objections. Both results would significantly undermine legislative terms and intent expressed in the Alcoholic Beverage Law.

Economic Impact

Other than requirements for publication and recitation of certain license fees, refunds or pro-rating, which are all mandated by statute, the provisions proposed for readoption have no additional intrinsic economic impact. Municipal issuing authorities, licensees and the State Division have administered the essential notice, hearing and decision making provisions for fifty years. Absent these regulations, the expenses incurred by the State Division in its overall supervision and control of the sale of alcoholic beverages at retail in both its computerized record processing of all retail licenses in the State and investigations and review of retail license issuance would significantly increase.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-2.1, 2.2 and 2.4 through 2.16, as amended in the New Jersey Register.

Full text of the proposed amendment to the readoption of N.J.A.C. 13:1-2.3 follows (deletions indicated in brackets [thus]).

13:2-2.3 Issuing authority defined

Name of "issuing authority" in the form in section 2 of this subchapter usually means the governing board or body of the municipality, whatever the name may be, for instance the mayor and common council, the township committee, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority. If application is made by a member of any issuing authority or by a corporation, organization or association (except a club license) in which any member of an issuing

authority is interested directly or indirectly, the director is the issuing authority and in that event the notice must state that objections be addressed to the Director of the Division of Alcoholic Beverage Control [, 25 Commerce Drive, Cranford, New Jersey 07016].

(a)

DIVISION OF MOTOR VEHICLES

Driver Control Service
Point System and Driving During Suspension

Proposed Readoption: N.J.A.C. 13:19-10

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.
Authority: N.J.S.A. 39:5-30, 39:5-30.5 and 39:4-14.3q.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquires about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, New Jersey 08666

At the close of the period for comments, the Division of Motor Vehicles may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Pursuant to Executive Order No. 66(1978), this rule will expire on March 5, 1984. The readoption of this rule becomes effective upon acceptance for filing of the notice of its readoption by the Office of Administrative Law.

This proposal is known as PRN 1984-98.

The agency proposal follows:

Summary

In accordance with Executive Order 66(1978), the Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:19-10.1 through 13:19-10.8 concerning the point system and administrative suspension for driving during suspension. The rules implement the provisions of the Motor Vehicle and Traffic Law pertaining to point assessment and suspension (N.J.S.A. 39:5-30, 39:5-30.5 and 39:4-14.3q).

N.J.A.C. 13:19-10.1 sets forth a schedule of points to be assessed for convictions of enumerated motor vehicle offenses. N.J.A.C. 13:19-10.2 sets forth the periods of suspension for point system violators within the legislative guidelines contained in N.J.S.A. 39:5-30.5 et seq. N.J.A.C. 13:19-10.3 provides for attendance at a driver improvement or probationary driver program for point system violators and probationary drivers. N.J.A.C. 13:19-10.4 provides for advisory notices to drivers accumulating six or more points and probationary drivers upon their first conviction resulting in the assessment of points. N.J.A.C. 13:19-10.5 provides for point reductions in accordance with the statutory provisions contained in N.J.S.A. 39:5-30.9. N.J.A.C. 13:19-10.6 sets forth the periods of suspension for point system violators who incur motor vehicle convictions within one year from the date of restoration for a point system suspension, one year from completion of a driver improvement or probationary driver program or one year from official warning issued for point accumulation. N.J.A.C. 13:19-10.7 provides that the point system provisions are not affected by suspensions or revocations imposed by a court. N.J.A.C. 13:19-10.8 provides for the suspension of driving and registration privileges whenever a person has operated a motor vehicle during an administrative or court-imposed suspension.

The Division has reviewed the rules in accordance with Executive Order 66 and has determined that they are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated."

Social Impact

The rules proposed for readoption have a beneficial social impact in that they promote highway safety by providing for suspension or driver improvement program attendance for drivers who have incurred motor vehicle violations.

Economic Impact

There is an economic impact on the State in funding the operations of the Division's Bureau of Driver Improvement. The economic impact is partially defrayed by the statutory fee of $40.00 which is imposed on drivers who are required to attend a driver improvement or probationary driver program. There is a direct economic impact on the public in that surcharges will be assessed against drivers who accumulate points in accordance with P.L. 1983, c.65, § 6b(1)(a) and § 6b(1)(b).

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:19-10.1 et seq., as amended in the New Jersey Register.

(b)

DIVISION OF MOTOR VEHICLES

Enforcement Service
Identifying Marks

Proposed Amendment: N.J.A.C. 13:20-34.7

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.
Authority: N.J.S.A. 39:3-33.3.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, New Jersey 08666

The Division of Motor Vehicles thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adopted rules become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-97.

The agency proposal follows:

Summary

This proposal amends that section of the identifying mark rules pertaining to reissue of particular identifying marks upon the registrants failure to renew the registration. The proposal provides for reissuance upon the registrant's failure to renew the registration for a period of 60 days.

Social Impact

Particular identifying marks will be more readily available because of the substantially shorter period from expiration of registration to reissuance to another applicant.

Economic Impact

There is a beneficial economic impact on the State in that registrations for expired particular identifying marks can be reissued and fees therefor collected in the shorter period established by this rule.

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

13:20-34.7 Reissue

[(a)] In the event a registrant fails to renew the registration for a particular identifying mark for [two consecutive registration years] **60 days from the date of expiration** or surrenders said mark and corresponding registration certificate to the division, said marks shall be available for reissuance to any applicant therefor.

PUBLIC UTILITIES

(a)

OFFICE OF CABLE TELEVISION

Rules of Practice and Procedure

Proposed Repeal and New Rule: N.J.A.C. 14:18-11.21

Authorized By: Office of Cable Television John P. Cleary, Director

Authority: N.J.S.A. 48:5A-10, 19, and 25.

A **public hearing** on the proposed rule will be held at the above address at 10:00 A.M., Monday, March 26, 1984.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before March 23, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John P. Cleary, Director
Office of Cable Television
Board of Public Utilities
1100 Raymond Blvd.
Newark, New Jersey 07102

The Board of Public Utilities thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-106.

The agency proposal follows:

Summary

The proposed rules establish procedures and standards for CATV consent ordinance renewals where (1) there is no specific automatic renewal provision in the existing ordinance, and (2) where there is provision for automatic renewal in the existing consent ordinance.

Where there is no specific renewal provision, the N.J.A.C. 14:18-11.21(a) shall follow the same procedures applicable to an initial consent application. Such application must be made at least 325 days before the initial certificate of approval expires.

Under N.J.A.C. 14:18-11.21(b) automatic renewals will issue, unless a notice of intention not to accept renewal has been filed 60 days prior to the end of the initial term. In order to issue such notice, a municipality must hold a full public hearing upon 30 days' notice and find one or more of the following:

(1) The company has been convicted of a crime;

(2) The company has not substantially complied with the terms of its franchise and applicable law;

(3) There has been a material change in the company's ability to continue service; or

(4) The company has not generally met FCC technical standards.

A company may appeal the municipal finding to the Board.

The Board shall deny an automatic renewal if the municipality, or the Board, in its own review, finds any of the above violations. Consents including automatic renewals may be renegotiated up to 60 days before expiration of the initial certificate.

N.J.A.C. 14:18-11.21(c) will require the Board to minimize service disruption if renewal is denied, as well as prohibiting forced transfer of the system at less than fair market value.

Social Impact

Present provisions are inadequate to protect subscribers, the municipality and the CATV from arbitrary termination of the renewal provision. The Board therefore has initiated a rulemaking setting minimum standards for abrogating automatic renewals.

By framing the future of the CATV franchise with definable standards and procedures, these rules provide an element of predictability which is expected to encourage CATV system upgrading and new services offerings.

Economic Impact

The proposed rules are procedural in nature and would not affect subscriber rates or impose economic burden on the municipalities and CATV companies.

Full text of the rule proposed for repeal may be found in the New Jersey Register at 15 N.J.R. 874(a), 15 N.J.R. 1483(a).

Full text of the proposed new rule follows:

14:18-11.21 Renewal of Municipal Consents

(a) If the consent ordinance does not contain specific automatic renewal provisions:

1. A CATV company seeking to renew an expiring consent must apply for a municipal consent in compliance with sections 1 through 19 of this subchapter.

2. Any such application must be filed at least 325 days prior to the expiration of the Certificate of Approval.

3. In order to be heard in the same hearings as the renewal applicant, a competing applicant must file with the municipality at least 15 days prior to the scheduled hearing.

(b) The following procedures shall govern the renewal process when the consent ordinance provides for automatic renewal:

1. At least 60 days prior to the expiration of the initial term either the municipality or the CATV company must serve both the other party and the Office of Cable Television with a notice of intention not to accept renewal in order to deny renewal.

2. Prior to giving notice of intention not to accept automatic renewal, a municipality must hold a public hearing with a stenographic record by a certified shorthand reporter upon 30 days' notice to the public and the cable company.

3. A notice of intention not to accept automatic renewal must be based upon substantial evidence in the record leading to a finding that:

i. The CATV company as defined in N.J.S.A. 48:5A-3(g) has been convicted of an indictable crime;

ii. The CATV company has not substantially complied with the material terms of the ordinance and certificate of approval and with applicable law;

iii. There has been a material change in the legal, technical, or financial qualifications of the CATV company that would substantially impair the continued provision of service by such CATV company; or

iv. The signal delivered by the CATV system within control of the CATV company has not generally met technical standards established by the Federal Communications Commission and the Office of Cable Television.

4. If a municipality has arbitrarily issued a notice of intention not to accept renewal, the CATV company may file a petition for direct certification pursuant to N.J.S.A. 48:5A-17(d) prior to the expiration of the initial certificate.

5. The Board shall issue a certficate of automatic renewal if satisfied.

i. No notice of intention not to accept renewal has been filed; and

ii. There have been no violations of the terms of the Cable Television Act, N.J.S.A. 48:5A-1 et seq., the regulations pursuant thereto, or by the terms of the municipal consent.

6. The Board shall issue a certificate of automatic renewal unless:

i. A notice of intention not to accept renewal has been filed; or

ii. After full hearing, upon notice to the municipality and the CATV company, the Board makes one of the findings listed in N.J.A.C. 14:18-11.21(b)(3).

7. Any renegotiation of the terms of a consent subject to automatic renewal must be completed and submitted to the Board for approval as an amended consent ordinance at least 60 days prior to the expiration of the initial certificate.

(c) In cases where renewal is denied:

1. The Board shall act to minimize the disruption of service to subscribers, and

2. No acquisition of an ownership interest in the system, or sale of the system to any other cable television company as defined by N.J.S.A. 48:5A-3(g) may be required at less than fair market value.

ENERGY

(a)

THE COMMISSIONER

Commercial and Apartment Conservation Service Program

Proposed New Rule: N.J.A.C. 14A:22

Authorized By: Leonard S. Coleman, Jr., Commissioner, Department of Energy.
Authority: N.J.S.A. 52:27F-11g and q.
DOE Docket No. DOE 005-84-02.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Linda M. Scuorzo, Esq.
Office of Regulatory Affairs
Department of Energy
101 Commerce Street
Newark, New Jersey 07102

The Department may thereafter adopt this proposal without further notice (see: N.J.A.C. 1:30-3.50). The adoption becomes effective upon publication in the Register of a notice of adoption.

The proposal is known as PRN 1984-93.

The agency proposal follows:

Summary

The Commercial and Apartment Conservation Service rules (CACS) are adopted under the Department's general authority to promote energy conservation. The rules were prompted by the adoption of regulations by the United States Department of Energy requiring the States to implement an energy audit program for commercial and apartment buildings. The proposed rules establish the requirements for performing such energy audits.

Subchapter 1 lists the definitions concerning the CACS program.

Subchapter 2 describes the marketing the utilities will have to perform to achieve the mandated response level.

Subchapter 3 details the various program services of CACS, including arranging the audit, audit content, and applicability criteria.

Subchapter 4 describes other services the utility must provide its customers, including information concerning loan financing and installation.

Subchapter 5 details the fee for the energy audit.

Subchapter 6 lists criteria for testing and qualifying energy auditors.

Subchapter 7 describes the participation of building heating suppliers, which is voluntary for the CACS Program.

Subchapter 8 describes utility reporting and recordkeeping requirements.

The audit functions required by the CACS Program will be performed primarily by the seven covered public utilities.

However, the heating unit analyses required by the regulations will be performed by building heating suppliers on a voluntary basis.

Social Impact

The regulations provide a comprehensive program of energy audits for commercial and apartment buildings. These energy audits will be performed by seven covered public utilities for buildings within their service areas. The heating unit analysis aspect of the audit will be performed on a voluntary basis by building heating suppliers. Energy audits are an effective means of educating building owners about their building's energy use patterns and conservation needs.

Covered utilities have been designated to provide the audits because of their ability to deliver the service on a large scale. In addition, a similar utility audit program already exists for residential buildings, and the CACS Program will supplement this effort in for the commercial and apartment buildings.

The audit will provide data on annual energy use, costs and consumption rates to eligible customers. This information is a vital part of any attempt to promote energy conservation. New Jersey commercial and apartment building owners will not only benefit from a comprehensive analysis of their energy use patterns and conservation options, but also from information on installation and financing opportunities—all of which will be provided as part of the CACS Program audit.

The program will require covered utilities to provide a service (energy audits) that they do not currently provide. While this will require the utilities to allocate resources to a new program, this shift will not affect the utilities' ability to provide safe, adequate and proper service to all customers.

In fact there exists great potential that the CACS Program can reduce energy demand, because owners who have energy audits for their buildings will be more likely to install retrofits. In a pilot program of commercial audits the Department identified savings totalling $12 million with an expenditure of only $360,000. The Department expects the CACS Program to be equally successful.

Economic Impact

The energy audits will be provided by the seven covered utilities to commercial and apartment building owners. The cost of the audits will be borne by the participating utilities. This approach will increase the attractiveness to commercial and apartment building owners of energy audits and should stimulate investments in energy conserving equipment.

The CACS Program will also produce indirect economic effects by creating additional employment through the utility companies and firms that manufacture energy conservation equipment, and through contractors that install such equipment.

Full text of the proposal new rule follows.

CHAPTER 22

COMMERCIAL AND APARTMENT CONSERVATION SERVICE PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

14A:22-1.1 Scope and Purpose

(a) The rules in this chapter constitute the Commercial and Apartment Conservation Service ("CACS") Program.

(b) The purpose of the CACS Program is to encourage the installation of energy conservation measures and renewable resource measures in existing apartment buildings and commercial buildings by customers of covered utilities and building heating suppliers.

14A:22-1.2 Definitions

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

"Air conditioner efficiency maintenance" means periodic cleaning or replacement of air filters and cleaning of coils on forced-air cooling systems.

"Air conditioner replacement" means an air conditioner which replaces an existing air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

"Apartment building" means a structure which is used for residential occupancy, was completed on or before June 30, 1980, contains five or more apartments and any of the following: a central heating or a central cooling system; or a central meter for the heating or cooling system.

"Automated energy control system" means devices and associated equipment which regulate the operation of heating, cooling, or ventilating equipment based on time, inside and/or outside temperature or humidity, or utility load management considerations in order to reduce energy demand and/or consumption.

"BPU" means the New Jersey Board of Public Utilities.

"Buildings" means both apartment buildings and commercial buildings.

"Building heating supplier" means any person engaged in the business of selling No. 2, No. 4, or No. 6 heating oil, kerosene, or propane to eligible customers.

"Caulking" means the sealants, putty, glazing compounds, or other pliable materials used to reduce the passage of air and moisture by filling in small gaps including:

1. At fixed joints on a building;
2. Underneath baseboards inside a building;
3. In exterior walls at electric outlets;
4. Around pipes and wires entering a building;
5. Around vents and exhaust fans in exterior walls; and
6. At any point where two different types of building material meet.

"CES" means the Department's Office of Community and Educational Services.

"Commercial and Apartment Conservation Service Program" or "CACS" means the program contained in this chapter.

"Commercial building" means a structure:

1. Which was completed on or before June 30, 1980;
2. Which is used primarily for carrying out a business (including a non-profit business) or for carrying out the activities of a state or local government;
3. Which is not used primarily for the manufacture or production of products, raw materials, or agricultural commodities; and
4. Which is not a Federal building.

"Conditioned space reduction" means closing off unoccupied areas, and/or reducing the heating and cooling supply to those areas.

"Covered utility" means in any calendar year a public utility which during the second preceding calendar year had either:

1. Sales of natural gas for purposes other than resale which exceed 10 billion cubic feet; or

2. Sales of electric energy for purposes other than resale which exceed 750 million kilowatt hours.

"Department" means the New Jersey Department of Energy.

"Destratification fan" means a device which, by virtue of its design, will cause the air within a conditioned space to be distributed in a manner that will minimize the temperature gradient within that conditioned space.

"Efficient use of shading" means the use of existing shades, drapes, awnings and related methods:

1. To block sunlight from entering a building in the cooling season;

2. To allow sunlight to enter a building during the heating season; or

3. To cover windows at night during the heating season.

"Eligible customer" means a person who:

1. Is the owner or tenant of a commercial building or the owner (or the owner's agent) of an apartment building to whom the covered utility sells electricity or natural gas and who is the utility's customer of record; or

2. Is the owner or tenant of a commercial building or the owner (or the owner's agent) of an apartment building which uses No. 2, No. 4, or No. 6 heating oil, kerosene, or propane.

"Energy audit" or "program audit" means an on-site evaluation of a commercial building or apartment building by qualified utility personnel or participating building heating suppliers during which the applicability of program measures and operations and maintenance procedures will be evaluated. Applicable operations and maintenance procedures will be detailed to the customer and general cost, saving, payback estimates will be discussed. Any program measures found applicable to the building will have specific cost, saving and payback estimates calculated and provided to the eligible customer. All estimates will be provided to the eligible customer within 30 calendar days of the energy audit.

"Energy conservation measure" means the following in a commercial building or apartment building:

1. Air conditioner replacement;
2. Automatic energy control systems;
3. Caulking;
4. Destratification fan;
5. Energy recovery systems;
6. Furnace/boiler or utility plant and distribution system modifications;
7. Insulation;
8. Lighting systems replacement or modification;
9. Passive solar space heating-cooling;
10. Solar domestic hot water systems;
11. Solar replacement swimming pool heater;
12. Weatherstripping;
13. Window-door system modification; and
14. Any other installation of modification of an installation designated by the Department which is designed to reduce the consumption of natural gas, electricity, oil, or propane in apartment buildings and commercial buildings.

"Energy operation and maintenance procedures" means:

1. Air conditioner efficiency maintenance;
2. Efficient use of shading;
3. Furnace efficiency maintenance and adjustments;
4. Light level reduction;
5. Plugging infiltration leaks;
6. Reduction in amount of conditioned space;
7. Sealing leaks in pipes and ducts;
8. Steam distribution system maintenance;
9. Temperature raising in summer;
10. Temperature reduction in winter;
11. Water flow reduction in showers;
12. Water temperature reduction; and
13. Any other low or no-cost procedure designated by the Department which is designed to reduce the consumption of natural gas, electricity, oil, or propane in apartment buildings and commercial buildings and does not require the installation of an energy conservation measure.

"Energy recovery system" means devices designed to recover waste energy from sources such as refrigeration or air conditioning equipment for some useful purpose such as heating water.

"Furnace efficiency maintenance and adjustment" means cleaning and combustion efficiency adjustments of gas or oil-fired furnaces/boilers (including burners), periodic cleaning or replacement of air filters on forced-air heating systems including heat pumps, lowering the bonnet or plenum fan thermostat setting on a gas or oil-fired furnace if appropriate and turning off the pilot light on a gas furnace during the summer.

"Furnace/boiler or utility plant and distribution system modification" means installation of any of the following devices or components:

1. "Intermittent pilot ignition device" ("IID") which means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the pilot or burner and replaces a continuously burning pilot light.

2. "Flue opening modification" ("Vent damper") which means an automatically operated damper installed in a gas-fired or oil-fired furnace or boiler which:

i. Is installed downstream from the drafthood; and

ii. Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

3. "Replacement oil burner" which means a device which is an integral part of an oil-fired furnace or boiler including the combustion chamber and which atomizes the fuel oil with air, ignites the mixture, and, owing to its design, achieves a reduction in the oil used over that used by the oil burner that it replaces.

4. "Replacement gas burner" which means a device designed for installation in an existing gas-fired boiler which uses fan and control mechanisms to supply and control combustion air to achieve an optimal fuel-to-air ratio for maximum gas combustion efficiency and which, because of its design, achieves a reduction in the gas used from the amount of gas used by the device which it replaces.

5. "Replacement furnace or boiler" which means a furnace or boiler, including a heat pump which replaces an existing furnace or boiler of the same fuel type and provides reduced fuel consumption due to higher energy efficiency of the system.

6. "Distribution system modification" which means modification to an energy distribution system and associated components that increases the energy efficiency, including:

i. Improved pipe or duct routing to reduce pressure drop and/or heat losses; or

ii. Point of use water heaters of the same fuel type.

"Insulation" means a material of the following types that is primarily designed to resist transmission in one of the following ways:

1. "Ceiling insulation" which means a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "Ceiling insulation" also applies to such materials used between the underside and upperside of the roof.

2. "Duct insulation" which means insulation installed on heating or cooling supply and return ducts in an unconditioned area of a building, such as the space above a dropped ceiling.

3. "Floor insulation" which means insulation that is installed between the lowest conditioned level of a building and a lower unconditioned level. For a structure with an open crawl space, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

4. "Pipe insulation" which means insulation installed on:

i. Pipes and fittings carrying hot or cold fluids for space conditioning purposes; or

ii. Hot water pipes and fittings with continuous recirculating systems.

5. "Wall insulation" which means insulation installed within or on exterior walls or walls between conditioned and unconditioned areas of a building.

6. "Water heater insulation" which means insulation wrapped around the exterior surface of the water heater casing.

"Lighting systems replacement or modifications" means a device or action which reduces overall lighting energy consumption and/or demand while maintaining satisfactory lighting requirements, and includes the following:

1. Reducing lighting levels to levels cited in applicable Department rules and may include installing task lighting and reducing overheat task lighting;

2. Controlling lamp operating time by limiting lighting operation to periods of area use, or installing of local manual switching, time control devices and space use sensing devices;

3. Replacing lamps with more efficient sources including, but not limited to, replacing of incandescent and fluorescent lighting with lumen-equivalent low energy lamps, replacing of old fluorescent lighting ballasts with new electronic ballasts, or replacing of any fixture type with one of greater lumens per watt efficiency such that total lighting demand can be reduced; and

4. Use of "daylighting" by automatically switching off electric lights in areas where satisfactory lighting levels can be maintained using either existing windows or skylights in a commercial building or a common area of an apartment building.

"Passive solar heating and cooling system" means a system that makes the most efficient use, or enhances the use of natural forces, for heating or cooling a space by the means of conductive, convective, or radiant energy transfer including solar irradiation, wind, night-time coolness and include only the following:

1. "Thermosyphon air system" which means a passive solar day-time heater attached to the south-facing wall of a building which uses natural convection or a fan of low power to draw air from near the floor, expose the air to a solar-heated surface, and discharges reheated air near the ceiling, and which is able to be closed off from the conditioned area at night and on cloudy days.

2. "Solaria/sunspace system" which means an enclosed structure of glass, fiberglass, or similar transparent material attached to the south-facing wall of a structure which absorbs solar heat and utilitizes air circulation to bring this heat into the building and which is able to be closed off from the structure at night and on cloudy days.

"Payback" means the amount of time needed to recover the cost of an investment in a program measure or energy conserving operation and maintenance procedure from the energy saved by that measure or procedure. All payback estimates shall use a simple payback calculation; cost of investment/energy savings from first year. All payback estimates shall be given in years.

"Plugging infiltration leaks" means:

1. Installing scrap insulation, or other pliable material in gaps around pipes, conduits, ducts, or other gaps which connect conditioned with unconditioned spaces; and

2. Adding weatherstripping around ceiling access doors or basement doors.

"Program announcement" means the information and offer of services required to be sent to every eligible customer by each covered utility in their service area pursuant to N.J.A.C. 14A:22-2.

"Program auditor" means any individual employed by a covered utility or building heating supplier or under contract with a covered utility or building heating supplier who meets all of the qualifications contained in N.J.A.C. 14A:22-7.2 and has successfully completed a Department auditor test for this program.

"Program measure" means energy conservation measures and renewable resource measures.

"Public utility" means any person engaged in the business of selling natural gas or electric energy or both to residential and commercial customers for use in apartment buildings and commercial buildings.

"Renewable resources measure" means the following measures in or with respect to apartment buildings or commercial buildings:

1. Solar domestic hot water systems;

2. Passive solar space heating and cooling; or

3. Solar replacement swimming pool heaters.

"Solar replacement swimming pool heater" means a device which is used solely for the purpose of using the solar energy to heat swimming pool water and which replaces a swimming pool heater that uses electricity, natural gas, and other fossil fuels.

"Sealing leaks in pipes and ducts" means applying appropriate sealants to any leak in a heating or cooling duct that is located outside the conditioned space, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking hot water valves.

"Solar domestic hot water system" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a structure other than for space heating, and includes solar thermosyphon hot water heaters.

"South-facing" means plus or minus 45 degrees of true south.

"Steam distribution system maintenance" means the visual inspection of the steam distribution system for the purpose of detecting steam leaks, ensuring that steam is not entering the condensate return lines, and returning all condensate to the boiler where practical and desirable.

"Temperature raising in summer" means raising the thermostat or other temperature control device for occupied space to as high a temperature as reasonable during the cooling season. The temperature of space that is not occupied may be allowed to rise further than that of occupied space.

"Temperature reduction in winter" means lowering the thermostat or other temperature control device for occupied space to as low a temperature as reasonable during the heating season. The temperature of space that is not occupied may be allowed to drop further than that of occupied space.

"Water flow reduction in showers and faucets" means reducing the hot water flow in showers, faucets, or other equipment as low as reasonable by the use of different methods.

"Water temperature reduction" means turning off the water heater or manually setting back the thermostat to as low a

temperature as practical, consistent with the needs for hot water.

"Weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

Window and door system modification" includes the measures defined as follows:

1. "Storm window" which means a window or glazing material placed outside or inside a prime window, creating an air space to provide greater resistance to heat flow than the prime window alone.

2. "Thermal window" which means a window unit with improved thermal performance through the use of two or more sheets of glazing materials affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

3. "Storm or thermal door" means:

i. A second door, installed outside or inside a prime door, creating an insulting air space;

ii. A door with enhanced resistance to heat flow through the glass area, constructed by affixing two or more sheets of glazing material;

iii. A prime exterior door with an R-value of at least 2; or

iv. A door that is designed to minimize air exchange during operation, including revolving doors and double doors with a foyer.

4. "Glazing heat gain/loss retardant" means devices such as insulated shades, drapes, or movable rigid insulation (awnings, external rollup shades) metal or fiberglass solar screening or heat absorbing films which significantly reduce winter heat loss and heat reflective films which significantly reduce summer heat gain through windows and doors.

SUBCHAPTER 2. PROGRAM ANNOUNCEMENT

14A:22-2.1 Scope

(a) The purpose of the annual program announcement is to acquaint all eligible customers of the respective covered utilities with the benefits and availability of energy audits performed by both the utility and the Department.

(b) The program announcement shall be in a form provided or otherwise directed and approved by the Department and shall be distributed commencing in June 1984 and annually thereafter. The program announcement may be cycled by the covered utilities by service area over not more than 90 consecutive days.

(c) Covered utilities shall provide sufficient numbers of program announcements and related promotional activities to achieve a yearly energy audit completion rate of not less than two percent of the eligible customers. In the event that the response to the program announcement and promotional activities exceeds two percent, utilities shall engage additional qualified personnel to service the demand in a timely manner. The program announcement and related promotional activities shall identify the Department as the lead agency of the CACS program. The covered utilities shall not unfairly discriminate among eligible customers in providing program audits.

(d) All costs of the program announcement and other promotional activities shall be borne by the covered utility.

14:22-2.2 Contents and prohibitions

Covered utilities shall notify eligible customers at least annually of the availability of energy audits. Such notification shall be made primarily as an enclosure, with a business reply card attached, in the customer's monthly billing envelope, or as an independent direct mail announcement in a form provided, directed or otherwise approved by the Department. Print, broadcast and/or billboard messages may also be used to reinforce or support direct mail announcements.

The notifications, announcements and messages shall be in the form provided, directed or approved by the Department.

14A:22-2.3 New customers

(a) Each covered utility shall identify and provide a program announcement to each new customer within 60 days of commencing billable service.

(b) Covered utilities shall maintain computer records and provide for accessing such data for the purpose of identifying eligible customers and new customers and past audit data.

(c) Each covered utility shall furnish to the Department monthly a list in ZIP code sequence of all new customers to whom the program announcement was provided, and shall include the name of the individual to whom the announcement was directed in addition to the business name and address.

(d) Each covered utility shall inform each new customer in writing that upon request, the customer may receive at no charge a new program audit of a building which was previously audited under the CACS Program, instead of receiving the results of any past program audit of the customer's facility.

SUBCHAPTER 3. PROGRAM SERVICES AND PROGRAM AUDITS

14A:22-3.1 Program services

(a) All covered utilities shall offer and provide upon request the following program services to all eligible customers:

1. A program audit of all applicable program measures in a form prescribed by the Department;

2. Financing information for program measures, at no charge;

3. Conservation literature in a form specified by the Department, at no charge.

(b) All covered utilities receiving requests for program audits from eligible customers shall record the requests and the arrangements made by the utility for the audit on an input form prescribed by the Department. All such records shall contain the following information, if available from the customer:

1. Name and address of the customer's place of business, or residence;

2. Date schedule for providing the energy audit and dates services were completed;

3. Type of fuel(s) used to heat and cool;

4. Time customer is available;

5. Contact for utility and physical plant data;

6. Building type, and principal use;

7. Media source from which they heard about the program;

8. Name of the customer's building heating supplier, if the building is heated with oil;

9. Names of the customer's utilities.

(c) The Department and the CES shall also receive requests for audits from eligible customers and shall record the same information required by (b) above.

14A:22-3.2 Arrangement of program audit

(a) If an eligible customer who heats with electricity or gas contacts the Department and requests a program audit, the Department shall refer that request to an appropriate covered utility.

(b) If an eligible customer who heats with oil contacts the Department and requests a program audit, the Department shall refer that request, except for that part which requires a heating unit analysis, to an appropriate covered utility. The Department shall determine whether the customer's heating supplier is a participating building heating supplier. If so, the Department shall refer the customer's request for a heating unit analysis to that participating building heating supplier. If the customer's oil supplier is not participating, the Department shall choose a participating heating supplier located in the customer's geographic service area to perform the heating unit analysis part of the program audit. The Department shall make the selection in a random and non-discriminatory manner from the list of participating building heating suppliers who have registered with the Department.

(c) Upon receiving a referral from the Department each covered utility and participating building heating supplier shall promptly contact the eligible customer to arrange for an appointment to provide the applicable program audit or heating unit analysis.

(d) If a covered utility receives a request for a program audit from a customer who heats with oil, the utility shall record the same information required by N.J.A.C. 14A:21-3.1(b) and refer the request for a heating system analysis to the Department for review and referral.

14A:22-3.3 Timing and preconditions

(a) All covered utilities shall provide a program audit of eligible customer buildings to determine applicable program measures and their estimated costs, savings, and payback within 30 calendar days of receipt of a request or referral. If the demand for such services becomes too great, the utility must so notify the Department in writing and contact each eligible customer requesting the program audit within 30 days of the request or referral to set up an appointment and complete the program audit within 60 calendar days of the date of the request or referral. The covered utilities shall have an additional 30 calendar days from the date the audio is completed to deliver a final audit report to the eligible customer. A copy of each final audit report shall also be sent to the Department.

(c) All participating building heating suppliers shall provide an oil-fired heating unit analysis to determine applicable program measures and their estimated costs, savings and paybacks within 30 days of a receipt of a request or referral. If the demand for such services becomes too great, the participating building heating supplier must so notify the Department in writing, and contact each eligible customer requesting such services within 30 days of the request or referral to set up an appointment and complete the analysis within 60 calendar days of the date of the request or referral.

(d) No covered utility or participating building heating supplier shall discriminate unfairly among eligible customers participating in the CACS Program.

14A:22-3.4 Energy conserving operations and maintenance procedures

(a) As part of the program audit each covered utility shall provide a list of energy conserving operations and maintenance procedures which shall consist of basic energy conservation opportunities appropriate for apartment buildings and commercial buildings. The auditor shall:

1. Determine the applicability of each energy conserving operation and maintenance procedure;
2. Explain each of the applicable energy conserving operation and maintenance procedures to the eligible customer;
3. Explain the importance of completing applicable energy conserving operations and maintenance procedures before any program measure is installed; and
4. Provide savings estimates stated in dollars.

(b) The energy conserving operations and maintenance procedures shall consist of the following:

1. Air conditioner efficiency maintenance;
2. Efficient use of shading;
3. Furnace efficiency maintenance and adjustments;
4. Light level reduction;
5. Plugging infiltration leaks;
6. Reduction in amount of conditioned space;
7. Steam distribution system maintenance;
8. Temperature raising in summer;
9. Temperature reduction in winter;
10. Water flow reduction in showers and faucets;
11. Water temperature reduction; and
12. Any other energy conserving operation and maintenance procedure which the Department determines appropriate.

14A:22-3.5 Program measures

(a) The structural and heating and cooling unit analysis shall determine the applicability of the following energy conservation measures:

1. Air conditioner replacement;
2. Automatic energy control systems;
3. Caulking;
4. Destratification fans;
5. Energy recovery systems;
6. Furnace/boiler or utility plant and distribution system modifications;
7. Insulation;
8. Lighting systems replacement or modification;
9. Passive solar space heating/cooling;
10. Solar domestic hot water systems;
11. Solar replacement swimming pool heater;
12. Weatherstripping;
13. Window door system modifications; and
14. Any other measure which the Department determines is appropriate.

(b) If an eligible customer heats with oil, a participating building heating supplier shall perform the oil-fired heating unit analysis of that unit, pursuant to N.J.A.C. 14A:22-3.2(b).

(c) The applicability of renewable resource measures shall be determined by the auditor at the time of the energy audit.

14A:22-3.6 Applicability of program measures

(a) Every auditor shall use the program audit to determine which program measures are applicable for each building type. The auditor shall make the final determination of the applicability of a program measure.

(b) A program measure is applicable if:

1. The program measure is not already present or in good condition and the potential exists to save energy or reduce energy demand in the building by installing same. In the event that a less efficient device performing the same function as a program measure is already present in the building, replacement with the applicable program measure shall be recommended.
2. Installation of the measure is not a violation of State, Federal or local law or regulations.
3. With respect to energy recovery systems, the building uses at least 50 gallons of service hot water per day; or has a space heating load exceeding 500 KBTU per day; and has

refrigeration equipment with a total average daily waste heat discharge exceeding 75 KBTU.

4. With respect to furnace flue opening modifications, the furnace combustion air is taken from a conditioned area.

5. With respect to ceiling insulation, the difference between the R-value of any existing insulation and the program measure level is R-11 or more.

6. With respect to lighting system modification to use daylighting, any electric lighting fixtures are located within 15 feet of an existing window or skylight in a commercial building, or within 15 feet of an existing window or skylight in common areas of an apartment building.

7. With respect to passive solar thermosyphon air heating systems, the building has a south-facing wall free of major obstruction to sunshine during the heating season.

8. With respect to solar domestic hot water systems, the building consumes more than 80 gallons of hot water per day and has access to a site clear of major obstructions to solar radiation which allows solar collectors to be oriented south-facing.

9. With respect to solaria/sunspace systems, the apartment building has existing balconies, patios, or available adjacent ground area on the south-facing wall. Solaria/sunspace systems shall not be applicable to commercial buildings.

10. With respect to solar swimming pool heater replacements, the pool uses electricity or other nonrenewable energy for heating.

11. With respect to window heat gain retardants, the building has glass on the south, east, or west sides where those sides are exposed to sunlight.

12. With respect to pipe and duct insulation, hot water pipes and heating and cooling ducts which extend through unconditioned spaces.

13. With respect to destratification fans whenever the ceiling height of a conditioned space within a building equals or exceeds ten feet; and the measured or estimated temperature gradient between the three foot level and ceiling level exceeds 1 degree Fahrenheit per foot.

14A:22-3.7 Cost, savings and payback estimates

(a) The auditor shall calculate costs, savings and payback estimates for all applicable program measures. These shall:

1. Be based upon calculation procedures and estimates of cost of installation and materials, using current construction industry standards and guides approved by the Department; and

2. Be based upon adequate measurements taken during the program audit including, actual measurements and inspections of the building shell, space heating, space cooling and water heating equipment.

(b) All costs, savings and payback estimates for gas-fired heating units shall be based upon an evaluation of the unit's seasonal efficiency, and shall include a measurement of the unit's steady state efficiency.

(c) All cost, savings and payback estimates for oil-fired heating units shall be based upon the unit's seasonal efficiency, and shall include measurement of the unit's steady state efficiency. The evaluation shall be conducted pursuant to N.J.A.C. 14A:21-3.1.

(d) All costs, savings and payback estimates for solar hot water systems shall be based upon the following information, which shall be disclosed to the eligible customer:

1. Square feet of collector;

2. Collector characteristics, including glazing materials and other collector materials;

3. Storage system, if needed, including capacity of storage;

4. Appropriate freeze protection;

5. Estimated per cent of the water heating load to be met by solar energy; and

6. Site preparation needed.

(e) All costs, savings and payback estimates for applicable passive solar space heating and cooling systems shall be based upon the following information which shall be disclosed to the eligible customer:

1. The applicable system;

2. The estimated per cent of the heating load to be met by the system;

3. The approximate dimensions of such a system; and

4. The collection storage characteristics, including the recommended heat capacity of storage.

(f) All costs, savings and payback estimates for solar hot water systems, passive solar heating and cooling systems and replacement solar swimming pool heaters shall have the following disclosure conspicuously placed on the audit results:

> "THE COST, SAVINGS AND PAYBACK ESTIMATES YOU RECEIVE ARE BASED ON SYSTEMS WHICH MAY BE DIFFERENT FROM THE ONES YOU PURCHASE. ALSO, THESE ESTIMATES WERE NOT DETERMINED USING ACTUAL CONDITIONS BUT USING SIMULATED MEASUREMENTS. THEREFORE, THE COST, SAVINGS AND PAYBACKS WE HAVE ESTIMATED MAY BE DIFFERENT FROM THOSE WHICH ACTUALLY OCCUR."

14A:22-3.8 Results of the program audit

(a) Upon completion of the program audit, the covered utility shall provide the results to each eligible customer who receives a program audit, and to the Department within 30 calendar days after the site visit. The program audit results shall be in a form prescribed by the Department. The auditor shall leave a telephone number which the eligible customer may call to review the audit results.

(b) Program audit results shall include the following:

1. The following disclosure, conspicuously placed:

> "THE PROCEDURES USED TO MAKE THESE ESTIMATES ARE CONSISTENT WITH NEW JERSEY DEPARTMENT OF ENERGY CRITERIA FOR APARTMENT AND COMMERCIAL BUILDING ENERGY AUDITS. HOWEVER, THE ACTUAL INSTALLATION COSTS YOU INCUR AND THE ENERGY SAVINGS YOU REALIZE FROM INSTALLING THESE MEASURES MAY BE DIFFERENT FROM THE ESTIMATES CONTAINED IN THIS AUDIT REPORT. ALTHOUGH THE ESTIMATES ARE BASED UPON MEASUREMENTS OF YOUR BUILDING, THEY ARE BASED ON ASSUMPTIONS WHICH MAY NOT BE TOTALLY CORRECT FOR YOUR BUILDING. TOTAL SAVINGS FROM THE INSTALLATION OF MORE THAN ONE PROGRAM MEASURE WILL PROBABLY BE LESS THAN THE SUM OF SAVINGS OF EACH MEASURE INSTALLED INDIVIDUALLY."

2. Energy consumption data for each fuel type stated in energy units, Btus and dollars:

3. A description of the building including but not limited to information concerning level of occupancy, schedule of operating hours, and size in square feet.

4. An inventory and description of the building components and equipment affecting energy consumption;
5. An estimate of the total costs (material and labor) expressed in dollars, of installation by an installer of each applicable program measure addressed in the program audit;
6. An estimate of the savings expressed in dollars, and Btus which would occur during the first year from installation of each applicable program measure addressed in the program audit;
7. An estimate of payback expressed in years for installation of each applicable program measure addressed in the program audit;
8. A ten-year cash flow analysis for every energy conservation measure costing over $500.00. The analysis shall include:
i. Pretax savings;
ii. Investment and operating cost differences;
iii. Pretax cash flow;
iv. Tax depreciation difference; and
v. Customer's annual tax rate.
9. Written information explaining the standards for credit applications and loan applications, the availability of financial assistance through lenders and methods of evaluating vendor proposals.

14A:22-3.9 Prohibitions
(a) No auditor shall provide costs, savings or payback estimates resulting form the installation of any product or measure which is not a program measure.
(b) No auditor shall unfairly discriminate in recommendations of program measures.
(c) No auditor shall recommend, select or provide information about any contractor or supplier, if such recommendations unfairly discriminates among contractors and suppliers.

SUBCHAPTER 4. FINANCING ASSISTANCE

14A:22-4.1 Services provided
(a) Upon request by an eligible customer, each covered utility shall promptly provide services to arrange financing for the purchase and installation of any program measure. These services shall include:
1. Written information explaining the standards for credit applications, loan applications, the availability of financial assistance through lenders and methods of evaluating vendor proposals.
i. Such written information shall be distributed by each covered utility to all eligible customers who receive an audit, or upon request by any eligible customer. Such written information shall be in a form prescribed by the Department.
2. Telephone assistance available through the covered utility by a toll-free number. The toll-free number shall be placed conspicuously on all lists and written information distributed.
3. In-person assistance about the selection of lenders, shopping for loans and filling out loan applications provided by trained personnel who shall be available in at least one specified location during normal business hours and/or at several locations during designated hours.

14A:22-4.2 Prohibitions
(a) When providing any arranging of services, no covered utility shall recommend, select, or provide information about any lender if such recommendation would unfairly discriminate among lenders.
(b) No covered utility shall provide any arranging services for any measure which is not a program measure.

SUBCHAPTER 5. PAYMENTS

14A:22-5.1 Payments
(a) All program services, including the program audit, shall be provided free of charge to any eligible customer, except as provided in (b) below;
(b) If an eligible customer receives a program audit that includes an analysis of an oil-fired heating unit by a participating building heating supplier, the building heating supplier shall charge no more than $10.00. Such fee may be paid by the Department.

SUBCHAPTER 6. AUDITOR QUALIFICATIONS AND TESTING

14A:22-6.1 General
(a) All auditors of program measures shall be qualified by the Department as to basic skills necessary to perform CACS Program energy audits. Each auditor shall take and pass a written test, prepared and administered by the Department, prior to being qualified to conduct audits. The Department may retest any or all auditors upon notice as audit procedures change, or for good cause as determined by the Department.
(b) Any building heating supplier who has previously passed a Department approved test and has been qualified by the Department may apply for and receive a waiver of the auditor qualification for testing. Any building heating supplier may apply for and receive a waiver of qualification testing standards if such person submits written proof which, in the opinion of the Department, establishes that the person has sufficient training in conducting testing and analysis of program measures applicable to oil-fired heating units.

14A:22-6.2 Qualifications of auditors
(a) Persons conducting a program audit shall individually or collectively have the following qualifications:
1. A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;
2. A general understanding of commercial building and apartment building construction terminology and components;
3. A general knowledge of the operation of the heating and cooling systems in apartment buildings and commercial buildings;
4. The capability to conduct the program audit, including:
i. Knowledge of all operations and maintenance procedures to be audited;
ii. Ability to determine appropriate program measures;
iii. A proficiency in the pertinent auditing procedures for each applicable program measure;
5. A working ability to calculate steady-state efficiency and seasonal efficiency of the furnace and boiler;
6. An understanding of the nature of solar energy and its commercial and apartment building applications including;
i. Insulation;
ii. Shading;
iii. Heat capture and transport; and
iv. Heat transfer for hot water and space heating.
7. Auditors may be qualified to conduct a specific part of the audit and shall be tested accordingly.

SUBCHAPTER 7. BUILDING HEATING SUPPLIERS

14A:22-7.1 Participation
Building heating suppliers may participate in the CACS Program to the extent provided by this subchapter.

14A:22-7.2 Requirements for participation

To be eligible to participate in the CACS Program, a building heating supplier shall notify the Department in writing of his intention to participate and agree to comply with all applicable requirements of this chapter.

14A:22-7.3 Voluntary withdrawal

Any participating building heating supplier may voluntarily withdraw from the CACS Program upon 30 days written notice to the Department. However, any building heating supplier who so notifies the Department shall continue to comply with all requirements for participation and extend all benefits due to all eligible customers who have requested an oil-fired heating unit analysis prior to the effective date of withdrawal.

14A:22-7.4 Disqualification

(a) The Department may disqualify any building heating supplier from participating in the program.

(b) Grounds for disqualification include, but are not limited to the following:

1. Violation, within three years prior to the date of application, of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant does business;

2. Violation of the Federal Organized Crime Control Act of 1970 or conviction for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, prejury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating lack of business integrity or honesty by the applicant, or if the applicant is a corporation, partnership, or business entity;

3. Violation of any Federal or State antitrust statutes, or the Federal Anti-Kickback Act;

4. Violations of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor;

5. Any other cause affecting the responsibility of a building heating supplier of such a serious and compelling nature as may be determined by the Department to warrant disqualification, including such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation; or

6. Failure to fully comply with all applicable requirements of this chapter.

14A:22-7.5 Procedures for disqualification

(a) Any building heating supplier whom the Department plans to disqualify from participating in the program shall receive written notice from the Department of the disqualification and the grounds therefor at least 30 days before such disqualification.

(b) The Department shall allow the building heating supplier to respond in writing to the allegations contained in the notice. All such responses must be received by the Department no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.

(c) A building supplier who has been disqualified by the Department may file a request for reconsideration after one year. The request for reconsideration shall be accompanied by a statement under oath setting forth substantial and appropriate grounds for reconsideration which shall be supported by documentary evidence. Substantial and appropriate grounds include, but are not limited to:

1. Newly discovered material evidence that the Department erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgment which formed the basis of the Department's previous decision, on material grounds;

3. Actual change of ownership or control; and

4. Elimination of the causes for which disqualification occurred.

(d) The Department shall review the request for reconsideration and shall, within 45 days of its receipt, notify the building heating supplier of its decision whether to allow the building heating supplier to continue to participate in the CACS Program.

SUBCHAPTER 8. REPORTING AND RECORDKEEPING

14A:22-8.1 Reporting; covered utilities

(a) Each covered utility shall submit the following information in writing to the Department on June 1, 1984 and annually thereafter through June 1, 1980 for the twelve month period ending the preceding April 1:

1. Number of audits requested by building type;

2. Estimated utility direct and indirect costs;

3. Whether the utility is engaged in financing, installing or supplying any program measures or renewable resource measures and a description of the program(s).

4. The approximate number of eligible customers and, if available, the percentage of those customers for whom the utility is the primary heating fuel supplier;

5. The number of eligible customers who have requested:

i. Program audits; and

ii. Loans arranged;

6. The number and function of employees assigned to the program including part-time employees;

7. The program budget;

8. Such other information as the Department may require.

(b) Each covered utility shall submit the following information in writing to the Department on the 10th of each month beginning June, 1984 following information for the preceding month:

1. The number of audits requested by fuel type;

2. The number of audits completed within 30 days;

3. The number of audits completed within 60 days;

4. The number of audits cancelled;

5. the amount and types of program literature distributed;

6. The media sources used;

7. Such other information the Department may require.

14A:22-8.2 Reporting: Participating building heating suppliers

(a) Each participating building heating supplier shall submit the following information in writing to the Department on June 1:

1. The number of oil-fired heating unit analyses performed and the cost to the customer and the building heating supplier; and

2. Other such information as the Department may require.

14A:22-8.3 Recordkeeping: Covered utilities

(a) Each covered utility shall keep the following records for the periods indicated and shall make them available to the United States Department of Energy and the Department upon request:

1. The name and address of each eligible customer who receives a program audit, which shall be kept for ten years from the date of the program audit;

2. A copy of the data collected during the audit and a copy of the estimates of the costs and savings presented to the customer, which shall be kept for ten years from the date of such request;

3. A copy of all requests furnished by eligible customers for heating unit analyses which shall be kept for ten years from the date of such a request;

4. The amount and cost of fuel purchased each month or other billing period for the twelve months prior to and following each program audit for each eligible customer, which shall be kept for two years from the date of such program audit; and

5. The names of the individuals who have met the qualification criteria for auditors, which shall be updated within a reasonable period of time following each implementation of the qualification procedures.

14A:22-8.4 Recordkeeping: Participating building heating suppliers

(a) Each participating building heating supplier shall keep the following records for the periods indicated and shall make them available to the United States Department of Energy and the Department upon request:

1. The name and address of each eligible customer who receives an oil-fired heating unit analysis as part of a program audit, which shall be kept for ten years from the date of the heating unit analysis;

2. A copy of the data collected during the heating unit analysis and a copy of the estimates of costs and savings presented to the customer, which shall be kept for ten years from the date of the heating unit analysis;

3. A copy of all requests furnished by eligible customers for heating unit analysis which shall be kept for ten years from the date of such requests;

4. If the participating building heating supplier supplies the fuel, the amount and cost of fuel purchased each month or other billing period for the 12 months prior to and following each heating unit analysis for each of its own eligible customers participating in the program, which shall be kept for two years from the date of such heating unit analysis.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System Contributory Insurance Rate

Proposed Amendment: N.J.A.C. 17:2-3.3

Authorized By: John P. Olender, Secretary, Public Employees' Retirement System.
Authority: N.J.S.A. 43:15A-17.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions and any inquiries about submissions and responses, should be addressed to:

Peter J. Gorman
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The Board of Trustees of the Public Employees' Retirement System thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adopted rules become effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-81.

The agency proposal follows:

Summary

The proposed amendment changes the participating PERS members' contribution rate for contributory group insurance from three-fourths of one percent salary to six-tenths of one percent of salary, effective April, 1984.

Social Impact

The proposed amendment will affect all members of the PERS who have elected to enroll in the contributory group life insurance program.

Economic Impact

The participating members will experience reduced costs for the contributory insurance coverage, which will not be altered by the proposed amendment. Since there appears to be sufficient reserves to cover the reduced contribution rates, there will be no appreciable cost to the participating public employers or the public at large as a result of this proposed amendment.

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

17:2-3.3 Contributory insurance rate

All participating members' contribution rate for contributory group insurance shall be [three-quarters of one percent] **six-tenths of one percent** of the member's base or contractual salary, effective as of [July 1, 1981] **April 1, 1984.**

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Motor Fuels Tax Act

Proposed Readoption: N.J.A.C. 18:18

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:39-10 and 54:50-1.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street
Trenton, NJ 08646

The Division of Taxation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:18-1.1 et seq. would otherwise expire on April 3, 1984. The readoption of these rules becomes effective upon acceptance by the Office of Administrative Law of the notice of their readoption.

This proposal is known as PRN 1984-104.

The agency proposal follows:

Summary

The first gasoline tax law (P.L. 1924 c.334) became effective in New Jersey on July 1, 1927 at the rate of 2¢ per gallon. In 1934 a commission recommended repeal of use of exemption certificates and substitution of a system of refunds. The present Motor Fuels Tax Act providing for a system of refunds and a closer control of nontaxable sales of motor fuels was enacted as P.L. 1935, c.318 and became effective July 1, 1935.

The Motor Fuels Tax rules N.J.A.C. 18:18-1.1 have been updated and revised periodically through internal agency review as required by changes in legislation and by changes in the regulatory environment. The rules implement the statute pursuant to which $282,347,938 in revenue was raised in fiscal year 1983. This represents the fourth largest source of state tax collections following the Sales Tax, the Gross Income Tax and the Corporation Business Tax.

N.J.A.C. 18:18 is summarized as follows:

Subchapter 1. "Definitions," supplies definitions of particular words and phrases used in the chapter.

Subchapter 2. "Licensing," provides for general powers of the Director with respect to the Motor Fuels Tax Act.

Subchapter 3. "Distributor's and Jobber's License; Bonds Required; Records," deals with specific conditions for bonding and regulating distributors and gasoline jobbers.

Subchapter 4. "Wholesale and Retail Dealers and Transport Licenses," outlines the conditions for regulation of wholesale and retail dealers and transport licenses.

Subchapter 5. "Special Licensing," establishes procedures for implementing statutory requirements for licensing "Special License A" and "Special License B" holders.

Subchapter 6. "Corporations," summarizes special provisions relating to corporate licenses or taxpayers.

Subchapter 7. "Imposition of Tax and Tax Reporting," prescribes certain particular accounting and reporting requirements for fuels.

Subchapter 8. "Fuel Carriers," establishes guidelines for fuel carrier reports and records.

Subchapter 9. "Exports," supplies guidelines relating to exports of fuels from New Jersey.

Subchapter 10. "Tax Paid in Error-Refund and Appeals," deals with refunds of tax paid in error.

Subchapter 11. "Collection of Taxes," includes provisions with respect to suits by the Attorney General for Collection of Taxes.

Subchapter 12. "Offenses, Fines and Penalties," describes the offenses, fines, and penalties to which violators of the law will be subjected.

Subchapter 13. "Procedure for Collection of Fines and Penalties," relates to jurisdiction and procedures for collection of fines and penalties.

Subchapter 14. "Exemptions," provides for exemption from the tax for sales to the Federal Government, State of New Jersey, any political subdivision of the state or to a department or agency of either.

Subchapter 15. "Refunds," provides for refund procedures and documentation for certain purchasers and users of Motor Fuels and summarizes form numbers for administration of the tax.

Pursuant to Executive Order 66(1978), these rules were reviewed by the Division and were found to be understandable, adequate, reasonable, and necessary in their interpretation and clarification of the Motor Fuels Tax Act. In order to continue the orderly administration of the New Jersey Motor Fuels Tax Act, these rules will continue in effect until five years after the filing of the readoption notice.

Social Impact

The Motor Fuels Tax rules were enacted to provide taxpayers, and their attorneys and accountants guidance and assistance in the administration of the Motor Fuels Tax Act N.J.S.A. 54:39-1 et seq. These rules were also intended as guidelines to assist taxpayers and licensees in their preparation of various tax returns and records pursuant to that Act. The readoption of these rules will continue to provide taxpayers and those required to report under the Act with guidance in fulfilling their statutory obligation. It will also continue the orderly administration and collection of the tax for the State of New Jersey.

Economic Impact

The readoption of the Motor Fuels Tax rules will continue to provide for accurate filing of tax returns and maintainance of tax related reports and records by licensees and for payment of the applicable tax. It will assist in providing for the anticipated revenue for state budgetary purposes and additionally provide mechanisms for refunds of tax in appropriate situations.

The tax rates and revenue generated have been referred to in the summary above, and under the readoption will continue to supply a projected source of revenue for the State.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:18.

(a)

DIVISION OF TAXATION

Sales and Use Tax
Taxation of manufactured and mobile homes

Proposed Repeal: N.J.A.C. 18:24-7.19
Proposed New Rule: N.J.A.C. 18:24-7.19

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:32B-24 and P.L. 1983, c.400.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

The Division of Taxation thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-103.

The agency proposal follows:

Summary

"The Manufactured Home Taxation Act," P.L. 1983, c.400, effective December 22, 1983, together with four other acts passed at the same time, addressed the problems noted below in the Social Impact. Briefly, the acts provided that mobile or manufactured homes on private property on a permanent foundation, should be taxed as real estate. Mobile or manufactured homes on mobile home parks are not taxed as realty. Instead, the owner must pay an annual municipal service fee in lieu of taxes to the municipality, through the mobile home park operator.

Trailers, a separate category consisting primarily of recreational or other over the road vehicles are still licensed as motor vehicles; other manufactured or mobile homes are not.

Sales tax applies to all manufactured and mobile homes, on the first sale only, at the manufacturer's invoice price. Trailers are subject to sales tax on the retail price at each transfer of title. The proposed new rule is promulgated to help the manufacturers, dealers and purchasers of mobile and manufactured homes and trailers to understand and comply with the current versions of the realty tax law and the sales tax law.

Social Impact

The law on taxation of manufactured and mobile homes has been in controversy for a number of years. Originally mobile homes which were primarily what are now called trailers, were considered only as motor vehicles. Prior to 1966, there was no sales tax effect. The mobile homes, if placed in trailer parks, were not assessed as real property. Only the trailer park operator paid realty tax on the land, usually without regard to the value of the trailers.

This caused financial difficulties for undeveloped municipalities, especially if there were school aged children to increase the local school population. Municipalities tried to exclude trailer parks. Trailer manufacturers and dealers, as well as those buying them, went to court to prevent the exclusion of trailer parks. The courts held that trailers, on private property, could be taxed as realty, but those in trailer parks could not. The courts also ruled that trailer parks could not be completely excluded from municipalities.

The 1966 Sales Tax Act presented a new problem. Trailers were subject to sales tax on the full retail price, while custom built homes were subject to sales tax only on materials, not on costs involved in construction. This problem greatly increased when large manufactured homes, sometimes in two or more sections which when joined were equivalent to a small or medium home, came on the market.

Because of these problems, there was a moratorium from November 1979 until the end of 1983, which prohibited the taxation as real estate of most manufactured or mobile homes. This resulted in further tax inequities since some municipalities followed this moratorium and some did not.

Because of all of these problems, a legislative committee was appointed to review the whole problem of taxation of mobile homes.

Economic Impact

The act and the implementing rule will have a substantial economic effect. Those buying residential type manufactured mobile homes will pay sales tax based on the manufacturer's invoice price, rather than the retail price, as formerly. However, all mobile or manufactured homes permanently fixed on private property are now subject to realty tax like all other homes, which is a change in the law. Sales tax will be imposed on all sales of trailers, as before.

Manufactured and mobile home owners will be paying an annual municipal service fee in lieu of taxes, which was not always done formerly. Presumable these fees, fixed at the local level, will be sufficient to minimize the impact of mobile home parks on local tax rates, including the costs of education, police, fire, etc.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 18:24-7.19.

Full text of the proposed new rule follows.

18:24-7.19 Taxation of manufactured and mobile homes

(a) This section is intended to clarify the taxation of manufactured and mobile homes under the provisions of P.L. 1983, c.400, approved December 22, 1983.

1. For the purposes of this section, the following terms shall have the following meanings:

i. "Manufactured or mobile home" means a unit of housing which consists of one or more transportable sections which are substantially constructed off site and, if more than one section, are joined together on site; is built on a permanent chassis; is designed to be used, when connected to utilities, as a dwelling on a permanent or nonpermanent foundation; and is manufactured in accordance with the standards promulgated for a manufactured home pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," Pub. L. 93-383 (42 U.S.C. § 5401, et seq.) and the standards promulgated for a manufactured or mobile home pursuant to the "State Uniform Construction Code Act," P.L. 1975, c.217 (C. 54:27D-119, et seq.).

ii. "Trailer or housetrailer" means a recreational vehicle, travel trailer, camper or other transportable, temporary dwelling unit, with or without its own motor power, designed and constructed for travel and recreational purposes to be installed on a nonpermanent foundation if installation is required.

iii. "Manufacturer's invoice price" means the price charged by the manufacturer to a purchaser for a new manufactured or mobile home, including any amount for which credit is allowed by the manufacturer to the purchaser, the charge for the manufacturer-installed accessories, options, components or other taxable tangible personal property, without any deduction for expenses, early payment discounts or the value of a trade-in.

iv. "Dealer" means any person who sells manufactured and mobile homes, trailers or housetrailers and other tangible

personal property in New Jersey in the regular course of business and who is registered as a vendor with the Division of Taxation, whether or not licensed as a motor vehicle dealer with the Division of Motor Vehicles.

vi. "New manufactured or mobile home" means only a newly manufactured unit.

vi. "Used manufactured or mobile home" means a unit which has become what is commonly known as "second hand" within the ordinary meaning thereof.

vii. "First sale" means a retail sale as defined by the Sales and Use Tax Act.

(b) On and after December 22, 1983, the first sale of a new manufactured or mobile home is subject to sales tax based upon the manufacturer's invoice price.

1. The sale of a new manufactured or mobile home by the manufacturer or other vendor to a contractor, subcontractor, homeowner or other ultimate consumer is a retail sale and the tax must be collected from the purchaser at the time of sale and remitted to the Division of Taxation.

2. Where the manufacturer or other vendor sells a new manufactured home to a homeowner or other ultimate consumer and agrees to install the home for the purchaser, the manufacturer or other vendor is acting as a contractor and the tax is due directly from such person. Sales tax is not collected from the purchaser.

i. Where a new manufactured or mobile home is purchased from a manufacturer or other vendor who is not a registered vendor in New Jersey for sales tax purposes, the purchaser must pay the tax directly to the Division; provided, however, that where the manufacturer's invoice price cannot be ascertained, the tax is based on the purchase price.

3. The sale of a new manufactured or mobile home by the manufacturer to a dealer is a sale for resale and the tax applies to the manufacturer's invoice price as follows:

i. Where the dealer sells a new manufactured or mobile home to a contractor, subcontractor, homeowner or other ultimate consumer, the sales tax must be collected from the purchaser by the dealer and remitted to the Division of Taxation.

Example 1:

Dealer X sells a manufactured home to Y for $30,000.00. The manufacturer's invoice price, including a charge for certain home furnishings, was $19,500.00. The cost of freight into dealer X's place of business was $500.00. The taxable receipt is $20,000.00 and the sales tax is stated to and collected from the purchaser at the rate of six percent, or $1,200.00.

ii. Where the dealer sells a new manufactured or mobile home to a homeowner or other ultimate consumer and agrees to install the home for the purchaser, the dealer is acting as a contractor and the tax is due directly from the dealer. Sales tax is not collected from the purchaser.

Example 1:

Dealer X sells a new manufactured home to Y and agrees to install the unit in a mobile home park. The manufacturer's invoice price, including a charge for certain home furnishings, is $19,500.00. The cost of freight into dealer X's place of business is $500.00. The dealer is liable for the tax on $19,500.00, or $1,170.00. No tax on the manufactured home is stated to or collected from the purchaser.

iii. The sale of a new manufactured home by a dealer or other vendor to a dealer is a sale for resale and the acquiring dealer may issue a valid New Jersey Resale Certificate (Form ST-3); however, that sales tax is due at the time of retail sale on the price paid by the acquiring dealer whenever the manufacturer's invoice price cannot be ascertained.

(c) The sale of dealer-installed options or accessories for or components of a manufactured or mobile home is subject to sales tax based upon the sales price, whether or not the dealer also agrees to install the home for his customer; provided, however, that where the dealer does agree to install a home for his customer, the purchase of building materials, supplies and equipment is subject to tax as provided by subsection (e) below.

(d) On and after December 22, 1983, the sale of a used manufactured or mobile home by any person, including a dealer, is exempt from sales and use tax, whether or not the home is located in a mobile home park.

(e) On and after December 22, 1983, the installation of a new or used manufactured or mobile home results in a capital improvement to real property, whether or not the home is installed in a mobile home park.

1. Services performed by a contractor, subcontractor, manufacturer or other vendor or dealer acting as a contractor or subcontractor and rendered in connection with the installation of a new or used manufactured or mobile home for the purchaser are exempt from sales tax; provided, however, that a duly completed Certificate of Capital Improvement (Form ST-8) has been obtained from the purchaser and retained by the contractor or dealer for his permanent records.

2. Sales of materials and supplies, equipment or taxable services to a contractor or subcontractor, manufacturer or other vendor or a dealer acting as a contractor or subcontractor, for use in the installation of a new or used manufactured or mobile home are subject to sales tax or use tax as provided by 18:24-5.3, et seq. of this chapter.

(f) The sale of a new or used trailer or housetrailer is subject to sales tax as provided for other motor vehicles in this subchapter.

(g) A certificate of ownership for a new manufactured or mobile home will not be issued by the Division of Motor Vehicles except upon proof, in a form approved by the Division of Taxation and the Division of Motor Vehicles, that any tax due on the sale or use of a new manufactured or mobile home has been paid or that no such tax is due.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Standard financial and statistical reports

Proposed Amendment: N.J.A.C. 19:45-1.6

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a) and 5:12-70(1)(m)(n).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23,

1984. These submissions and any inquiries about submissions and responses should be addressed to:

William H. Delaney, Director
Casino Control Commission
Division of Financial Evaluation & Control
3131 Princeton Pike Office Park
Building No. 5
CN-208
Trenton, NJ 08625

At the close of the period for comments, the Casino Control Commission may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-101.

The agency proposal follows:

Summary

The proposed amendment would require that all quarterly reports submitted to the Casino Control Commission by casino licensees be based on calendar quarters ending March 31, June 30 and September 30. In addition, it would require that annual reports to the Casino Control Commission be based on a calendar period beginning January 1 and ending December 31. This would eliminate the present alternative that allows casino licensees to file quarterly reports based on equal 91-day fiscal quarters ending on or about March 31, June 30 and September 30, and annual reports based on a fiscal year of equal 91-day quarters ending on or about December 31.

This proposed amendment will help the Casino Control Commission to fulfill its responsibilities under N.J.S.A. 5:12-70(m). N.J.S.A. 5:12-70(m) gives the Casino Control Commission the responsibility to prescribe a minimum uniform standard of accountancy methods, procedures, and forms, and such other standard operating procedures as may be necessary to assure consistency, comparability, and effective disclosure of all financial information concerning casino licensees. If all casino licensees are required to file their reports based on calendar periods, the Casino Control Commission will maximize the uniformity, consistency and comparability of information contained therein.

It should be noted that due to procedural requirements of the Administrative Procedure Act and Rulemaking Rules of the Office of Administrative Law, this amendment, if adopted, cannot become effective until April 16, 1984 at the earliest. Consequently, the effective date of the amendment would occur after the end of the first calendar quarter of 1984 (i.e., March 31). In order to assure that all reports filed for 1984 are based on uniform quarterly periods, the submission of the quarterly reports covering the first quarter of 1984 will be subject to this amendment. The effects of applying the amendment to the submission of the first quarter reports will be minimal since quarterly reports covering the first quarter of 1984 do not have to be filed with the Casino Control Commission until May 15, 1984.

Social Impact

The social impact of this amendment would be substantial in that the public and the Casino Control Commission will be provided with financial information that is more uniform, consistent, comparable and effectively disclosed, and thus, more useful.

Economic Impact

The economic impact of this amendment on licensees will be immaterial in relation to the total costs of operating a casino-hotel. Only two licensees will have to change to a calendar period of reporting. These two operators may incur initial costs in changing their reporting period to a calendar basis; however, such costs will not be excessive and should be offset in part by eliminating the need for a fiscal to calendar period reconciliation of revenues and expenses. The economic impact on the Casino Control Commission will be moderate in that the Commission will experience less costs associated with review functions relating to fiscal to calendar period reconciliations of revenues and expenses. The economic impact of this amendment on the public will be minimal.

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

19:45-1.6 Standard financial and statistical reports

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

(c) Annual reports to the Commission shall be based on a calendar year, beginning January 1, and ending December 31. [, or a fiscal year, of equal 91 day quarters ending on or about December 31.] Quarterly reports shall be based on calendar quarters ending March 31, June 30, and September 30. [or equal 91 day fiscal quarters ending on or about March 31, June 30, and September 30.] Monthly reports shall be based on calendar months.

[1. The reports based on fiscal periods shall contain a footnote reconciling the fiscal periods revenues and expenses to a calendar basis.]

(d)-(j) (No change.)

(a)

CASINO CONTROL COMMISSION

Taxes
Section 144 Investment Obligation and Investment Alternative Tax

Proposed Amendments: N.J.A.C. 19:54-2.9, 2.27

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a), 5:12-70(e) and 5:12-144(f).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 23, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Robert Genatt
General Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5
CN-208
Trenton, NJ 08625

At the close of the period for comments, the Casino Control Commission may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-102.

The agency proposal follows:

Summary

On January 25, 1984, the Casino Control Commission adopted a new subchapter of rules, N.J.A.C. 19:54-2, concerning the investment obligation and investment alternative tax imposed by section 144 of the Casino Control Act (N.J.S.A. 5:12-144). These rules were published in the November 7, 1983, Register at 15 N.J.R. 1838(a). See the notice of adoption concerning these rules in this Register. As indicated in the Summary of Public Comments included in this notice of adoption, the Commission reacted favorably to two public comments suggesting that amendments be made to the rules as published.

First, Resorts International Hotel, Inc. ("Resorts"), proposed that the Commission eliminate that provision of N.J.A.C. 19:54-2.9(b) which establishes a fixed minimum operation period of at least 25 years or the estimated useful life of the property, whichever is less, for each investment property approved by the Commission. Instead, Resorts proposed that the Commission rely upon its general authority to require reasonable minimum operation periods, established elsewhere in that section, to evaluate each proposal on a case-by-case basis; this would afford the Commission much greater flexibility in evaluating the merits of, and necessary restrictions to be assigned to, each particular proposal submitted for Commission approval.

Second, the Atlantic City Casino Hotel Association ("Association") proposed that the Commission modify N.J.A.C. 19:54-2.27(d), which holds a casino operator liable for the failure of a recipient of an allowable contribution to meet any allowability conditions imposed by the Commission upon approval of the contribution. As indicated by the Association, it may neither be possible nor appropriate for the casino operator to intervene in the affairs of the approved recipient once the contributions have been completed.

Although the Commission found merit in both of these comments, the Commission also recognized that the proposed amendments were substantive in nature and would require public notice and comment before they could be acted upon by the Commission (see N.J.A.C. 1:30-3.5). Furthermore, the Commission concluded that the remainder of the sections within which these two provisions were contained were essential to the exercise of its responsibilities under section 144 of the Act. Accordingly, the Commission voted on January 25, 1984, to simultaneously adopt the proposed rules as published, and to approve for publication the amendments suggested by Resorts and the Association. The proposed amendment to N.J.A.C. 19:54-2.9(b) will simply eliminate that sentence which imposes a fixed minimum operation period on all approved investment properties. The proposed amendment to N.J.A.C. 19:54-2.27(d) will modify this subsection so that casino operators will only be held liable for defaults by contribution recipients which were within the control of the casino operator.

Social Impact

The proposed amendment to N.J.A.C 19:54-2.9(b) should have minimal social impact due to the fact that the Commission will retain the authority to establish required operation periods which are not only less than, but greater than, the 25 year fixed minimum period which is presently contained in the rules. Of course, the possibility would exist, should the amendment be adopted, that the Commission could approve an operation period for a particular property which would be less than that presently required by the rules. If this were to occur, persons interested in the continued operation of such a property could possibly be adversely affected should the owner of the property discontinue or alter its operation.

Although speculative at best, the proposed amendment to N.J.A.C. 19:54-2.27(d) could also adversely affect those persons interested in the continued operation of a project or property which was the recipient of an allowed contribution. Under the proposed amendment, the failure of such a project or property for a reason which was beyond the control of the licensee could result in the abandonment of the project or property without liability on the part of the casino operator. Conversely, under the existing rule, a casino operator would be responsible for either curing the default or paying the investment alternative tax which had otherwise been avoided as a result of the allowed contribution. Thus, even under the existing rule, persons interested in the continued operation of the recipient project or property would have no absolute assurance that the project or property would continue to operate after a default has occurred.

Economic Impact

For the same reasons stated above, the economic impact of the proposed amendments on casino operators and persons interested in approved projects or properties is too speculative to quantify. Minimum operation periods approved by the Commission could be shorter or longer than the present 25 year minimum requirement. The proposed amendment to N.J.A.C. 19:54-2.27(d) should have some beneficial economic impact on casino licensees, however, since they will no longer be contingently liable for the defaults of contribution recipients which are beyond their control. Potential recipients of contributions may also benefit from this amendment to the extent that it increases the likelihood of casino contributions being made. The proposed amendments are not expected to have any appreciable economic impact on the operations of the Commission or the Division of Gaming Enforcement.

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

19:54-2.9 Eligibility: Completion and operation

(a) (No change).

(b) In approving an eligibility application for a proposed project, the Commission shall establish a completion date for the construction and improvement of the investment property and shall also establish the minimum operation period during which the completed investment property must be operated in

accordance with the operation conditions imposed by the Commission. [Such minimum operation period shall be at least 25 years or the estimated useful life of the completed investment property, whichever is less.] The Commission may revise the completion date upon a showing of good cause.

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

19:54-2.27 Allowability: Recipient obligations and suitability

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

(d) In the event that a recipient fails to meet any allowability conditions imposed by the Commission **for a reason which was within the control of the casino operator or any casino licensee associated therewith**, the casino operator shall forfeit any credit for equity investment or cumulative investment attributable to the non-conforming amount of the contribution and shall be liable for any investment obligation which becomes unsatisfied or incurred in the same manner as provided in N.J.A.C. 19:54-2.9 for failure to fulfill completion and operation conditions of an eligible investment. For purposes of this section, the non-conforming amount of a contribution shall be the value of that portion of the contribution which is not applied or used in accordance with the allowability conditions. Where a contribution is subject to conditions for a specified period, the casino operator shall be entitled to retain credit for the same percentage of the contribution value as the percentage of the specified period in which the conditions were met.

(e) (No change.)

RULE ADOPTIONS

BANKING

(a)

DIVISION OF BANKING

Savings Banks Investment Securities Investment Approval

Adopted Amendment: N.J.A.C. 3:11-8.1

Proposed: December 19, 1983, at 15 N.J.R. 2087(a).
Adopted: February 6, 1984 by Michael M. Horn, Commissioner, Department of Banking.
Filed: February 6, 1984 as R.1984 d.38, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:9A-182.3.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): February 6, 1989.

Summary of Public Comments and Agency Responses: **No comments 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 *[thus]*).

3:11-8.1 Investment securities

(a) In addition to investments otherwise authorized in Article ***25*** *[15]* of the Banking Act of 1948, as amended, savings banks are further authorized to invest in the following securities:

1. Bonds, debentures, notes or other obligations of any business corporation, except bank holding companies, which are defined in (a)3 below, organized under the laws of the United States or any state therein; provided, however, such investment security has received a quality rating in any of the first three quality classifications issued by Moody's Investors Service, Inc., Standard & Poor's Corporation, or Fitch Investors Service, Inc., or has received a quality rating in the first seven quality classifications issued by Duff and Phelps, Inc. If such investment security shall be of a type commonly denominated as "commercial paper" such obligation shall have received a quality rating of P-1 by Moody's Investors Service, Inc., A-1 by Standard & Poor's Corporation, F-1 by Fitch Investors Service, Inc., or Duff 1 plus or minus.

2.-5. (No change.)

(b) (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES BUREAU OF SHELLFISH CONTROL

Shellfish-Growing Water Classification Growing Water Condemnations

Adopted Amendments: N.J.A.C. 7:12-1.2, 1.3 and 1.6

Proposed: December 19, 1983 at 15 N.J.R. 2103(a).
Adopted: February 6, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: February 6, 1984 as R.1984 d.42 **with substantive and technical changes** not requiring additional public notice and comment (see: N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1D-1 et seq. and 58:24-1 et seq.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): June 6, 1988.
DEP Docket No. 067-83-11.

Summary of Public Comments and Agency responses: **No written comments received.**

After the proposal deadline for this rule, the Food and Drug Administration (FDA) conclusion from the joint FDA-Departmental Study of the Waters of Raritan Bay, suggesting fitness of these waters for seasonal harvesting of shellfish under special permit for depuration, was made available to the department. Thereafter, the department received a comment from a member of the public requesting departmental action in conformity with the aforementioned FDA conclusions. Upon departmental review of both the FDA report and public comment, several changes in these amendments were made relaxing the restrictions on shellfish harvesting without affecting the rights of the public and without jeopardizing public health. The amendments to N.J.A.C. 7:12-1.2 and new rule N.J.A.C. 7:12-1.6 were not formerly proposed but are of necessity being adopted pursuant to the above discussion. These changes, while continuing to protect public health, would allow shellfish to be harvested from waters classified as Seasonal Special Restricted under special permit for depuration. This change from the proposal establishes the Seasonal Special Restricted category described at N.J.A.C. 7:12-1.6.

Although this adoption establishes the mechanism for the utilization of shellfish in the area so classified, these waters

will not be available for harvest under any special permit program, until a favorable determination is submitted by this department that levels of heavy metal contaminants are within those recommended by the FDA.

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]*).

7:12-1.2 Definitions

. . .

"Seasonal Special Restricted Areas" means certain Condemned waters meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC), formerly the National Shellfish Sanitation Program, during a portion of the year. The areas so designated will automatically, by operation of regulations according to the schedule in N.J.A.C. 7:12-1.6, be available for use under the special permit programs sanctioned by the department.

. . .

7:12-1.3 Growing water condemnations

(a) Charts designating Condemned areas as hereinafter described are available from the Bureau of Shellfish Control offices, Marine Police Stations, and Shellfisheries field offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Approved Area Charts are developed from Nautical Charts Number 12327 New York Harbor 76th Edition, December 20, 1980; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 19th Edition, December 13, 1980; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May 18th Edition, December 6, 1980; and Number 12304 Delaware Bay, 27th Edition, March 28, 1981. The State Department of Environmental Protection hereby condemns all shellfish growing waters or other places from which shellfish are or may be taken, at all times of the year, except when otherwise noted in N.J.A.C. 7:12-1.4 *,* *[and]* 1.5 ***and 1.6***.

1.-2. (No change.)

3. Raritan Bay area (A portion is designated as a Special Restricted area ***and a portion is designated as a Seasonal Special Restricted area. See: N.J.A.C. 7:12-1.6 of this subchapter****):

i. All the waters of Raritan Bay and tributaries thereof *, **with a portion of those waters designated as Seasonal Special Restricted Areas. See: N.J.A.C. 7:12-1.6***. This condemnation adjoins the closure defined in paragraph 39 of this subsection;

ii. (No change.)

iii. All the waters of Sandy Hook Bay and tributaries thereof; ***(Portions are designated as Special Restricted Areas or Seasonal Special Restricted Areas. See: N.J.A.C. 7:12-1.6.) Special Restricted Area: That portion of Sandy Hook Bay bounded by a line beginning at the south end of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) where it intersects the shoreline and following the easternmost side of the main stem of that pier to its northernmost extent, then following a line connecting that point to Sandy Hook light, Fixed light 88 ft 19 M (F 88 ft 19 M) bearing approximately 082 degrees T to where it intersects the western shoreline of Sandy Hook peninsula, then southward following the west shore of Sandy Hook to the Route 36 highway bridge over the Shrewsbury River, then proceeding westward along that bridge to where it adjoins the mainland then following the shoreline in a general northwestward direction to its point of origin at the base of the naval pier. (This designation of Special Restricted waters directly adjoins those waters defined as Seasonal Special Restricted Areas in N.J.A.C. 7:12-1.6.)***

[iv. Special restricted area: That portion of Sandy Hook Bay bounded by a line beginning at the south end of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) where it intersects the shoreline and following the easternmost side of the main stem of that pier to its northernmost extent, then following a line connecting that point to Sandy Hook light (F 88 ft 19 M) bearing approximately 082 degrees T to where it intersects with the western shoreline of Sandy Hook peninsula, then southward following the west shore of Sandy Hook to the Route 36 Highway bridge over the Shrewsbury River, then westward along that bridge to where it adjoins the mainland, then following the shoreline in a general northwestward direction to its point of origin at the base of the naval pier.]

4.-*[40]* ***39.*** (No change.)

7:12-1.6 Seasonal Special Restricted growing waters (Special Restricted Areas: June 1 through August 31; Condemned Areas: September 1 through May 31, yearly)

(a) The Seasonal Special Restricted waters described below shall be Condemned Areas for the harvest of shellfish from September 1 through May 31, yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resource recovery programs described in N.J.A.C. 7:12-2 and N.J.A.C. 7:17, during the period June 1 through August 31, yearly. These waters will not be utilized, i.e., will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metals are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by this department from analyses of ongoing studies. This area is designated on the charts referred to in N.J.A.C. 7:12-1.3 and is described as:

1. Raritan Bay area: Seasonal Special Restricted Areas - Special Restricted Areas from June 1 through August 31, yearly, and Condemned Areas from September 1 through May 31, yearly;

i. All those waters contained within a line beginning on the northernmost point of Conaskonk Point near Union Beach, New Jersey and bearing approximately 345 degrees T to Sequine Point at Princes Bay, Staten Island, New York, until it intersects the New York-New Jersey boundary, then along that boundary in an easterly direction until it intersects the Raritan Bay East Reach Channel, then along the southwest boundary of that channel in a southeasterly direction (approximate bearing 106 degrees T) to the channel marker designated as 'Interrupted Quick Flashing Green light "BR"' (I QK F1 G BR) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel and Terminal Channel, and then bearing approximately 098 degrees T to the navigation aid designated as "Equal Interval 6 Second and Vertical Beam light 38 ft, 15 M Bell" (E. Int. 6 sec and VB 38 ft 15 M Bell) located on the shore at Sandy Hook Point, then proceeding in a generally southerly direction following the western shoreline of Sandy Hook until it intersects a line connecting Sandy Hook light, Fixed light 88 ft, 19 M (F 88 ft 19 M) to the northernmost extent of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) (approximate bearing 262 degrees T) and then following this intersecting line to the northern end of the

Navy Pier, and then following the easternmost side of that pier to where it intersects the shoreline in Leonardo, and then following the shoreline in a generally northwest direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.*

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Shellfisheries
Oyster Seed Beds

Notice of Correction: N.J.A.C. 7:25A-3.1

An error appears in the December 5, 1983 New Jersey Register at 15 N.J.R. 2040(a) concerning the expiration date of Subchapter 3, Chapter 25A, Title 7. The Executive Order No. 66(1978) Expiration Date for Subchapter 3 should read July 1, 1984. The operative date for the regulations is May 14. 1984.

(b)

DIVISION OF WASTE MANAGEMENT

Solid Waste and Hazardous Waste Management

Readoption: N.J.A.C. 7:26-1.1, 1.2, 1.3, 1.4, 1.6 and 1.8

Proposed: December 5, 1983 at 15 N.J.R. 2017(a).
Adopted: January 23, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: February 6, 1984 as R.1984 d.40 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1E-6.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): February 21, 1989.
DEP Docket No. 062-83-10.

Summary of Public Comments and Agency Responses:
No comments received.

The Department noted, however, that two sections not proposed for readoption do require continuation and therefor are being readopted in their current text. The first of these sections, N.J.A.C. 7:26-1.6 contains the definition of solid waste. The definition is cited in N.J.A.C. 7:26-1.4, but the text of the definition itself is contained in N.J.A.C. 7:26-1.6. It is therefore necessary to readopt N.J.A.C. 7:26-1.6 to retain the text of the definition as cited in N.J.A.C. 7:26-1.4. Inasmuch as the definition was cited in N.J.A.C. 7:26-1.4, readoption of N.J.A.C. 7:26-1.6 is required to correct the omission and confirm to the intent of the proposal.

N.J.A.C. 7:26-1.8 is being readopted to preserve both public access to and confidentiality rights of information in accordance with N.J.A.C. 7:14A-11. This section, which merely references this provision, is required pursuant to the Federal Resource Conservation and Recovery Act, was not included in the proposal due to oversight.

Full text of the readoption appears in the New Jersey Administrative Code, as amended in the New Jersey Register, at N.J.A.C. 7:26-1.

(c)

DIVISION OF WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES

Interdistrict and Intradistrict Solid Waste Flow

Joint Adopted Amendment: N.J.A.C. 7:26-6.5

Proposed: September 6, 1983 at 15 N.J.R. 1417(a).
Adopted: February 6, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection, and February 3, 1984 by Barbara A. Curran, President, Board of Public Utilities.
Filed: February 6, 1984 as R.1984 d.41, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1B-3, 13:1E-6, 13:1E-23 and 48:13A-1 et seq.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): December 5, 1987.
DEP Docket No. 042-83-07.

Summary of Public Comments and Agency Responses:

On September 6, 1983, the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) proposed an amendment to the "waste flow rules", N.J.A.C. 7:26-6.5 to redirect solid waste types 13, 23, 25 and 27 generated in South Brunswick Township from disposal in the South Brunswick landfill to the Edgeboro landfill in East Brunswick as required by an amendment to the Middlesex County District Solid Waste Management Plan.

On September 22, 1983 a public hearing was held in South Brunswick Township to receive comment on the proposed amendment. At the hearing, officials of South Brunswick Township and a representative of the Middlesex County Division of Solid Waste Management testified in support of the proposal. The only issue raised was the remaining capacity of the landfill. During the comment period following the hearing, the DEP submitted a copy of a memorandum regarding a survey which was performed at the landfill which indicated that remaining capacity is greater than had been estimated by South Brunswick. Notwithstanding the increased estimate of greater capacity, South Brunswick Township adopted a resolution to close the landfill no later than December 31, 1984. The adopted rule reflects this commitment, which is in conformance with the Middlesex County District Solid Waste Management Plan.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***).

7:26-6.5 District waste flow planning requirements and disposal facility designations

Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by designating specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows, as described in this section.

(a)-(l) (No change.)

(m) Waste flows within, into and out of the Middlesex County District:

1. In-County Wastes:

i.-ii. (No change.)

iii. All solid waste types 10, 13, 23, 25, and 27 generated from within the Middlesex County municipalities of New Brunswick, North Brunswick, Plainsboro, Cranbury, East Brunswick, Milltown, South River, Spotswood, and Helmetta, and all solid waste types 13, 23, 25, and 27 generated from within the Middlesex County municipality of South Brunswick, shall be disposed of at the Edgeboro Disposal Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

iv. All solid waste type 10 generated from within the Middlesex County municipality of South Brunswick shall be disposed of at the South Brunswick municipal landfill, facility number 1221B, located in South Brunswick, Middlesex County, New Jersey. Upon closure of this facility, ***which shall occur no later than December 31, 1984,*** said solid wastes will be redirected to another alternate facility(ies).

v.-vii. (No change.)

2. Out-of-County Wastes:

i.-xvi. (No change.)

(n)-(v) (No change.)

(a)

BUREAU OF PESTICIDE CONTROL

New Jersey Pesticide Control Code Dealers, Dealer Businesses

Adopted Amendment: N.J.A.C. 7:30-3.2, 4.2 and 4.4

Proposed: December 5, 1983 at 15 N.J.R. 2017(b).
Adopted: January 24, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: February 6, 1984 as R.1984 d.39, **without change.**

Authority: N.J.S.A. 13:1D-1 et. seq. and specifically N.J.S.A. 13:1F-4.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): December 6, 1987.
DEP Docket No. 063-83-11.

Summary of Public Comments and Agency Responses:

The Department held a public hearing concerning the proposed amendment on January 6, 1984 at 380 Scotch Road, West Trenton, New Jersey. No persons requested the opportunity to testify at the hearing, and no testimony was heard. No comments were received regarding the proposed amendment.

Full text of the adoption follows.

7:30-3.2 General requirements

(a) Effective February 6, 1984, no person shall distribute, sell, or offer for sale or supervise the distribution, sale, or offering for sale of any restricted use pesticide to an end user without first meeting the requirements of certification and registration as a pesticide dealer unless:

1.-7. (No change.)

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

7:30-4.2 Registration

(a) Effective February 6, 1984, no person shall cause, suffer, allow or permit the operation of a pesticide dealer business which distributes restricted use pesticides to end users in the State of New Jersey without first registering such business with the department, on forms provided by the department, unless:

1.-6. (No change.)

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

7:30-4.4 Sale of Restricted Use Pesticides

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

(c) All transactions involving the sale or distribution of restricted use pesticides to end users shall be conducted by or under the direct supervision of a certified and registered pesticide dealer employed at the pesticide outlet where the transactions take place except that a pesticide dealer business which had a current registration with the department as of June 29, 1983, under the former N.J.A.C. 7:30-1.8, (Dealers in restricted pesticides) which became effective on July 1, 1974 and was replaced by N.J.A.C. 7:30-4, is exempt from the provisions of N.J.A.C. 7:30-4.4(c) until February 6, 1984.

HEALTH

(a)

CONSUMER HEALTH SERVICES

Controlled Dangerous Substances Rescheduling Glutethimide From Schedule III to Schedule II

Adopted Amendment: N.J.A.C. 8:65-10.2 and 10.3

Proposed: June 6, 1983 at 15 N.J.R. 844(a).
Adopted: January 27, 1983, by J. Richard Goldstein, M.D., Commissioner, Department of Health.
Filed: February 2, 1984 as R.1984 d.35, **without change.**

Authority: N.J.S.A. 24:21-3.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): Exempt pursuant to N.J.S.A. 24:21-3.

Summary of Public Comments and Agency Responses:

The Department of Health received two comments from the manufacturers of Glutethimide and an updated study by the Department's Division of Alcohol, Narcotic and Drug Abuse. The manufacturers' concerns were over the added costs to put in greater security required of Schedule II substances while the real abuses of Glutethimide were at the physician, pharmacist and patient levels. The Department responded that it was aware of the levels of abuse and diversion but there were no provisions in the Act to allow differential interpretations for one segment of registrants over others.

The Division of Alcohol, Narcotic and Drug Abuse provided an updated study of hospitalizations and arrest records which adequately substantiated the escalation of the abuses and diversion of Glutethimide and recommended the proposed schedule change.

Full text of the adoption follows (see related adopted amendments in the New Jersey Register at 15 N.J.R. 1375(a)).

8:65-10.2 Controlled dangerous substances; Schedule II
(a) (No change.)
(b) The following is Schedule II listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance code numbers.
1.-3. (No change.)
4. Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code):

Amobarbital[1]	2125
Glutethimide	2550
Pentobarbital[2]	2270
Phencyclidine[5]	7471
Secobarbital[2]	2315

5. (No change.)

8:65-10.3 Controlled dangerous substances; Schedule III
(a) (No change.)
(b) The following is Schedule III listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code numbers:
1. (No change.)
2. Depressants: Unless specifically excepted or unless listed in another Schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system.
i.-iii. (No change.)
iv. The following (listed by generic/established or chemical name with CDS code)[3]:

Chlorhexadol	2510
Lysergic Acid	7300
. . . . .	. . .
. . . . .	. . .

3. (No change.)

HUMAN SERVICES

(b)

COMMISSIONER

Administrative Hearings and Administrative Reviews

Adopted New Rule: N.J.A.C. 10:6

Proposed: October 17, 1983 at 15 N.J.R. 1725(a).
Adopted: January 24, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: January 25, 1984 as R.1984 d.27, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:1-12, 52:14B-12.

Effective Date: February 21, 1984.
Operative Date: April 2, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 21, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

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

CHAPTER 6

ADMINISTRATIVE HEARINGS AND ADMINISTRATIVE REVIEWS

SUBCHAPTER 1. ADMINISTRATIVE HEARINGS

10:6-1.1 Administrative Hearings: Contested cases

All matters which are determined by the Division Director (i.e., Agency head) to constitute a contested case (as defined by N.J.A.C.1:1-1***and consistent with case law***) shall be transmitted to the Office of Administrative Law for handling as an Administrative Hearing in accord with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.) subject to any superceding Federal or State law.

10:6-1.2 Administrative Hearings: Non-Contested Cases

Matters which are determined by the Division Director to be non-contested cases (as defined by N.J.A.C. 1:1-1) may be transmitted to the Office of Administrative Law at the discretion of the Division Director for handling as an Administrative Hearing, as long as there is a genuine dispute of fact and in accord with N.J.S.A. 52:14F-5(o).

SUBCHAPTER 2. ADMINISTRATIVE REVIEWS

10:6-2.1 Non-contested matters handled at Director's discretion

(a) There is no right to an Administrative Review of a non-contested matter. Claimant (i.e., applicant/recipient) and non-claimant (i.e., provider) disputed matters are only entitled to administrative Reviews at the discretion of the Division Director and to the extent that such is consistent with Federal and State law.

(b) Matters which are determined by the Division Director to be non-contested and which are not transmitted to the Office of Administrative law for handling as an Administrative Hearing (see N.J.A.C. 10:6-1.2) may at the discretion of the Division Director be:

1. Retained for agency handling as an Administrative Review; or

2. Dismissed by the Agency *[with no Administrative Review]* ***with further appeal only to the Appellate Division of The Superior Court of New Jersey.***

10:6-2.2 Conduct of Administrative Reviews of non-contested matters

(a) Administrative Reviews of non-contested matters shall be conducted in accord with the following general process:

1. Consistent with N.J.A.C. 10:6-2.1, claimants and non-claimants who are not satisfied with the results of attempts to settle or resolve a dispute, shall be informed that they may request a divisional level Administrative Review of the disputed matter by completing and submitting an "Administrative Review Request Form" and all relevant attachments, to the Division Director or his designee. ***The request shall be for either:***

i. An informal proceeding at which the parties would appear, or

ii. A paper review without the parties appearing.

2. All disputed matters shall be carefully reviewed and every attempt shall be made to reasonably settle or resolve the dispute. Each Division may develop its own settlement procedures, but all procedures must ensure an expeditious treatment of the matter.

3. The Division Director shall then determine whether the disputed matter is appropriate for an Administrative Hearing (see N.J.A.C. 10:6-1.2), an Administrative Review (see N.J.A.C. 10:62.1), or neither (see N.J.A.C. 10:6-2.1). Notice shall be prepared and sent advising as to this determination and the reason therefore.

4. Where an Administrative Review is determined appropriate, the Division Director or his designee shall assign an appropriate agency employee to conduct the Administrative Review and transmit the case file to the employee. This employee and his immediate supervisor shall have had no direct part in the decision-making regarding the disputed matter.

5. Upon transmitting the matter for Administrative Review the Division Director shall advise the Administrative Review assignee as to the status of the disputed matter pending the issuance of the Final Decision (i.e., continuance or discontinuance of services, benefits, funding, etc.).

6. ***At the discretion of the Division Director or his designee the Administrative Review shall be conducted either as:***

i. An informal proceeding at which the parties would appear, or

ii. A paper review without the parties appearing.

[The Administrative Review shall be an informal proceeding at the discretion of the Administrative Review assignee subject to the following procedural requirements:]

7. *[i.]* The Administrative Review shall be conducted within 30 working days of the transmittal of the matter to the Administrative Review assignee.

8. Where the Administrative Review is to be an informal proceeding at which the parties would appear:

i. *[ii.]* The Administrative Review assignee shall give the person seeking review at least five working days notice of the time and place of the Administrative Review;

ii. *[iii.]* At the Administrative Review the following shall be provided:

(1) *[1.]* The opportunity to be present, to present and rebut positions taken by the agency, and to submit relevant documents;

(2) *[2.]* The opportunity for representation by an attorney or any other person (i.e., a friend, neighbor, etc.); and

(3) *[3.]* The opportunity to meet face-to-face with and question the reviewer and the agency staff member(s) involved in the disputed matter.

10:6-2.3 Completion of Administrative Reviews; Recommended Decisions and Final Decisions

(a) At the completion of an Administrative Review, the following shall occur with appropriate notice to the person seeking review:

1. The Administrative Review assignee shall write and send to the parties a Recommended Decision within 25 working days of the date of Administrative Review;

2. Written comments, objectives or exceptions to the Recommended Decision, if any, shall be submitted to and received by the Division Director's office within 10 working days from the date of the Recommended Decision.

3. The Division Director shall issue a Final Decision in writing after careful review of the Recommended Decision and any comments, objectives or exceptions that may have been submitted in response to it;

4. Upon issuance the Final Decision shall be sent to the parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

10:6-2.4 Administrative Reviews: additional division policies and procedure

The Divisions shall have the option of adopting policies and procedures regarding Administrative Reviews which supplement, but are not inconsistent with, N.J.A.C. 10:6-2.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Physicians' Services
Subchapter 1. General Provisions

Readoption: N.J.A.C. 10:54-1

Adopted Amendments: N.J.A.C. 10:54-1.1, 1.2, 1.4, 1.5, 1.10, 1.13 through 1.18
Adopted Repeal: N.J.A.C. 10:54-1.21, 1.22

Proposed: December 19, 1983 at 15 N.J.R. 2129(a).
Adopted: February 1, 1984, by George J. Albanese, Commissioner, Department of Human Services.
Filed: February 2, 1984 as R.1984 d.34, **without change.**

Authority: N.J.S.A. 30:4D-6(a)5, 7 and 7b; 1905(a)(5) of the Social Security Act; and 42 CFR 440.50.

Effective Date of Readoption: February 2, 1984.
Effective Date of Amendments: February 21, 1984.
Effective Date of Repeal: February 21, 1984.
Expiration Date Pursuant to Executive Order No. 66 (1978): February 21, 1989.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code, as amended in the New Jersey Register, at N.J.A.C. 10:54-1.

Full text of the repealed rules appears at N.J.A.C. 10:54-1.21, 1.22.

Full text of the adopted amendments to the readoption follows.

10:54-1.1 Definitions

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

"Concurrent care" (No change.)

"Consultation" means advice or counsel of qualified specialist as recognized by this program which is requested by the attending physician. This requires a personal examination of the patient with a written report of the history, physical findings, diagnosis, and recommendations of the consultants as noted under procedure codes 9029 and 9030 in N.J.A.C. 10:54-3. When the consultant assumes the continuing care of the patient, any subsequent services rendered by him/her will no longer be considered as consultation. Except where medical necessity dictates or where a hospital policy dictates otherwise, multiple and simultaneous consultations in the same speciality for the same disease, illness or condition, whether in or out of a hospital, are not reimbursable. When consultation services are performed, the name of the referring physician must be included on the claim form and will be listed under the appropriate section of the claim form.

Note: For applicable requirements of consultation services see N.J.A.C. 10:54-3.

"Physician" (No change.)

"Physician services" (No change.)

"Specialist" (No change.)

"Specialist in family practice or general practice," for purposes of the New Jersey Medicaid Program, means a fully licensed physician who limits his/her practice to his/her speciality and who is a diplomate of the Board of Family Practice, a Fellow of the American Academy of Family Physicians, or a Diplomate of the American Osteopathic Board of General Practice.

"Transfer" (No change.)

10:54-1.2 Scope of Service

(a) Payment will be made for the medically necessary services, subject to the following limitations:

1. No additional payment will be made for injections and drugs dispensed by the physician except as outlined under specific procedure codes listed in subchapter 3 (Procedure Code Manual) of this chapter.

2. (No change.)

3. Physician services provided in the hospital setting; inpatient:

i. For the hospitalized patient (inpatient), specific physician services for which the physician is customarily reimbursed directly by the hospital under contractual or other arrangements (that is ECG interpretation, laboratory services, and so forth) are considered a reimbursable hospital cost and must be billed by the hospital not by the physician;

ii. (No change.)

4. through 7. (No change.)

10:54-1.4 Policies related to inpatient care

(a) (No change.)

(b) The New Jersey Medicaid Program recognized as a covered service medically necessary inpatient services which are provided in an approved private psychiatric hospital or the psychiatric section of an approved general hospital with the following limitations:

1. (No change in text.)
2. (No change in text.)
3. (No change.)
4. (No change.)

(c) (No change.)

10:54-1.5 Prior authorization

(a) (No change)

(b) Prior authorization for certain services rendered by physicians are required as follows:

1. (No change.)

2. Psychiatric services:

i. (No change.)

ii. Exception: Psychiatric services rendered in an approved hospital outpatient department, to a registered clinic patient, shall not require prior authorization but, in accordance with

the Hospital Manual, shall require a physician's certification and plan of treatment after the first 30 days. Certification and/or recertification and plan of treatment shall consist of a typewritten statement, signed by the attending physician, which shall indicate the type, amount, frequency and duration of the services that are to be furnished, and must include the diagnosis and anticipated goals. The certification must be completed on a timely basis and the dates on the report must be applicable to the billing dates on the claim submitted by the hospital.

iii. In general hospital outpatient departments, prior authorization is required for Partial Hospitalization (P.H.) services after 30 calendar days.

iv. (No change in text.)

v. (No change in text.)

vi. (No change in text.)

vii. If request for authorization is approved, both the provider copy and the contractor copy will be returned to the provider, who is responsible for submitting the contractor copy along with the HCFA-1500 to the Prudential Insurance Company for payment.

viii. (No change in text.)

10:54-1.10 Prescription policies

(a) This section is intended to decribe the physician's responsibility in writing of prescriptions in order to maintain the traditional patient-prescriber-provider relationship and to insure the recipient free choice of provider Physicians are urged to familarize themselves with all aspects of this section in order to effect economics consistent with good medical practices and to facilitate prompt payment to the provider.

1. The New Jersey Medicaid Program allows the choice of prescribed drugs to the prescriber, within the limits of applicable laws, rules and regulations of the program. The Prescription Drug Price and Quality Stabilization Act applies to the New Jersey Medicaid Program, and the formulary published by the Drug Utilization Review Council shall be used for all drugs listed therein.

2. The practitioner's Individual Medicaid Practitioner number must appear on all written prescriptions and must be given to the pharmacist with all telephone orders. This number must be transposed onto the prescription claim form submitted by the pharmacy and serves to expedite the processing of these claims.

3. (No change.)

(b) (No change.)

(c) (No change.)

(d) The choice of prescription drugs remain at the discretion of the prescribing physician subject to the observation of the following tenets:

1. Oral medication should be prescribed when as effective as injectable preparations;

2. Nonproprietary or generic named drugs of equal therapeutic effectiveness should be prescribed if available at a lower cost than proprietary or brand named drugs;

3. The practitioner should note the specific conditions listed under subsections (f) and (g) of this section regarding restriction of payment to pharmacies for certain prescription drugs.

(e) The quantity of medication prescribed should provide a sufficient amount of medication necessary for the duration of the illness or an amount sufficient to cover the interval between visits, but may not exceed a 60-day supply or 100 unit doses, whichever is greater. Any drug used continuously (that is, daily, three times daily, every other day, and so forth)—for 14 days or more is considered to be a sustaining drug or maintenance medication and should be prescribed in sufficient quantities to treat the patient for up to 60 days. In long-term medical care facilities (that is, skilled nursing facilities, infirmacy section of home for aged, or public medical institution), if the quantity of sustaining drug or medication is not indicated in writing by the prescriber, the pharmacy provider may dispense up to a maximum of 30 day's supply.

1. Exceptions include the following:

i. Patients authorized as Level IV B in a long-term care facility, where the interval between physician visits may be 60 days, may have one refill, one time only, if a 60-day supply was authorized on the original prescription.

ii. Oral contraceptives may be prescribed up to a supply for three ovulatory cycles;

iii. Vitamins and vitamin/mineral combinations may be prescribed and dispensed in quantities up to a 100-day supply.

(f) The following therapeutic classes and dosage forms require prior authorization obtained by the prescribing practitioner from the Medicaid District Office. If the request is approved, an authorization number will be provided and must appear on the prescriber's original prescription. The pharmacist cannot be reimbursed unless he has the authorization number to insert on the pharmacy claim form.

1. (No change in text.)

2. (No change in text.)

3. (No change in text.)

4. (No change in text.)

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

1. through 11. (No change.)

12. Antiobesics and anorexiants;

13. Drugs considered less than effective under the Drug Efficacy Study Implementation Program.

(h) Telephone orders from the prescriber for original prescriptions, in accordance with all applicable Federal and State laws and regulations, will be permitted.

Note 1: Telephone orders for refills are not permitted.

Note 2: For drugs listed in the Drug Utilization Review Council (DURC) formulary, the prescriber must initial the statement "Substitution Permissible" or "Substitution Not Permissible." If neither statement is initialed, the pharmacist shall substitute from the formulary and bill Medicaid accordingly. For telephone prescriptions, this information must be put in writing immediately.

(i) (No change.)

10:54-1.13 Choice of prescription drugs

(Delete the current entire text and replace with the following text;)

(a) The choice of prescribed drugs shall be at the discretion of the prescriber within the limits of applicable law and as listed herein. However, no payment shall be made for certain drugs under specific conditions.

1. Exceptions:

i. Covered pharmaceutical services requiring prior authorization (see N.J.A.C. 10:54-1.10(f));

ii. Pharmaceutical services not eligible for payment (see N.J.A.C. 10:54-1.10(g);

iii. Non-legend drugs (see N.J.A.C. 10:54-1.16).

(b) The New Jersey Drug Utilization Review Council Formulary (hereafter referred to as the Formulary) dated July 9, 1979, and all subsequent revisions, distributed to all prescribers and pharmacists, supersedes the New Jersey Medicaid Formulary dated November 11, 1975.

(c) The Prescription Drug Price and Quality Stabilization Act (N.J.S.A. - 24:6E-1) shall apply to the New Jersey Health Services (Medicaid) Program. This law requires that every prescription blank contain the statements "Substitution Permissible" and "Do Not Substitute." The prescriber must initial one of statements in addition to signing the prescription blank.

1. When the prescriber does not initial either statement on a prescription for a drug product listed in the Formulary, the pharmacist shall substitute from the list of interchangeable products.

2. When the prescriber initials "Substitution Permissible", the pharmacist shall dispense and bill Medicaid for one of the less expensive products listed as interchangeable with the brand name prescribed. The Medicaid client must accept the interchangeable product unless the client is willing to pay the pharmacy's full usual and customary price.

3. When the prescriber intitials "Do Not Substitute," the pharmacist shall dispense and bill Medicaid for the prescribed product.

4. When the prescriber orders by generic name, the Formulary does not apply. The pharmacist shall dispense the least expensive, therapeutically effective product available to him/her at the time of dispensing. The product need not necessarily be from the list of interchangeable products.

(d) The Federal Maximum Allowable Cost (MAC) regulations prescribe the upper limit Medicaid may reimburse for certain multi-source drugs. The limit shall apply to all MAC drugs, unless the prescriber indicates in his/her own handwriting on each written or telephoned prescription "Brand Necessary" or "Medically Necessary". The Department of Health and Human Services requires a handwritten statement and does not permit the use of alternatives, such as a check box, initials, or prescriber's signature next to a preprinted statement "Do Not Substitute". For purposes of reimbursement, the physicians override capability under N.J.S.A. 24:6E-1 does not apply to drugs which have a federal MAC limit.

(e) Blanket authorization denying substitutions will not be permitted. Each prescription order must state "Brand Necessary" or "Brand Medically Necessary" in the prescriber's own handwriting or his/her initials, if a printed statement or rubber stamp is used. (See N.J.A.C. 10:54-1.13(d)).

10:54-1.14 Quantity of medication

(a) The quantity prescribed should provide a sufficient amount of medication necessary for the duration of the illness or an amount sufficient to cover the interval between visits, but may not exceed a 60 day supply or 100 unit doses, whichever is greater.

(b) Any drug used continuously (that is daily, three times daily, every other day and so forth) for 14 days or more is considered to be a sustaining drug or maintenance medication and should be prescribed in sufficient quantities to treat the patient for up to 60 days or 100 unit does, whichever is greater.

(c) In long-term care facilities (that is, skilled nursing home, infirmacy section of home for the aged, a public medical institution), if the quantity of sustaining drug or maintenance medication is not indicated in writing by the prescriber, the pharmacy provider must dispense an appropriate quantity of medication not to exceed a one month supply.

10:54-1.15 Drug services requiring prior authorization

(a) The following therapeutic classes and dosage forms require prior authorization obtained by the prescribing practitioner from the Medicaid District Office. If the request is approved, an authorization number will be provided and must appear on the prescriber's original prescription. The pharmacist must check the box in the space provided on the prescription claim form (MC-6) identifying a prior authorized item, and enter the authorization number in the proper space in this area.

1. Protein replacement products, such as (but not limited) Probana, Protagen, Nutramigen, Neo-Mullsoy;

2. Preventive drugs and biologicals listed in Appendix A when not available through listed distributing stations.

3. Injectable medication to be administered to a patient by other than the prescriber or prescriber's employee.

4. Hymenoptera venom.

5. Methadone (not eligible when used for detoxification drug maintenance).

6. Non-legend medication not listed in Appendix B or C.

10:54-1.16 Pharmaceutical services not eligible for payment

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

1.-3. (No change.)

4. Medication furnished by a prescriber or an employee of a prescriber;

5. (No change.)

6. (No change.)

7. Prescribed non-legend (OTC) drugs for patients in long-term medical facilities (that is, skilled nursing facilities, infirmacy sections of a home for the aged or public medical institutions;

8. (No change.)

9. Prescribed nonlegend drugs unless specifically listed in Appendix B or C (Allowable Nonlegend Drugs). (Appendixes B and C are furnished separately as a loose-leaf section of the New Jersey Medicaid Manual.) See N.J.A.C.10:54-1.15, Drug services requiring prior authorization.

10. (No change.)

11. (No change.)

12. Methadone or any prescription containing Methadone; that is tablets, capsules, liquid, injectable or powder, when used for drug detoxification or addiction maintenance. See N.J.A.C. 10:54-1.15.

13. (No change.)

14. Antiobesics and anorexiants;

15. Drugs considered less than effective under the Drug Efficacy Study Implementation Program;

16. Drugs or drug products not approved by the Federal Food and Drug Administration, when such approval is required by Federal law and/or regulation;

17. Injectable drug products;

i. Exceptions:

(1) Food and Drug Administration approved antineoplastic drugs;

(2) Gamma-globulin when not available from the Department of Health or other agencies. Prior authorization must be obtained by the prescriber;

(3) Medication to be administered to a patient by other than the prescriber or an employee of the prescriber. Prior authorization must be obtained by the prescriber and the written prescription must include the statement, "Medicaid authorized", and the assigned prior authorization number;

(4) Insulin;

(5) Hymenoptera venom preparations when prior authorized;

18. Radiopaque contrast materials (Telepaque).

10:54-1.17 Telephone-ordered original prescription

(a) (No change.)

(b) When a prescriber chooses not to allow product interchange on a telephone order, the statement "Substitution not permitted by prescriber-telephoned Rx", plus the pharmacist's full signature next to or below the statement, must appear on the prescription order. A rubber stamp bearing the statement is acceptable.

(c) When a prescriber chooses to certify "Brand Necessary" or "Brand Medically Necessary" on a telephoned prescription for a product included on the Federal MAC list, a written signed prescription order containing the certification must be sent to the pharmacists within seven days of the date of the telephone order. The written prescription must be retained by the pharmacist as the original prescription. Failure to comply will result in the payment for the prescription being reduced to the MAC reimbursement level.

(d) For purposes of reimbursement, telephone authorization to refill an original prescription is considered a new order and requires a new written prescription number. Stamping or writing a new number on the original prescription order does not constitute a new prescription under the Medicaid Program.

10:54-1.18 Prescription refill

(a) The pharmacist must initiate, complete and submit Prescription Claim Form (MC-6) to Blue Cross of New Jersey for payment of an allowable refill. The following instructions apply for allowable refills:

1. Refill instructions must be indicated by the prescriber on the original prescription. Prescriptions without such instructions are not refillable and are not eligible for payment.

2. Prescription refills will be limited to a maximum of five times within a six-month period if so indicated by the prescriber on the original prescriptions.

i. Exceptions:

(1) Oral contraceptives originally prescribed for a three ovulatory cycle supply may be refilled up to three times within one year if so indicated on the original prescription;

(2) Vitamins and vitamin-mineral combinations originally prescribed for a 100 day supply may be refilled two times within one year if so indicated by the prescriber.

3. Refill instructions indicating "refill prn" or indicating more than five refills will be honored for payment only up to the limits imposed in (a) 2 above and will be reimbursed up to these limits only.

4. Payments will not be allowed for telephone authorized refills. A new prescription is required.

5. Prescription refills shall not be dispensed until a reasonable quantity (approximately 75 percent) of the medication originally dispensed or refilled could have been consumed in accordance with the prescriber's written directions for use.

i. Exception: When medication has been lost or destroyed (for example, broken container), the pharmacist may refill the prescription. A note of explanation for the early refill must be stapled to the Medicaid Prescription Claim Form (MC-6), in order to be eligible for reimbursement.

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual
Lost or Stolen Assistance Checks

Adopted Amendment: N.J.A.C. 10:81-7.18

Proposed: November 7, 1983 at 15 N.J.R. 1820(b).
Adopted: February 1, 1984 by, George J. Albanese, Commissioner, Department of Human Services.
Filed: February 2, 1984 as R.1984 d.36, **without change**.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: February 21, 1984.
Expiration Date Pursuant to Executive Order 66(1978): June 1, 1984.

Summary of Public Comments and Agency Responses:

Comments were received from a county legal services Agency. The agency voiced concern that recipients of public assistance would face hardship as a result of adoption of the proposal to increase the time period during which county welfare agencies must either issue or deny the issuance of duplicate assistance checks. It was the commentor's belief that since no new investigation or verification requirements were set forth in the proposal, the extension of the time frame is without documented merit and merely permits case workers to take five additional working days to determine whether to replace a lost or stolen check and provides them with an excuse in not treating the matter with the needed sense of urgency.

Response: The Department points out that N.J.A.C. 10:81-7.18(a) continues to required immediate action on the part of the local agency upon notification that a recipient's benefit check has been lost or stolen. The revised portion of the regulation does not alter that requirement nor is it intended to diminish the degree of urgency which governs the processing of matters related to the subject. The reason that prompted the proposed regulatory change was the fact that county welfare agencies had indicated that they experience practical difficulty in the implementation of an absolute and uniform five day time period for all cases in an effort to arrive at definitive determinations in accordance with N.J.A.C. 10:81-7.18(b)3 and 4 when appropriate documentation as to the identification of the individual who endorsed and/or cashed the original assistance check is absent.

Full text of the adoption follows.

10:81-7.18 Lost or stolen assistance checks

(a) Upon notification from a client that his or her assistance check has been lost or stolen, the CWA will immediately secure the client's affidavit of the facts and circumstances and will file a stop payment order with the bank. Within ten working day the CWA will either issue a duplicate check or provide written notice that the check will not be replaced. The notice must be in the format of an adverse action notice including information about both regular and emergency fair

hearing rights and setting forth the reason(s) for the action. (See N.J.A.C. 10:81-6.2 and 6.17.)
(b)-(d) (No change.)

(a)

DIVISION OF PUBLIC WELFARE

Special Payments Handbook; Aged, Blind and Disabled
Emergency Assistance; Funeral and Burial Expenses

Readopt: N.J.A.C. 10:100-3

Proposed: December 5, 1983 at 15 N.J.R. 2025(a).
Adopted: February 6, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: February 6, 1984 as R.1984 d.37, **without change.**

Authority: N.J.S.A. 44:7-12, 44:7-13, 44:7-38 and 44:7-43.

Effective Date: February 6, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 6, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:100-3, as amended at 14 N.J.R. 981(a).

(b)

DEVELOPMENTAL DISABILITIES COUNCIL

Charity Racing Days for the Developmentally Disabled Distribution of Proceeds

Adopted New Rule: N.J.A.C. 10:141

Proposed: November 7, 1983 at 15 N.J.R. 1826(a).
Adopted: January 18, 1984 by Catherline Rowan, Executive Director, Developmental Disabilities Council.
Filed: January 26, 1984 as R.1984 d.28, **without change.**

Authority: N.J.S.A. 5:5-44.2-44.6 and 30:1Aa-7.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 21, 1989.

Summary of Public Comments and Agency Responses:

One letter of support was received from a current award recipient who maintained that the monies received enabled services to thousands of persons with developmental disabilities. One letter of criticism was also received (after the closing date for comments) which questioned an eligibility requirement which, as was pointed out, is determined by Statute and not within the Council's power to modify.

Full text of the adopted new rule follows.

CHAPTER 141

CHARITY RACING DAYS FOR THE DEVELOPMENTALLY DISABLED

SUBCHAPTER 1. DISTRIBUTION OF PROCEEDS FOR CHARITY RACING DAYS FOR THE DEVELOPMENTALLY DISABLED

10:141-1.1 Scope

In 1977 interested organizations which provided services to persons with developmental disabilities sought additional funding for program operations. The state legislature responded by passing P.L. 1977, c.200, which provides that a portion of the proceeds from three days of horse racing at various tracks in New Jersey are distributed to certain eligible organizations. The Developmental Disabilities Council, as the primary advisory body on services for persons with developmental disabilities remained the administrator of the monies, in cooperation with the New Jersey Racing Commission. The rules explain the Charity Racing Days award procedures, and define relevant terms such as "developmental disability," "eligible organizations," etc.

10:141-1.2 Definitions

"Developmental disability" means a disability which:

1. Originates before such person attains age 18;
2. Has continued or can be expected to continue indefinitely;
3. Constitutes a substantial handicap to such person's ability to function normally in society and which is attributable to:

i. Mental retardation, cerebral palsy, epilepsy or autism;
ii. Any other condition found to be closely related to mental retardation, i.e., an impairment of general intellectual functioning or adaptive behavior, and which requires treatment and services similar to those required for mental retardation; or
iii. Dyslexia resulting from a disability as described in i and ii above.

"Nonprofit organization" means a private, rather than public, body which must provide proof of both incorporation as a nonprofit organization with the New Jersey Secretary of State and classification as a tax exempt organization under Section 501(c)(3) of the United States Internal Revenue Code.

10:141-1.3 Eligible organizations

(a) An eligible organization shall be a nonprofit organization located in New Jersey which expends funds for direct

services in full-time programs to New Jersey residents who are developmentally disabled, which organization shall be affiliated with a national organization of the same type and purpose.

1. Affiliation with a national organization of the same type and purpose shall require proof of a formal written affiliation agreement between a local organization and a national organization, or between a local organization and a state organization, which in turn has a formal written affiliation agreement with the national organization. The national organization shall:

i. Have a bona fide charter or by-laws with objectives relating to the developmentally disabled and include a statement of purpose essentially the same as or closely similar to the statement of purpose contained in the charter by-laws of the state or local organization.

ii. Have a Board of Directors and officers who meet at least once a year;

iii. Have chapters in at least forty (40) states;

iv. Publish an annual report summarizing expenditures for programs and activities;

v. Engage in annual fund raising as stated in its charter or by-laws and/or as recognized by the National Information Bureau;

vi. Require financial contributions and accounting from its chapters;

vii. Have an annual publication which is widely disseminated;

viii. Have a Federal tax exempt identification number.

(b) An eligible organization shall be a full time developmental disabilities service provider which expends funds for direct services and which has as its main purpose either:

1. The provision of services (as defined below); or

2. The raising of funds on behalf of a single other organization whose sole purpose is the provision of eligible service.

i. All funds raised (excepting minimal costs for administration and fund raising) shall be contributed to the provision of eligible services.

ii. At least seventy-five (75) percent of the recipients of eligible services provided by the organization must be developmentally disabled, as defined herein.

10:141-1.4 Eligible services

(a) Eligible direct services shall include evaluation services, diagnostic services, treatment, day care, training and education, sheltered employment, recreation, special living arrangements, counseling, and information and referral. Such services may be funded directly by an organization from contributions, by grants, or by purchase contracts with public agencies. Explanation of eligible direct services, based on federal definitions and as published in the 1978 developmental disabilities State Plan, follows:

1. Diagnostic services are the provision of coordinated services, including but not limited to medical, psychological, social or other services necessary to identify the presence, cause and extent of a developmental disability.

2. Evaluation is the systematic appraisal of physical, psychological, vocational, educational, cultural, social, economic or other characteristics of the individual to determine: The extent to which the disability limits or can be expected to limit his or her daily living and work activities; the extent to which the disability can be minimized through the provision of services; the nature and scope of services needed; and objectives which are commensurate with the individual's needs, interests and capacities.

3. Information and referral is the provision of a current and complete listing of all appropriate resources which are available and accessible to the developmentally disabled.

4. Counseling is the provision of professional guidance made on the basis of evaluation in order to achieve goals which are mutually agreeable to counselor and client.

5. Advocacy services are the provision of a system of social, legal and other services to help developmentally disabled individuals exercise their rights as citizens and to assist those who are unable to protect themselves from neglect, exploitation or other hazardous situations.

6. Treatment services are interventions designed to halt, control or reverse conditions which cause or complicate developmental disabilities. Such interventions may include: Surgery, provision of prosthetic devices, dental treatment, physical therapy, occupational therapy, speech and hearing therapy, and other medical and medically oriented treatments needed by the individual.

7. Recreational services provide for planned and supervised activities designed to: Help meet the individual's therapeutic needs for self-expression, social interaction and entertainment and develop skills and interests leading to constructive and enjoyable use of leisure time.

8. Special living arrangements are settings for the provision of living quarters for developmentally disabled persons who need some degree of supervision, but who do not require the more intensive services provided by domiciliary care. (Short term living arrangements refers to temporary residential care, e.g., camps, respite care, etc.) (Long term living arrangements refers to permanent residential care, e.g., group homes, skill development homes, etc.)

9. Day care services are the provision of comprehensive and coordinated activities providing personal care and other services to pre-school, school age and adult developmentally disabled individuals. The services are provided outside of the residence for a portion of the 24-hour day. Services include creative, educational, social, physical and learning activities designed to provide at least training, counseling, personal care and recreation services. Day care services for pre-school age and school age children are likely to emphasize recreation activities and maturation of the children in order to supplement service being provided by parents or guardians. Day care for adults is likely to emphasize the development of occupational and/or social skills to make the individual as independent as possible.

10. Education services are the provision of structured learning experiences based on appropriate evaluations and taking place within the least restrictive environment. Curriculum should be designed to develop ability to learn and acquire useful knowledge and basic skills, and to improve the ability to apply them to everyday living. Education services are to be provided to every age group. Training services are the provision of a planned and systematic sequence in instruction to: Develop skills for daily living, including self-help, motor skills for daily living, including self-help, motor skills and communication; enhance emotional, personal, and social development; and provide experiences for gaining occupational and pre-vocational skills. Training services should be based upon appropriate evaluation of the individual and objectives designed to meet the needs of the individual.

11. Sheltered employment services are the provision of activities involving work evaluation, occupational skills, train-

ing and paid employment for those who cannot be absorbed into the general labor market because of their disability.

10:141-1.5 Procedures

(a) The following procedures shall be carried out on an annual basis:

1. Notification of application solicitation: the Developmental Disabilities Council shall provide notice soliciting formal applications for eligibility determination.

2. Application: organizations shall submit designated appropriate proof that eligibility requirements are met.

i. Such applications and supporting documentation shall be reviewed and determination of eligibility made by the Developmental Disabilities Council.

3. Notification of eligibility determination shall be provided to applicant organizations in a timely manner.

4. Organizations determined to be ineligible shall have the right of appeal to the Council within 30 days of the date of notification to such effect.

5. Award determinations and allocation of funds: upon receipt of notice from the Racing Commission of the total monies available for distribution, the Developmental Disabilities Council, using the designated computerized data base system, shall allocate such monies as provided herein and shall notify organizations and the Racing Commission of the amounts of such allocations.

10:141-1.6 Methods for allocation of funds

(a) The amount of monies each eligible organization shall receive shall be allocated in the following manner.

1. Incidence Formula: one-half of the total amount available for distribution shall be allocated proportionately among the eligible organizations on the basis of the officially accepted "incident rate" of each type of disability (as set forth in the Developmental Disabilities Annual State Plan for year 1978), in relation to the total number of developmentally disabled residents of this state.

2. Service Formula: one-half of the total amount available for distribution shall be allocated proportionately among eligible organizations on the basis of the number of developmentally disabled residents of this State who are provided services by each organization in relation to the total number of developmentally disabled residents of this State who are served by all such organizations.

10:141-1.7 Participatory requirements

(a) Organizations determined to be eligible shall provide required information on the approved forms to the agency responsible for processing the computerized data as designated by the Council.

(b) Eligible organizations shall be required to participate in a computerized data base system designated by the Council by periodically reporting on the approved forms the primary disagnosis of each individual served and those eligible direct services he/she is receiving; such reports shall provide the base information for allocation of funds.

10:141-1.8 Accountability of Charity Racing Days monies

(a) Organizations allotted such funds shall be required to submit an annual report to the Developmental Disabilities Council concerning the dispersal of such funds, as well as such other reports, materials and information as may be from time to time required by the Council.

(b) The New Jersey Developmental Disabilities Council shall maintain records on the implementation of Charity Racing Days procedures and submit annual reports to the State legislature on the distribution and use of Charity Racing Days monies.

LAW AND PUBLIC SAFETY

(a)

NEW JERSEY RACING COMMISSION

Horse Racing
Ownership Approval; Listing of Shareholders

Adopted Amendments: N.J.A.C. 13:70-3.5 and 3.6

Proposed: November 21, 1983 at 15 N.J.R. 1928(a).
Adopted: February 2, 1984 by Harold G. Handel, Executive Director, New Jersey Racing Commission.
Filed: February 6, 1984 as R.1984 d.43, **without change**.

Authority: N.J.S.A. 5:5-30, L.1983, c.254.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-3.5 Ownership approval

No person shall in any manner become the owner or holder, directly or indirectly, of any shares of stock or certificates or other evidence of ownership comprising a five percent or greater interest in any association or corporation which has been or shall be granted a permit to hold or conduct a horse race meeting without first obtaining the approval of the New Jersey Racing Commission pursuant to these rules and regulations. For purposes of this section "person" shall be construed to include the spouse and/or children or any such applicant and compliance with this section shall be required of all such persons holding any interest whatsoever whenever the total interest held by such persons as an aggregate exceeds the five percent requirement. Failure to comply with this regulation shall subject the applicant to disqualification and the permit holder to the penalties and sanctions provided by law.

13:70-3.6 Annual listing of shareholders

Racing associations shall file on an annual basis with the Commission a list of all persons possessing directly or indirectly any shares of stock or certificates or other evidence of ownership of any interest in any association or corporation. Said filing shall take place prior to June 1 of each calendar year.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Eligibility; Registration Required

Adopted Amendment: N.J.A.C. 13:70-6.53

Proposed: December 19, 1983 at 15 N.J.R. 2147(a).
Adopted: February 2, 1984 by Harold G. Handel, Executive Director, New Jersey Racing Commission.
Filed: February 6, 1984 as R.1984 d.45, **without change.**

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

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): June 19, 1984.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-6.53 Eligibility; registration required

(a) In order to be eligible to enter and start in races exclusively for horses bred in New Jersey, each horse must be registered with the Thoroughbred Breeders' Association of New Jersey. To qualify for such registration, the said horse must have been foaled in the State of New Jersey and, in addition, unless the breeder is a resident of the State, or one who maintains his breeding stock continually in the State, the said horse shall be either the produce of a mare having conceived in New Jersey the previous season or a mare sent into the State to foal and covered by a New Jersey stallion the season of the birth of the foal.

1.-2. (No change.)

3. To be considered a New Jersey stallion, it is required that the stallion be in the State of New Jersey for at least one full breeding season, commonly understood to be the period from February 1st through July 1st of any year, or if the stallion is brought in subsequent to the start of the breeding season he must be approved as a New Jersey Stallion by the New Jersey Racing Commission upon the recommendation of the Board of Trustees of the Thoroughbred Breeders' Association of New Jersey and the appropriate annual fee paid to the Association prior to serving the first mare in the State of New Jersey and annually thereafter prior to February 1st.

i. Should any stallion die in New Jersey prior to completion of one full breeding season he may also be considered a New Jersey stallion upon approval by the New Jersey Racing Commission upon recommendation of the Board of Trustees of the Thoroughbred Breeders' Association of New Jersey.

ii. A copy of the stallion report of mares bred as filed with the Jockey Club must be provided to the Thoroughbred Breeders' Association of New Jersey no later than September 1st.

4. (No change.)

(b)

NEW JERSEY RACING COMMISSION

Harness Racing
Associations

Adopted New Rules: N.J.A.C. 13:71-6.25, 6.26, 6.27, 6.28, 6.29 and 6.30

Proposed: November 21, 1983 at 15 N.J.R. 1928(b).
Adopted: February 2, 1984 by Harold G. Handel, Executive Director, New Jersey Racing Commission.
Filed: February 6, 1984 as R.1984 d.44, **without change.**

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

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): April 5, 1987.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted new rules follows.

13:71-6.25 Ownership approval

No person shall in any manner become the owner or holder, directly or indirectly, of any shares of stock or certificates or other evidence of ownership comprising a five percent or greater interest in any association or corporation which has been or shall be granted a permit to hold or conduct a horse race meeting without first obtaining the approval of the New Jersey Racing Commission pursuant to these rules and regulations. For purposes of this section "person" shall be construed to include the spouse and/or children of any such applicant and compliance with this section shall be required of all such persons holding any interest whatsoever whenever the total interest held by such persons as an aggregate exceeds the five percent requirement. Failure to comply with this regulation shall subject the applicant to disqualification and the permit holder to the penalties and sanctions provided by law.

13:71-6.26 Annual listing of shareholders

Racing associations shall file on an annual basis with the commission a list of all persons possessing directly or indirectly any shares of stock or certificates or other evidence of ownership of any interest in any association or corporation. Said filing shall take place prior to June 1 of each calendar year.

13:71-6.27 Application forms; approval

Approval may only be given to such persons who make application therefor on the form prescribed by the New Jersey

Racing Commission and only when such application is filed with the Director of the Racing Commission properly completed and executed in all respects.

13:71-6.28 Investigation

The commission may investigate the applicant or any person named in the application, with respect to such person's criminal record, subversive activities record and any other reports concerning such persons, in order to determine whether the applicant or a person for whom ownership is directly or beneficially to be held has not been convicted of a crime of moral turpitude, has not violated any rules and regulations previously or presently prescribed by the New Jersey Racing Commission, and who possesses sufficient moral responsibility so as not to be detrimental to the best interests of racing in New Jersey.

13:71-6.29 Review of application approval

Applications may be approved, after due consideration by the Executive Director of the Racing Commission to whom such power is delegated, but the New Jersey Racing Commission may, in its discretion, review any such findings made by the Executive Director to determine whether any applicant merits approval.

13:71-6.30 Application denials; notice

When an applicant, after due consideration, cannot be approved for reasons expressed in N.J.S.A. 5:5-22 et seq., as amended and supplemented, or if, in the opinion of the New Jersey Racing Commission, approval of such person will be detrimental to the best interests of racing in New Jersey, or if an applicant will hold ownership for another whose interest is beneficial, indirect or otherwise and the indirect or beneficial owner could not qualify to hold direct ownership for reasons expressed herein, the commission may disapprove such applicant by notifying by registered mail the Secretary of the association or corporation licensed to conduct a horse race meeting. Such disapproved person may request, and the commission shall hold, a hearing which request and hearing shall be made and had as provided for in N.J.S.A. 5:5-22 et seq.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

No Passing Zones

Routes 49, 37, 68, 175, 170, 52 and 83

Adopted Amendment: N.J.A.C. 16:29-1.10
Adopted New Rules: N.J.A.C. 16:29-1.29, 1.30, 1.31, 1.32, 1.33 and 1.34

Proposed: December 19, 1983 at 15 N.J.R. 2148(a).
Adopted: January 24, 1984 by Jarret R. Hunt, Chief Engineer, Traffic and Local Road Design.

Filed: February 1, 1984 as R.1984 d.32, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 39:4-6 and 39:4-201.1.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): November 7, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

16:29-1.10 Route 49

(a) The certain parts of State highway Route 49 shall be designated and established as "No Passing" zones:

1.-2. (No change.)

3. Within the Townships of Stow Creek, Hopewell, Fairfield and Maurice River, Shilon Borough and Cities of Bridgeton and Millville, Cumberland County and described in drawing number HNPZ-040 dated March 17, 1983.

16:29-1.29 Route 37

(a) The certain parts of State highway Route 37 within Lakehurst Borough, Manchester and Dover Townships in Ocean County and described in drawing number HNPZ-055 dated July 20, 1982 shall be designated and established as "No Passing" zones.

16:29-1.30 Route 68

(a) The certain parts of State highway Route 68 within Mansfield and Springfield Townships, and Wrightstown Borough in Burlington County and described in drawing number HNPZ-057 dated July 27, 1982 shall be designated and established as "No Passing" zones.

16:29-1.31 Route 175

(a) The certain parts of State highway Route 175 within Ewing Township, Mercer County and described in drawing number HNPZ-059 dated September 14, 1982 shall be designated and established as "No Passing" zones.

16:29-1.32 Route 170

(a) The certain parts of State highway Route 170 within Mansfield Township, Burlington County and described in drawing number HNPZ-060 dated September 22, 1982 shall be designated and established as "No Passing" zones.

16:29-1.33 Route 52

(a) The certain parts of State highway Route 52 within Somers Point City, Atlantic County and described in drawing number HNPZ-063 dated March 30, 1983 shall be designated and established as "No Passing" zones.

16:29-1.34 Route 83

(a) The certain parts of State highway Route 83 within Dennis Township, Cape May County and described in drawing number HNPZ-065 dated April 8, 1983 shall be designated and established as "No Passing" zones.

Editor's Note: The following drawings depicting "No Passing" zones have been filed but are not reproduced herein. Copies may be obtained from the Bureau of Traffic Engineer-

ing, Department of Transportation, 1035 Parkway Avenue, Trenton, NJ 08625:
. . .

HNPZ-040
HNPZ-055
HNPZ-057
HNPZ-059
HNPZ-060
HNPZ-063
HNPZ-065

TREASURY-GENERAL

(a)

STATE LOTTERY COMMISSION

Lottery Vendor's Code of Ethics

Adopted New Rule: N.J.A.C. 17:20-8.1

Proposed: December 5, 1983 at 15 N.J.R. 2030(a).
Adopted: January 26, 1984 by New Jersey State Lottery Commission, Hazel Frank Gluck, Executive Director.
Filed: January 30, 1984 as R.1984 d.30, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 5:9-7(a), (b), (f) and 52:13D-12 et seq.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): November 7,1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***).

SUBCHAPTER 8. LOTTERY VENDORS' CODE OF ETHICS

17:20-8.1 Lottery vendors' code of ethics

(a) No Lottery Vendor shall employ any person or maintain any business relationship with any person who is a Lottery Commissioner, officer or employee. As used in this section, Lottery Vendor means any person, firm or corporation engaging or seeking to engage in business with the Division of the State Lottery.

(b) The maintenance of a business relationship shall be deemed to include but not be limited to any interest, financial or otherwise, direct or indirect, any business transaction or business activity involving a Commissioner, officer or employee. However, it shall not be a violation of this section for a Lottery Commissioner, officer, or employee to seek *[further]* ***future*** outside employment or to correspond with a Lottery Vendor with respect thereto, provided that:

1. The Director is promptly informed of such activities; and
2. They are not violative of State law or such other ethical standards as may apply. (Lottery Commissioners and Division Officers and employees are covered by separate Codes of Ethics. See subsection (h)).

(c) No Lottery Vendor shall cause or influence, or attempt to cause or influence, any Lottery Commissioner *,* officer or employee ***to act*** in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said Lottery Commissioner, officer or employee.

(d) No Lottery Vendor shall cause or influence, or attempt to cause or influence, any Lottery Commissioner, officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Lottery Vendor or for any other person.

(e) No Lottery Vendor shall offer any Lottery Commissioner, office or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service, or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his official duties.

(f) This Code of Ethics shall also apply to any licensed agent of the New Jersey State Lottery.

(g) No Lottery Vendor shall, without the written approval of the Director, disclose, directly or indirectly, any information not generally or legally available to the public concerning the affairs of the Division.

(h) This Code is intended to augment and not replace existing administrative orders and pertinent codes of ethics. If any part of this Code shall be found ineffective or inoperative, such finding shall not affect the other parts of the Code.

(i) This Code shall take effect immediately upon adoption by the New Jersey State Lottery Commission.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Local Property Tax
County Boards of Taxation; Petitions of Appeal

Adopted Amendment: N.J.A.C. 18:12A-1.6

Proposed: November 21, 1983 at 15 N.J.R. 1930(b).
Adopted: January 27, 1984 by John R. Baldwin, Director, Division of Taxation.
Filed: February 1, 1984 as R.1984 d.31, **without change.**

Authority: N.J.S.A. 54:3-3-14.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): August 12, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

18:12A-1.6 Petitions of appeal
(a)-(c) (No change.)
(d) A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the first three quarters of the taxes assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66 even though his petition to the county board of taxation might request a reduction in excess of one quarter of the taxes assessed for the full year. A county board of taxation shall not enter a judgment regarding a tax appeal filed by a taxpayer unless the first three quarters of the current year's taxes have been paid and unless the municipality has applied to the county board for a dismissal of the taxpayer's appeal.
(e)-(k) (No change.)

OTHER AGENCIES

(a)

GARDEN STATE PARKWAY

Definitions

Adopted Amendment: N.J.A.C. 19:8-1.1

Proposed: December 19, 1983 at 15 N.J.R. 2153(a).
Adopted: January 23, 1984 by New Jersey Highway Authority, George P. Zilocchi, Deputy Executive Director.
Filed: January 27, 1984 as R.1984 d.29, **without change.**

Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18 and 27:12B-24.

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): June 1, 1988.

Full text of the adoption follows.

19:8-1.1 Definitions
"Car" means a passenger motor vehicle, including station wagons, hearses, funeral flower and funeral service vehicles for which issuance of passenger car plates is authorized, taxicabs, motorcycles and panel vans, pickup trucks and similar vehicles having a registered gross weight not exceeding 6,999 pounds.

(b)

CASINO CONTROL COMMISSION

Taxes
Section 144 Investment Obligation and Investment Alternative Tax

Adopted New Rule: N.J.A.C. 19:54-2

Proposed: November 7, 1983 at 15 N.J.R. 1838(a).
Adopted: February 2, 1984 by Casino Control Commission, Walter N. Read, Chairman.
Filed: February 2, 1984 at R.1984 d.33, **with technical and substantive changes** nor requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a), 5:12-70(e) and 5:12-144(f).

Effective Date: February 21, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1988.

Summary of Public Comments and Agency Responses:

Comments concerning the proposed rules were received from four sources: the Division of Gaming Enforcement ("Division"); Resorts International Hotel, Inc. ("Resorts"); the Atlantic City Casino Hotel Association ("Association") and the Claridge Hotel and Casino ("Claridge").

The Division generally expressed its support for the rules proposed by the Commission, finding them "consistent with the provisions of the Casino Control Act, comprehensive with respect to issues of investment eligibility and its determination, and fully responsive to section 144(f) of the Act." Accordingly, the Division recommended that the proposed rules be adopted as published.

The comments received from Claridge concerned an issue which arises as a result of existing statutory and proposed regulatory requirements. Claridge proposed that the rules be broadened to include within the accredited cumulative investment of a licensee any cumulative investment of a lessor from whom the license leases realty or improvements related to its hotel casino, regardless of whether or not the lease is "capitalized" (treated as an installment contract for the sale of real property). Otherwise, according to Claridge, a casino hotel which chooses to structure its ownership in such a manner that the licensee who is to receive the gaming revenues from the facility is a lessee in a non-capitalized lease arrangement is penalized by receiving no cumulative investment credit for the casino hotel facility, even though the desired cumulative investment is achieved.

Although the argument advanced by Claridge may have some appeal in terms of the cumulative investment which would otherwise be attributed to the casino hotel facility, the Commission must nonetheless reject the rule amendment proposed by Claridge due to its direct contradiction of existing statutory requirements. Section 144 of the Casino Control Act (N.J.S.A. 5:12-144) defines "cumulative investments," in

pertinent part, as "investments in and debt financing of the licensed premises." The same section of the Act defines "investments" as "equity investments in land and real property on which improvements are made and in real property improvements." Accordingly, the Act directs that a licensee's cumulative investment in the licensed premises may only include equity investments in and debt financing of the casino hotel facility. The Commission is unaware of any legal or accounting opinion which would justify a finding that a lessee in a non-capitalized lease arrangement has either an equity or debt interest in the property which is the subject of the lease. Thus, the Casino Control Act clearly prohibits such a licensee-lessee from receiving any cumulative investment credit for the casino hotel facility which generates the revenues subject to the obligations imposed by section 144 of the Act.

Several of the comments received from Resorts and the Association also concerned regulatory requirements mandated by the Casino Control Act. These comments include: the suggestion that partial credit be given for equity investments actually made within the authorized investment period, even if the complete investment obligation is not satisfied (Resorts); the proposed expansion of the definition of contribution contained in N.J.A.C. 19:54-2.2 and 2.23 to include items of value other than cash or realty (Resorts); the suggested elimination of N.J.A.C. 19:54-2.3, which imposes joint and several liability on all casino licensees associated with a casino hotel for the failure of the casino operator to satisfy section 144 obligations (Resorts); the proposed elimination of N.J.A.C. 19:54-2.17, which requires Commission review and approval of all agreements between casino licensees and the joint owners of multiply owned investments and cumulative investments (Resorts), and the suggested expansion of the kinds of investments which are eligible for investment credit (Association). Regardless of the substantive validity or invalidity of these comments, the Commission is compelled to reject each of these suggested modifications to the rules as published due to the statutory basis of the relevant proposed regulatory requirements.

Other comments submitted by Resorts requested clarification of N.J.A.C. 19:54-2.1(a), -2.1(d) and the definitions of "equity investment" and "debt financing" contained in N.J.A.C. 19:54-2.2. The Commission rejected these comments on the grounds that the proposed rules were, in its opinion, an appropriate and sufficiently concise exercise of its regulatory authority.

Both Resorts and the Association took exception to those provisions of N.J.A.C. 19:54-2.5 which would require a licensee to seek a determination of eligibility prior to commencing a proposed investment or cumulative investment. The comments generally indicated that prior approval of proposed projects could cause inordinate delay and expense to casino licensees without commensurate benefit to the State. Instead, Resorts and the Association proposed that licensees be permitted to initiate investment projects at their own risk prior to a determination of eligibility by the Commission.

The Commission rejected these comments. The Commission believes it has a statutory obligation to insure that the investments made by licensees pursuant to the investment obligations imposed by section 144 of the Act are those which best serve the interests of the people of this State. In this regard, the benefits to be obtained from the limited amount of funds to be generated by section 144 must be maximized. Accordingly, the Commission believes that the prior approval of all investment projects proposed by licensees is appropriate to the exercise of its statutory responsibilities pursuant to section 144 and completely within the authority conferred upon it by subsections (b) and (f) of that section.

For similar reasons, the Commissioner rejected those comments which objected to the inclusion of section 2.13 of the proposed rules, "Presumptively ineligible investments." This section simply represents another exercise of the Commission's authority to determine which investment projects are entitled to a determination of eligibility. Contrary to Resorts objection that this section serves no useful purpose given the Commission's general authority to determine the eligibility of each investment project, this section serves to advise licensees in advance that certain types of investment projects will not be favorably reviewed by the Commission. The section generally precludes eligibility determinations for investments or cumulative investments which are of primary benefit to the licensee, and which are likely to be made regardless of the investment obligations imposed by section 144 of the Act. A technical amendment to N.J.A.C. 19:54-2.13(a)(3) has been adopted by the Commission, however, to clarify that this paragraph is only intended to apply to real property improvements made to investment property subsequent to the receipt of an initial determination of eligibility. Finally, the Commission rejected those comments which criticized the presumptive ineligibility imposed by this section upon mere acquisitions of land by licensees. The Association contended that obtaining credit for such purchases is essential to the ability of a licensee to stockpile the land necessary for large-scale projects. The proposed rule does not, however, forever preclude a licensee from obtaining investment credit for such purchases. It merely requires that the licensee actually utilize the acquired land in an approved eligible project before investment credit will be recognized.

The Association also expressed the opinion that the eligibility requirements, application process and monitoring responsibilities created by the proposed rules were far too complex to be practical, and may be self-defeating by encouraging licensees to opt to pay the tax. Although the Commission generally disagrees with this comment, and believes that the proposed rules are not only consistent with but essential to the proper exercise of its responsibilities under the Act, the Association's suggestion that timing requirements for the review of applications be included within the rules has been favorably considered by the Commission. Accordingly, substantive amendments to N.J.A.C. 19:54-2.8 and -2.26 not requiring additional public notice or comment have been adopted by the Commission.

The provisions of N.J.A.C. 19:54-2.24(c) were also criticized by the Association as being counterproductive. This subsection authorizes potential recipients of contributions to file applications directly with the Commission seeking a determination of allowability. According to the Association, this provision will have two adverse consequences; 1) the numerous applications received will overburden the Commission's resources; and 2) a determination of allowability from the Commission will raise false hopes that contributions will necessarily be forthcoming. An examination of the relevant language, however, proves these concerns groundless. The Commission will not accept complete applications from potential recipients unless "the commission preliminarily determines that the facility, project or program would probably be approved;" and an essential element of this preliminary determination will be a demonstration that there "is a reasonable probability that a casino operator will agree to make contributions to the potential recipient for such facility, project or program." N.J.A.C. 19:54-2.24(c). Thus, the casino industry

itself will play an essential screening role in determining which potential recipients are actually presented with the opportunity to apply to the Commission for a determination of allowability.

Several other comments received also require individual responses by the Commission. Resorts proposed that N.J.A.C. 19:54-2.31 be amended to provide that the first Annual Report required by this section be filed no later than 90 days following the adoption of the proposed rules, as opposed to March 15, the standard proposed filing deadline. Upon review, the Commission supported this proposal, and adopted an appropriate amendment to N.J.A.C. 19:54-2.31.

Resorts also proposed that the Commission eliminate that provision of N.J.A.C. 19:54-2.9(b) which would establish a fixed minimum operation period of at least 25 years or the estimated useful life of the property, whichever is less, for each investment property approved by the Commission. Resorts contended that this provision would "deprive the Commission of the flexibility necessary to evaluate various projects on a case by case basis." In Resorts opinion, this subsection otherwise grants the Commission all the authority necessary to establish reasonable minimum operation periods.

Upon analysis, the Commission may be inclined to agree with Resorts' interpretation of this subsection and the authority it confers upon the Commission. In the Commission's opinion, however, this fixed minimum operation period cannot be deleted from the rules as proposed without giving the public an opportunity to comment (see N.J.A.C. 1:30-3.5). Since the Commission believes that the authority to establish minimum operation periods is essential to the exercise of its authority to determine the eligibility of investments under section 144 of the Act, the Commission has determined to adopt N.J.A.C. 19:54-2.9(b) as published. The Commission has also decided, however, to simultaneously publish for public comment the deletion of the fixed minimum operation period proposed by Resorts.

Similarly, the Commission has, after due consideration, reevaluated the merits of N.J.A.C. 19:54-2.27(d), which would hold a casino operator liable for the failure of a recipient of an allowable contribution to meet any allowability conditions imposed by the Commission. As indicated by the Association, it may neither be proper nor possible for a casino operator to exercise any influence over the conduct of a truly independent authorized recipient. Since this proposed amendment could also have a significant impact upon certain interested members of the public, however, the Commission has decided to proceed with the adoption of this subsection and to simultaneously approve a notice of proposal concerning its amendment. Further action may be taken on the amendment of N.J.A.C. 19:54-2.9(b) and 19:54-2.27(d) after publication of the notice of proposal and the receipt of public comment.

Finally, one additional comment submitted by Resorts is neither being rejected nor accepted by the Commission, but is being deferred for further study. Resorts has suggested that a casino licensee should be given investment credit for investments and cumulative investments made by separate corporations created by it and through which it funnels investment monies. Resorts contends that there are various legitimate business reasons for a licensee to make its investments through separate entities. Under the proposed rules, it is unclear whether a licensee could obtain credit for investments made by such entities.

This proposal may have some merit; however, no specific standards were proposed which could be used to identify those investment or cumulative investments which could be legitimately credited to the investment efforts of the casino operator. Accordingly, the Commission will review this proposal further to determine whether such standards may be developed, or until a more detailed regulatory proposal has been submitted by Resorts or any other interested person.

One final technical change to the proposal has been adopted by the Commission as a result of its own review of the rules as published. The definition of "casino licensee or licensed casino" has been amended to clarify that either of these terms may be used throughout the rules to refer to the holder of a casino license.

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

SUBCHAPTER 2. SECTION 144 INVESTMENT OBLIGATION AND INVESTMENT ALTERNATIVE TAX

19:54-2.1 General description of investment obligation and investment alternative tax

(a) Commencing with the first annual Gross Revenue Tax return of a casino licensee for any calendar year beginning after December 31, 1978, and based upon a determination that in said return or any annual return thereafter the gross revenue of such licensee in the tax year exceeds the cumulative investments in this State of such licensee as of that year, such licensee shall make investments in an amount not less than two percent of the gross revenues for the tax year. Such investments must be made with a period of five years from the end of the tax year. Fifty percent of the investments required as a result of any of the three annual Gross Revenue Tax returns commencing with the first such return for any calendar year beginning after December 31, 1978, shall be made in the municipality in which the licensed premises are located and fifty percent of such investments shall be made in any other municipality of this State. Twenty-five percent of investments required as a result of any annual Gross Revenue Tax return subsequent to the third such return in a series of returns the first of which is for a calendar year beginning after December 31, 1978, shall be made in the municipality in which the licensed premises are located, and seventy-five percent of such investments shall be made in any other municipality of this State. The foregoing obligation is imposed by section 144(b) of the Casino Control Act (N.J.S.A. 5:12-144(b)).

(b) All investments and cumulative investments made pursuant to the obligation imposed by section 144(b) of the Act shall be subject to a determination by the commission as to the eligibility of such investments or cumulative investments. Only those investments or cumulative investments, or portions thereof, as are found to be eligible shall be recognized. In determining eligibility the commission shall consider the public interest, including the social and economic benefits to be derived from such investments by the people of this State.

(c) Under section 144(d) of the Act, the licensee may include contributions of money or realty in computing the amount of investments or cumulative investments made by the licensee; provided the commission determines that such contributions best serve the public interest and either:

1. Directly relate to the improvement, furtherance, and promotion of the tourist industry in this State through the planning, acquisition, construction, improvement, maintenance, and operation of recreational, entertainment and other

facilities for the public, including, without limitation, a performing arts center, the beaches and shore front of this State, and transportation facilities providing or enhancing service in resort areas of this State; or

2. Directly relative to the improvement, furtherance and promotion of the health and well-being of the people of this State, through the planning, acquisition, construction, improvement, maintenance, and operation of a facility, project or program approved by the commission.

(d) In the event that eligible investments or allowable contributions in the amounts required by section 144(b) of the Act are not made within the applicable five year period, there shall be imposed an investment alternative tax in an amount equivalent to two percent of gross revenues for the tax year for which the obligation was incurred. The investment alternative tax shall be added to the Gross Revenues Tax for the most recent calendar year and shall be due and payable at the time of the annual Gross Revenue Tax return.

(e) In the event of a sale or other disposition of the licensed premises, any investment obligation which is not satisfied shall be immediately deemed due and payable as investment alternative tax, and said amount shall constitute a lien upon the licensed premises until paid, together with interest at the rate specified in the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes. For this purpose, the phrase "sale or other disposition of the licensed premises" shall have the meaning ascribed to it in N.J.A.C. 19:54-2.2.

19:54-2.2 Definitions

As used in this subchapter, the following words and terms shall have the meaning herein ascribed to them unless a different meaning clearly appears from the context.

"Act" means the New Jersey Casino Control Act (N.J.S.A. 5:12).

"Adjusted Debt Financing" means subsequent to the completion of the real property investment and the securing of initial permanent debt financing, the amount of the initial permanent debt financing plus any additional debt financing or refinancing which exceeds the amount of any demonstrated increase in the assessed value of the real property.

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the affiliated person.

"Allowability" means the status of all or part of a contribution which status results from a determination by the commission that such contribution best serves the public interest and either:

1. Directly relates to the improvement, furtherance, and promotion of the tourist industry in this State through the planning, acquisition, construction, improvement, maintenance, and operation of recreational, entertainment, and other facilities for the public, including, without limitation, a performing arts center, the beaches and shore front of this State, and transportation facilities providing or enhancing service in resort areas of this State; or

2. Directly relates to the improvement, furtherance, and promotion of the health and well-being of the people of this State through the planning, acquisition, construction, improvement, maintenance, and operation of a facility, project or program approved by the commission.

"Allowable contribution" means a contribution, or any part thereof, which has received a positive determination of allowability from the commission.

"Capitalized lease" means a long-term lease of real property where the lessor and the lessee both account for the lease consistent with generally accepted accounting principles as though it were actually an installment contract for the purchase of the real property. Where a lease is properly capitalized, the "leasee" shall be deemed to have the investment or cumulative investment in the subject property.

"Casino licensee or licensed casino" means for purposes of this regulation, ***any*** *[a casino licensee or licensed casino which shall include the]* holder of a casino licensee.

"Casino management agreement" means a written agreement between a casino licensee which owns or leaves, as tenant, all or part of the approved hotel or the land thereunder and another casino licensee whereby the latter agrees to provide complete management of a casino in accordance with section 82(c) of the Act.

"Casino management licensee" means a casino licensee which provides complete management of a casino pursuant to a casino management agreement, as herein defined.

"Casino operator" means the following:

1. Where there is no casino management agreement with regard to the casino hotel facility, the casino operator shall be the casino licensee which controls and operates the casino, whether such casino licensee leases, as tenant, all or part of the licensed premises or the land thereunder or owns all or part of such premises or land under an agreement approved by the commission in accordance with section 82(c) of the Act; or

2. Where there is a casino management agreement with regard to the approved hotel, the casino operator shall be the casino management licensee, if said licensee has supplied capital at risk in the gaming operations of the casino. If the casino management licensee has supplied none of the capital at risk in the gaming operations of the casino, the casino operator shall be the casino licensee for which the casino management licensee operates the casino and to which the gross revenues derived therefrom are directly attributable; or

3. Where more than one casino licensee associated with the licensed premises meets the criteria of paragraph 1 or 2 above, the commission shall either designate one such casino licensee as the casino operator or shall permit such casino licensees to form one business association, acceptable to the commission in accordance with section 82(c)(3) of the Act, to be the casino operator.

"Casino revenue fund" means a separate special account established in the Department of the Treasury for deposit of all revenues from the tax imposed by section 144 of the Act.

"Contribution means a gift of cash or realty to an unaffiliated person for the improvement, furtherance and promotion of the tourist industry in this State or of the health and well-being of the people of this State.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of equity securities, by contract, or otherwise.

"Cumulative investments" means investments in and debt financing of the licensed premises, plus other investments in and debt financing of land and real property on which improvements are made and real property improvements; provided such investments and debt financing not associated with the licensed premises have been made subsequent to July 6, 1976; and provided, further, that the amount of cumulative investment shall not exceed the cost of the land, real property and improvements, calculated in accordance with generally accepted accounting principles. If such lands, real property and real property improvements are sold or otherwise disposed of by the licensee they shall not be included for the

purposes of determining cumulative investments of that licensee.

"Day" means in computing taxes or investments due for any period, the last day of the period which shall end either at midnight or at the close of business, provided that the casino is continuously open for business until the closing time, whichever is later.

"Debt financing" means the amount of borrowed funds or credit repayment of which is secured by a specific lien, mortgage or other encumbrance on land and real property on which improvements are made and real property improvements, whether or not such lien, mortgage or encumbrance is recorded or perfected as against third parties. In the case of a capitalized lease or other installment contract for the purchase of real property, the unpaid balance of the present value of lease payments or of the purchase price of the real property, exclusive of interest, shall be treated as though it were borrowed funds or credit secured by a lien or mortgage in favor of the lessor or vendor. The present value of such lease payments (effective purchase price) shall be computed in accordance with generally accepted accounting principles using a commercially reasonable rate of imputed interest for deferred or future payments.

"Eligibility" means the status of all or part of an investment or cumulative investment which status results from a determination by the commission based upon the public interest, including the social and economic benefits to be derived from such investments for the people of the State.

"Eligible investment" or "Eligible cumulative investment" means an investment or cumulative investment, or any part thereof, which has received a positive determination of eligibility from the commission.

"Equity investment" or "Equity" means:

1. The amount by which the actual cost of land and real property on which improvements are made and real property improvements, calculated in accordance with generally accepted accounting principles, exceeds the lesser of the current debt financing or adjusted debt financing associated with such land, real property and improvements. Equity investments made in any given year shall be the difference between the amount of such investments at the close of that year and the amount at the close of the previous year.

2. Applications of "equity investment", "investments," "cumulative investments", "debt financing" and "adjusted debt financing" may be illustrated by the following examples:

i. A casino licensee purchases a parcel of real property at a price of $50,000. If the licensee immediately pays the full price and obtains title free and clear of any encumbrance, the licensee would have an equity investment of $50,000, the difference between the cost ($50,000) and the amount of debt financing ($0);

ii. In order to purchase a parcel of property costing $50,000, a licensee obtains a loan of $30,000 to be secured by a mortgage on the property. The licensee supplies the additional $20,000 and purchases the property in calendar year 1. The amount of debt financing is $30,000. The licensee's present equity investment is $20,000, the difference between the total cost ($50,000) and the debt financing ($30,000);

iii. Assume the same facts as in ii. above and further assume that in calendar year 2 the licensee made payments on the mortgage of $5,000, of which $4,000 was interest and $1,000 was principal. Although total mortgage payments were $5,000, only $1,000 was repayment of the borrowed funds secured by the mortgage. Thus, the amount of debt financing is reduced from $30,000 to $29,000. The reduction of debt financing through repayment of the principal increases the equity investment to $21,000, since the equity investment is equal to total cost ($50,000) minus debt financing ($29,000). The amount of equity investment made for the calendar year is $1,000, the difference between the current amount ($21,000) and the former amount ($20,000);

iv. Assume the same facts as in iii. above and further assume that in calendar year 3 the licensee refinances the real property as a result of which the property is subject to a mortgage to secure repayment of borrowed funds or credit in the amount of $40,000. The licensee's current equity investment in the property is $10,000, or cost ($50,000) minus debt financing ($40,000). The equity investment made by the licensee in the current year is the current equity investment ($10,000) minus the investment as of the previous year ($21,000), that is, negative $11,000;

v. Assume the same facts as in iii. above and further assume that in calendar year 3 the licensee refinances the real property as a result of which the property is subject to a mortgage to secure repayment of borrowed funds or credit in the amount of $40,000. Further assume that the licensee is able to demonstrate that the assessed value of the real property has risen from $50,000 to $65,000, subsequent to completion of the project. The actual debt financing has increased from $29,000 to $40,000, or $11,000. However, the value of the real property has increased by $15,000 ($65,000 minus $50,000). The additional debt financing, as adjusted, will be the amount by which the additional debt financing ($11,000) exceeds the increased assessed value ($15,000). Since $11,000 does not exceed $15,000, the additional adjusted debt financing is zero and the adjusted debt financing is $29,000 plus zero, or $29,000. Equity investment is then $21,000, actual cost ($50,000) minus adjusted debt financing ($29,000). Equity investment made in calendar year 3 is the difference between the current amount ($21,000) and the amount at the close of the prior year ($21,000), or zero;

vi. A licensee, as lessee, enters into a long term lease for the rental of real property. Consistent with generally accepted accounting principles, both the lessor and the lessee account for the lease as an installment contract for the purchase of the real property. Using a commercially reasonable interest rate and discounting future rental payments, the effective purchase price is computed to be $50,000. By the end of the calendar year in which the lease was entered the licensee has made payments of $1,000 attributable to the purchase price rather than interest or other expenses. The licensee's equity investment as of the end of that year is the total cost or price minus the amount of debt financing. The amount of debt financing is defined to be the amount outstanding on the effective purchase price, here, $49,000. Thus, the equity investment is $50,000 minus $49,000, or $1,000.

"Investments" means equity investments in land and real property on which improvements are made and in real property improvements, whether such investments are by fee ownership, installment sales contract or capitalized lease.

"Investment project" means a scheme of development for investment property, including, without limitation, planning, acquisition, construction, improvement, maintenance and operation; provided that nothing herein shall be construed to allow credit for costs incurred in such project other than those costs which constitute investments or cumulative investments as defined herein.

"Investment property" means land and real property on which improvements are made and real property improvements, or any portion thereof, which have received a positive determination of eligibility or which an operator intends to submit for such determination.

"Lease" or "Lease agreement" means a written agreement for the lease of all or part of the licensed premises in accordance with section 82 of the Act or for the lease of any investment property including any such lease which is capatalized under generally accepted accounting principles.

"Licensed premises" means the approved hotel, as defined in section 27 of the Act, with respect to which a casino license has been issued and in which the gross revenues subject to the investment obligation are generated.

"Real property improvement" or "Improvement" means the construction, expansion, modernization, rehabilitation, renovation, alteration or repair of buildings, structures and other facilities, which improvements from an integral part of the real property and which would be included in the assessed valuation of the real property for local real property tax purposes.

"Sale or other disposition of the licensed premises" means as used in section 144(e) of the Act, any event which affects the ownership of the licensed premises or the interests of the casino operator therein or which interferes with or prevents operation of the casino including, but not limited to, sale of the premises, loss of occupancy, physical destruction of the premises, and termination, refusal to renew, suspension or revocation of the casino license; provided that if, in the judgment of the commission, a sale or other disposition does not significantly affect the operations of the casino operator in such premises, the commission may declare that, under such conditions as may be appropriate, the sale or other disposition is not an event included in this definition; and further provided that a conservator being appointed shall not be deemed such an event.

19:54-2.3 Obligated licensee

(a) The obligation to make eligible investments or allowable contributions or pay the alternative investment tax, to file necessary returns and to satisfy any other related requirement imposed by the Act or by these regulations shall be upon the casino operator who shall be primarily liable therefor.

(b) In accordance with section 82(c) of the Act, each casino licensee which is a party to either a casino management agreement or a lease of the licensed premises or the land thereunder or an agreement to jointly own such premises or land with the casino operator shall be jointly and severally liable for any acts, omissions and violations by the casino operator regarding the obligations imposed by (a) above regardless of actual knowledge of such act, omission or violation and notwithstanding any provision of such agreement or lease to the contrary.

(c) In the event of a sale or other disposition of the licensed premises, any investment obligation which is imposed by section 144(b) of the Act and these regulations with respect to such premises and which is not fully satisfied in accordance with the Act and this subchapter, shall be immediately deemed due and payable as investment alternative tax, and said amount shall constitute a lien upon the licensed premises until paid, together with interest at the rate specified in the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes. Additionally, if the licensed premises or the interests of the casino operator therein are sold or transferred to another casino licensee, the latter shall also be liable in the event of a default by the casino operator.

(d) Nothing in this section shall be construed to limit the authority of the State Treasurer or the commission to determine and enforce any obligation either by way of a lien against the property of an obligated licensee, including a lien against the licensed premises, or otherwise as provided by the Act, by the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes, or by any other applicable law.

19:54-2.4 Eligibility requirement

For purposes of determining whether an investment obligation is imposed by section 144(b) of the Act and of determining whether the obligated licensee has fulfilled such obligation, no investment or cumulative investment, nor any part thereof, shall be recognized unless such investment or cumulative investment, or party thereof, has been determined to be eligible in accordance with these regulations.

19:54-2.5 Eligibility determination: Time for application

(a) With respect to a cumulative investment commenced by the casino operator prior to the issuance of said operator's casino license or prior to the effective date of these regulations, whichever is later, if the operator intends to qualify such cumulative investment as an eligible cumulative investment, the operator shall apply to the commission for an eligibility determination within three months of the date on which the casino license was issued or of the effective date of these regulations, whichever is later, or within such other time as the commission may direct; provided, however, that no eligibility determination need be sought with respect to the licensed premises. Nothing herein shall prohibit either a casino license applicant from seeking review of a cumulative investment or the commission from directing such applicant to present its cumulative investment for review prior to the time specified herein.

(b) With respect to an investment commenced by the casino operator prior to the effective date of these regulations, if the operator intends to qualify such investment as an eligible investment, the operator shall apply to the commission for an eligibility determination within three months of the effective date of these regulations, or within such other time as the commission may direct.

(c) With respect to an investment or a cumulative investment to be commenced after the issuance of the casino license or the effective date of these regulations, whichever is later, if the operator intends to qualify such investment or cumulative investment as eligible, the operator shall apply to the commission for an eligibility determination before commencing the investment or cumulative investment and shall not commence the investment or cumulative investment until the commission determines eligibility.

(d) For purposes of this section, commencement of an investment or cumulative investment shall not occur by mere acquisition of land or real property or by engagement of an architect, engineer or other consultant to draw plans or to determine feasibility, legality, costs or other such factors, or by negotiations with prospective sellers, contractors and investors, or by execution of agreements or contracts which are expressly conditioned upon a positive determination of eligibility by the commission.

(e) Failure of the casino operator to timely apply for an eligibility determination as provided in this section shall render the pertinent investment or cumulative investment ineligible unless the casino operator can establish to the satisfaction of the commission that there was good cause for the failure to timely apply in which case the commission may accept an untimely application for eligibility.

19:54-2.6 Eligibility determination: Application

(a) A casino licensee may apply to the commission for a determination of eligibility as to a cumulative investment or

investment by filing with the commission a properly completed application for eligibility determination which shall include, without limitation:

1. A detailed narrative description of the project;
2. Architectural and site plans; and
3. A cost analysis reflecting real property costs and total costs.

(b) The application shall be completed, signed and filed in conformance with the general application rules set forth in N.J.A.C. 19:41-7. In addition to filing a properly completed and signed application, the applicant shall provide any other information, assurances and documentation requested by the commission to establish the eligibility of the cumulative investment or investment.

19:54-2.7 Eligibility: Standards

(a) In determining eligibility, the commission shall consider the public interest, including the social and economic benefits to be derived from such investments for the people of this State. In deciding whether these standards are met, the commission may consider any pertinent factors including, but not limited to, the following:

1. The extent to which the investment project responds to demands directly or indirectly created by legalized casino gaming and related developments;
2. The pressing social and economic needs of the municipality or region and the ability of the project to serve those needs;
3. For investment projects located outside Atlantic City, the comparative need of the area served by the project for the type of facilities, benefits or services the project will provide;
4. The ability of the project to qualify for Federal or State funding subsidies or to obtain real property tax exemptions or abatements;
5. The nature of the existing development and use of land in the locality;
6. The compatibility of the investment project with future development of the locality as envisioned by the master plan adopted for the locality or region;
7. The compatibility of the investment project with the physical characteristics and natural resources of the locality;
8. The impact of the investment project on municipal, county or regional services;
9. The availability of adequate public transportation to serve the project;
10. For housing projects, the availability of adequate parks, recreational areas, utilities, schools and parking;
11. For commercial projects, the employment to be generated and the extent to which such employment will be available to local residents, especially unemployed residents;
12. For commercial projects, the availability of adequate housing for anticipated employees; and
13. The acceptance of the investment project by residents of the affected locality or region.

19:54-2.8 Eligibility determination: *[p]* ***P**rocedures, priorities

(a) In considering whether a particular project or proposal is an eligible investment or cumulative investment, the commission shall conduct such hearings as may be necessary or appropriate to determine whether the project or proposal satisfies the standards set forth in these regulations. The commission may conduct such hearings directly or may designate an appropriate hearing examiner to preside at the hearing and to render a report and recommendation to the full commission. Unless otherwise required by law, such hearings may be conducted as non-adversarial, informational proceedings and shall not be considered contested cases within the meaning of P.L. 1968, c.410, as amended (N.J.S.A. 52:14B-1 et seq.) or of N.J.A.C. 19:42-1 et seq. In addition to considering information provided by the applicant or introduced at the hearing, the commission shall be entitled to utilize any relevant information or data which is within its knowledge or which is supplied by any Federal, State or local agency with relevant experience or jurisdiction, including, without limitation, the Department of Housing and Urban Development, the Department of Community Affairs, the Department of Labor and Industry, the Department of Transportation, and regional, county or local housing, planning and redevelopment agencies.

***(b) With respect to applications for eligibility determinations for investments or cumulative investments subject to N.J.A.C. 19:54-2.5(c), the Commission shall initiate any hearings required by (a) above within 45 days of its receipt of all information and documentation required to be submitted pursuant to N.J.A.C. 19:54-2.6; the Commission shall take final action on such applications within 45 days of the completion of any such hearings.**

(c) With respect to applications for eligibility determinations for investments or cumulative investments subject to N.J.A.C. 19:54-2.5(a) or (b), the Commission shall initiate any hearings required by (a) above as soon as is practicable after its receipt of all information and documentation required to be submitted pursuant to N.J.A.C. 19:54-2.6; the Commission shall take final action on such applications within 45 days of the completion of any such hearings.*

[(b)] ***(d)*** Aside from considering the eligibility of a particular project or proposal, the commission may at any time:

1. Receive information and data relevant generally to eligibility from various sources, including governmental agencies;
2. Conduct such investigative or fact-finding hearings as may be helpful to identify factors bearing upon eligibility, such as:

i. The needs of a particular locale or region;

ii. The effects, if any, of casino development in the locale or region; and

iii. The nature and types of projects which would best respond to such needs and demands; and

3. Adopt by regulation or resolution policies and priorities regarding the nature and type of investment projects which would be favored as to eligibility. Where such policies and priorities have been adopted, the commission may apply them in determining the eligibility of any particular project or proposal.

19:54-2.9 Eligibility: Completion and operation

(a) Approval of an application for eligibility shall be conditioned upon the satisfactory completion of investment property construction and improvement and upon operation of the completed investment property in the approved manner for the minimum operation period; provided, however, that the commission may, with the consent of the casino operator and other interested parties and upon a finding of changed circumstances or other good cause, modify the conditions imposed for completion or operation of the investment property at any time.

(b) In approving an eligibility application for a proposed project, the commission shall establish a completion date for the construction and improvement of the investment property and shall also establish the minimum operation period during which the completed investment property must be operated in

accordance with the operation conditions imposed by the commission. Such minimum operation period shall be at least 25 years or the estimated useful life of the completed investment property, whichever is less. The commission may revise the completion date upon a showing of good cause.

(c) Subsequent to a determination of eligibility but prior to the satisfaction of the completion or operation conditions, the casino operator may conditionally claim any otherwise eligible investment or cumulative investment made by the operator in the project subject to the following:

1. In the event that the casino operator subsequently fails to complete the investment property as required, any investment obligation credited to the investment property shall be deemed unsatisfied and any investment obligation avoided by reason of the cumulative investment claimed for such property shall be deemed to have been incurred. Any investment obligation so unsatisfied or incurred shall be due at the time provided by the act and these regulations as though the incomplete project had not received a determination of eligibility. If any such investment obligation is overdue, the casino operator shall immediately pay the overdue amount as investment alternative tax together with interest from the due date at the rate specified in the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes; provided, however, that the casino operator may attribute to such overdue investment obligation any other eligible equity investments where:

i. The other equity investments were made within the five calendar years following the calendar year in which such overdue investment obligation was incurred; and

ii. The other equity investments are sufficient in amount to satisfy the overdue obligation. Nothing herein shall be construed to permit multiple credit for the same investment amount.

2. In the event that the casino operator subsequently completes the investment property but fails to operate the property in the approved manner for the minimum operation period, only a percentage of the investment and cumulative investment previously made by the operator in the property and considered as eligible shall be recognized. The percentage shall be the percentage of the minimum operation period in which the project was operated in conformance with the operating conditions. The casino operator shall be liable for any investment obligations unsatisfied or incurred by reason of such reduction and shall be required to satisfy such obligations or to pay investment alternative tax in the same manner as provided in (c)1 above. Nothing herein shall be deemed to prohibit a casino operator or other interested party from seeking authorization from the commission to modify the operation conditions in accordance with (a) above or from operating the project in conformance to such modified conditions.

(d) Following appropriate operation of the completed investment property for the minimum operation period, the operator shall not be deprived of equity investments or cumulative investments made in the project in any prior calendar year. The operator may make further eligible equity investments and claim eligible cumulative investments in such property after the minimum operation term if the casino operator is otherwise entitled to do so under the act and this subchapter and if the casino operator continues to operate the investment property in accordance with all legal requirements and operation conditions imposed by the commission. Failure to properly maintain and operate the investment property after the minimum operation period will be treated in the same manner as a sale or other disposition of the property and the investment property will no longer be considered in determining cumulative investments of the operator as of the close of that calendar year.

(e) Notwithstanding the provisions of (c) above, the commission may permit a casino operator to sell or otherwise transfer its interest in the investment property prior to satisfaction of all completion and operation conditions and without forfeiting any equity investment or cumulative investment made in a prior calendar year if all other requirements of the act and this subchapter are met and if the casino operator first presents guarantees and assurances acceptable to the commission that the investment property will be completed and operated by the purchaser or transferee in accordance with the eligibility conditions; provided, however, that, if such conditions are not met by the purchaser or transferee, the casino operator shall either promptly act to satisfy such conditions or be liable for any investment obligation or investment alternative tax and any interest thereon in the manner and to the extent required by (c) above. Nothing herein shall be construed to permit a casino operator to include the cost of any investment property or any portion thereof, sold or otherwise disposed of in determining eligible cumulative investments as of the close of the calendar year in which such sale or other disposition occurred.

(f) In the event of a sale or other disposition of the licensed premises, if the casino operator has conditionally claimed investments or cumulative investments for investment property and if the completion and operation conditions imposed on such investment property have not been satisfied as of the date of the sale or other disposition of the licensed premises, then the casino operator shall be deemed to have failed to satisfy such completion or operation conditions with the consequences set forth in (c) above, except that any unsatisfied investment obligation which results from application of (c) above shall be immediately deemed due and payable as investment alternative tax, together with interest, as provided by section 144(e) of the Act and N.J.A.C. 19:54-2.3(c).

(g) Notwithstanding the provisions of (f) above, a casino operator may retain conditionally claimed investment or cumulative investment in an investment property upon a sale or other disposition of the licensed premises if:

1. At least 60 days prior to such sale or disposition of the licensed premises or, if such sale or disposition is unexpected, within 10 days thereafter, the casino operator represents in writing to the commission that it will continue to complete and operate the investment property in accordance with any eligibility conditions and provides to the commission financial assurances in a form acceptable to the commission and in an amount sufficient to secure the full amount of any investment alternative tax and interest thereon which may become due upon failure to satisfy the eligibility conditions; or

2. At least 60 days prior to such sale or disposition of the licensed premises or, if such sale or disposition is unexpected, within 10 days thereafter, a casino licensee associated with an operating casino hotel represents in writing to the commission that the investment property will continue to be completed and operated in accordance with any eligibility conditions, that such casino licensee will be liable for any failure to satisfy such conditions and that all other casino licensees associated with the said operating casino hotel shall be jointly and severally liable in accordance with section 82(c) of the Act and N.J.A.C. 19:54-2.3(b); provided that if the casino licensee assuming the obligation to complete and continue the investment property is not the obligated casino operator, said casino operator shall also be liable for the amount of any invest-

ment alternative tax and interest in the event of a failure to satisfy the eligibility conditions.

19:54-2.10 Eligibility: Compliance with legal requirements

Approval of an application for eligibility shall require the approval of all regulatory bodies and fulfillment of all legal requirements applicable to the investment project including compliance with the master plan and zoning ordinances of the locality and, where applicable, the "Coastal Area Facility Review Act," P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.); provided, however, that the applicant may apply for an eligibility determination and the commission may conditionally approve such application prior to the approval of other regulatory bodies and fulfillment of all legal requirements when it appears that such approvals will be obtained and legal requirements fulfilled. In the event of a subsequent failure of the project to meet all pertinent legal requirements, the project shall be considered incomplete with the consequences provided in N.J.A.C. 19:54-2.9.

19:54-2.11 Eligibility: Licensed premises; evaluation date

Issuance of casino license with respect to an approved hotel shall be the equivalent of a determination of eligibility with respect to the licensed premises as a cumulative investment; provided that the amount of the casino operator's eligible cumulative investment in such licensed premises, if any, shall be evaluated as of the date of the issuance of such license or, if the casino operator is not entitled to claim the licensed premises as a cumulative investment at the time of the license issuance, as of the date on which the casino operator acquired a cumulative investment in such premises. Subsequent to the evaluation date, any renovation, rehabilitation or improvement of the licensed premises or any payment of the mortgages or encumbrances on the licensed premises shall not be included in the automatic eligibility conferred by this section.

19:54-2.12 Eligibility: Accounting for partial approval and multiple licensed premises

(a) Where the commission determines that only part of an investment or cumulative investment satisfies the standards for eligibility, the commission may either reject the application for eligibility in its entirety or approve only that part of the investment or cumulative investment which satisfies the standards. If the commission does grant such partial approval, the casino operator shall account for such eligible portion as though it were a separate eligible investment or cumulative investment and shall enter in the appropriate accounts for eligible investments or cumulative investments only such amounts as are attributable to the eligible portion.

(b) Where a person is the casino operator for more than one licensed premises, such casino operator shall separately account for gross revenues, investment obligations, cumulative investment and investments with respect to each such licensed premises; and the obligations of such casino operator under the act and this subchapter shall be determined separately with respect to each such licensed premises. The casino operator may apportion investments or cumulative investments in investment property between or among the operator's various licensed premises; provided that no amount of investment or cumulative investment may be credited more than once; and provided, further, that no investment or cumulative investment in one of the licensed premises operated by such casino operator may be considered in determining the obligations of the operator with respect to any other licensed premises operated by such casino operator.

19:54-2.13 Presumptively ineligible investments

(a) Without in any way restricting the authority of the commission to determine eligibility, the following investments or cumulative investments will ordinarily not be determined to be eligible:

1. Repayment of mortgage loans or reduction of other debts secured by liens or encumbrances on the licensed premises;

2. All maintenance, renovation or rehabilitation of the investment property which is a normal or reasonably foreseeable expense in the long term upkeep and operation of such property, including the licensed premises;

3. All other real property improvements to the investment property, including the licensed premises,***made subsequent to an initial determination of eligibility*** which in the judgment of the Commission would be made by the operator to enhance the profitability of the business associated with such property and would likely be made as a business investment regardless of the investment obligation of section 144(b) of the Act; and

4. Mere acquisition of land, real property and real property improvements, including such property as has been determined to be eligible in the hands of another casino operator.

19:54-2.14 Eligibility: Voluntary sale or other disposition of investment property

(a) For purposes of this section, the phrase "sold or otherwise disposed of by the casino operator" shall include any sale or disposition of all or part of a casino operator's investment real property or real property improvements where such sale or disposition is voluntarily and purposely initiated or accepted by the casino operator. It shall not include a "sale or other disposition of the licensed premises" as defined in N.J.A.C. 19:54-2.2. It shall also not include an allowable contribution of realty, nor placing any mortgage, lien or encumbrance on the property, nor any forced sale, or other involuntary conversion such as a foreclosure sale or destruction of the property through natural or other causes, beyond the control of the casino operator.

(b) Real property and real property improvements sold or otherwise disposed of by the casino operator shall not be included for the purpose of determining:

1. Eligible cumulative investments as of the close of the calendar year in which the real property or real property improvements are sold or otherwise disposed of by such operator; and

2. Eligible equity investments made by the operator in the year in which such property was sold or otherwise disposed of by such operator.

(c) In the event that only a portion of real property or real property improvements, or of the operator's interest therein is sold or otherwise disposed of by the casino operator, the casino operator may:

1. For the purpose of determining eligible cumulative investments after the partial sale or other disposition, include the amount of retained cumulative investment if the casino operator has first obtained a determination of continued eligibility for the retained portion or, where appropriate, for multiply owned property in accordance with N.J.A.C. 19:54-2.17; and

2. For the purpose of obtaining credit for equity investments made in the retained portion of the real property or real property improvements after the partial sale or other disposition, include additional equity investments in such retained portion in the same manner and to the same extent permitted

by N.J.A.C. 19:54-2.16 as though the retained portion were a separate investment project in which the casino operator's cost and equity investment immediately after the sale or disposition are the amounts derived in accordance with (d) below; provided, that the operator has obtained a determination of continued eligibility for the retained portion or, where appropriate, multiply owned property.

(d) The amount of retained cumulative investment or equity investment immediately following a partial sale or other disposition shall be determined by using the resultant cost incurred by the operator in the retained investment property and the debt financing, if any, associated with he operator's retained portion as though the retained portion were a separate investment property. The resultant cost shall be the operator's cost of the investment real property before the transaction reduced by the amount obtained directly or indirectly by the operator for the investment real property sold or otherwise disposed of. Any assumption, reduction or forgiveness of the operator's obligation to repay debt financing associated with the investment property shall be deemed an amount obtained by the operator for these purposes and shall reduce the resultant cost in the retained investment property.

(e) A sale or other disposition of all or part of eligible real property or real property improvements by a casino operator shall be subject to the completion and operation conditions and consequences set forth in N.J.A.C. 19:54-2.9 with respect to previously credited investments or cumulative investments made in prior calendar years in such property. Upon a partial sale or other disposition of eligible investment property, if the commission determines that, as to either the retained portion or the sold or otherwise disposed of portion, the operator failed to satisfy its completion and operation conditions but as to the other portion such conditions are not then breached, the operator shall be liable for any unsatisfied or incurred investment obligation as results from application of N.J.A.C. 19:54-2.9 to the portion which has not satisfied the eligibility conditions as though such portion were a separate investment property. For this purpose, unless the casino operator can demonstrate otherwise, it shall be presumed that previous equity investments and cumulative investments in the entire property before the partial sale or other disposition were divided between the retained portion and the sold or otherwise disposed of portion in the same proportion as the relative value of each portion to each other.

19:54-2.15 Eligibility: Involuntary sale or other disposition of investment property

(a) For purposes of this section, an involuntary sale or other disposition shall include: any forced sale, such as a foreclosure sale; any involuntary conversion caused by destruction of the investment property from natural or other forces beyond the control of the casino operator; and any other event which prevents the operator from controlling or using the property for its intended purpose. It shall not include a "sale or other disposition of the licensed premises" as defined in N.J.A.C. 19:54-2.2. It shall also not include a voluntary sale or other disposition nor an allowable contribution.

(b) Except as otherwise provided herein, real property and real property improvements which are subject to an involuntary sale or other disposition shall not be included for the purpose of determining:

1. Eligible cumulative investments as of the close of the calendar year in which such sale or disposition occurred; and

2. Eligible equity investments made by the operator in the calendar year in which such sale or disposition occurred.

(c) In the event that only a portion of real property or real property improvements is the subject of an involuntary sale or other disposition, the casino operator may include the amount of retained cumulative investments in the remaining portion for the purpose of determining eligible cumulative investments after the involuntary sale or disposition if:

1. The casino operator, within 10 days or such further time as the commission may allow, applies for a determination that the remaining portion continues to be eligible and obtains such determination; or

2. The casino operator, within 10 days or such further time as the commission may allow, files written assurances acceptable to the commission that the investment property will be regained, completed, rebuilt, restored and operated in accordance with any eligibility conditions, including any time schedule, set by the commission.

(d) Where the casino operator proceeds under (c)1 above, the operator shall treat the remaining portion of eligible investment property as though it were a separate investment project. Where the casino operator proceeds under (c)2 above, the operator shall treat the remaining portion of the property as part of the overall investment project and may retain previously credited investments and cumulative investments as provided in (f) below. In either case, the operator shall claim additional equity investments in such investment property only as allowed by N.J.A.C. 19:54-2.16.

(e) The amount of current cumulative investment or equity investment immediately following a partial involuntary sale or other disposition shall be determined by using the resultant cost incurred by the operator in the retained investment property and the debt financing, if any, associated with the operator's retained portion as though the retained portion were a separate investment property. Nothing in this subsection shall be construed to permit credit for any cumulative investment or equity investment in real property without an appropriate determination of eligibility. For purposes of this subsection, the resultant cost shall be the lesser of the following:

1. The percentage of the cost of the entire real property before the partial sale or disposition which percentage is the same as the percentage of the entire real property retained by the operator after such sale or disposition; or

2. The cost of the entire real property before the partial sale or disposition reduced by the amount obtained directly or indirectly by the operator from such sale or disposition. Any insurance payments made to the operator on account of the involuntary sale or other disposition and any assumption, reduction or forgiveness of the operator's obligation to repay debt financing associated with the entire investment property shall be deemed an amount obtained by the operator for the purpose of calculating the resultant cost.

(f) An involuntary sale or other disposition of all or part of eligible real property or real property improvements shall be subject to the completion and operation conditions and consequences of N.J.A.C. 19:54-2.9 in the same manner as provided for a voluntary sale or disposition in N.J.A.C. 19:54-2.14. Notwithstanding the foregoing, if a casino operator obtains approval to regain, complete, rebuild or restore the investment property in accordance with (c)2 above, the operator shall not forfeit previously credited equity investments and cumulative investments in such investment property so long as the operator complies with all conditions of such approval.

19:54-2.16 Eligibility: Increased equity investment; reduction of debt financing

(a) Where an investment in real property has been determined to be eligible and where the operator has obtained

credit for equity investments in such property for previous calendar years, additional equity investment in such property in a given year shall be eligible only to the extent that the amount of equity investment in the property as of the close of the given year exceeds the amount of all equity investments in such property which have been credited against investment obligations and not forfeited under the act and this subchapter.

(b) Subject to the restrictions of (a) above, payments by a operator which increase the level of equity investments in eligible investment property, other than the licensed premises, by reduction of the debt financing or adjusted debt financing associated with such property shall be eligible equity investments in such property.

19:54-2.17 Eligibility: Multiple ownership

(a) The commission may determine an investment or cumulative investment to be eligible where the real property or real property improvements are owned or to be owned jointly by the casino operator and another person or persons, including another casino licensee.

(b) The application for eligibility in such case shall be made in the same manner and at the same time as provided for any other eligibility application, provided that the application reveals the identity of the co-owner, the relationship, if any, of the co-owner to the licensee, the nature and number of all agreements between the licensee and the co-owner, the amounts to be invested by each party, and the obligations to be assumed by each.

(c) The co-owner must agree to permit the commission, the Division of Gaming Enforcement ("the division") and the State Treasurer to inspect and examine all records and accounts pertaining to the investment property and to provide any information related to such property.

(d) The commission shall not approve an application for eligibility of multiply owned property unless it first approves the agreement between the parties on the basis of the reasonableness of its terms and also approves the qualifications of the person involved in the agreement with the casino licensee, which qualifications shall be reviewed according to the standards enumerated in section 86 of the Act. In order to properly perform its review function the commission or the division may require such person to provide additional information and to file disclosure forms prepared by the commission.

(e) Where a casino licensee holds real property or real property improvements which have already been determined to be eligible, sale or other transfer of any part of the interests in such property to an additional party shall terminate the eligibility of the property unless the licensee and the co-owners satisfy the requirements of this section; provided, however, that the transfer of assets to a conservator appointed under the act shall not effect eligibility.

(f) A casino operator which jointly owns eligible investment property shall separately account for its portion of the property so that the appropriate accounts accurately reflect the amount of equity investment and cumulative investment attributable to such operator in the property.

19:54-2.18 Eligibility: Agreements and parties

In addition to determining whether the investment project satisfies the standards for eligibility, the commission may review all written and unwritten agreements pertaining to the construction or operation of the project prior to issuing its determination of eligibility. After issuance, the commission may review any such agreement subsequently entered into by the casino operator. Each agreement shall be reviewed by the commission on the basis of the reasonableness of its terms and of the qualifications of the person involved in the agreement with the casino operator, which qualifications shall be reviewed according to the standards enumerated in section 86 of the Act. Such person shall provide the commission with any information it may require to determine the person's qualifications in the same manner as required for persons subject to qualification by section 104(b) of the Act.

19:54-2.19 Eligibility: Amount eligible, related party transactions

(a) Following a determination by the commission that a particular project is eligible, a casino operator may claim as eligible and the State Treasurer shall certify only such costs of investment or cumulative investment as result from good faith, arm's length bargaining between unaffiliated parties; but in no event shall the certified costs exceed the fair market value for goods or services applied to the project if such fair market value can be fairly determined by the State Treasurer in certifying the amount of eligible investments of cumulative investments pursuant to section 144(e) of the Act and the regulations promulgated by the State Treasurer thereunder.

(b) Regardless whether a particular cost exceeds the fair market value or not, the casino operator may be required to justify costs charged by a party with which the operator has previously dealt or with which the operator contemplates dealing for other goods or services. The operator may also be required to justify to the Treasurer the costs charged by a party where those costs are significantly higher than such party has charged other clients, customers, contractors or purchasers, regardless whether the operator has dealt or contemplates future dealings with such party.

(c) Where the casino operator and any of the persons involved in an investment project are related parties, where the operator can exercise control over any involved person or where any involved person can exercise control over the operator, the amount of costs which may be claimed by the operator shall not exceed the costs shown on the books of such other party or person; provided that the costs shown on such books are themselves the result of arm's length dealings with an unrelated party. For these purposes, a related party shall include any affiliate or any other party deemed to be related by application of generally accepted auditing standards.

(d) Nothing in this section shall be construed to limit the power and responsibility of the State Treasurer or the commission to establish regulations and procedures for disallowing or adjusting the eligible amount of investments and cumulative investments by reason of related party transactions or other arrangements or understandings which affect the costs of the investment project.

19:54-2.20 Eligibility: Identity of parties; disclosure

(a) As part of its application for an eligibility determination, a casino operator shall disclose the identity of all parties involved in the investment project, shall specify the nature of the goods or services provided or to be provided by each party, and shall include a copy of all written agreements or a detailed description of all unwritten agreements between the licensee and such party.

(b) Where the licensee has engaged, is engaged or contemplates engaging in transactions with an involved party, other than transactions related to the investment project, the licensee shall so indicate and shall include copies or descriptions of such transaction agreements.

(c) Where any party involved in an investment or cumulative investment is a related party within the meaning of

N.J.A.C. 19:54-2.19(c), the licensee shall so indicate and shall specify the nature of the relationship and any intermediary persons forming part of that relationship.

(d) The casino operator shall permit the commission, division or State Treasurer to inspect and examine all books and records for purposes of determining the relationship, if any, between the licensee and other persons involved in the investment and to authenticate any costs claimed by the operator as part of the investment. The casino operator shall also secure similar cooperation of any person involved in the investment.

19:54-2.21 Eligibility: Continuing disclosure

As a condition of eligibility, the casino operator shall promptly notify the commission of any significant change in information bearing on the eligibility determination, including the names of involved persons as they become known, the financing, construction or operation of the investment property, any additional related parties within the meaning of N.J.A.C. 19:54-2.19(c), any sale or other disposition of the investment property, any destruction of the property and any other change in information bearing on eligibility.

19:54-2.22 Allowable contributions of money or realty

For the purposes of satisfying all or part of the amount of investments, if any, required by section 144(b) of the Act or of increasing the amount of its cumulative investments, a casino operator shall be entitled to include in such amounts any contributions of money or realty made by the casino operator if such contributions have received an affirmative determination of allowability by the commission.

19:54-2.23 Allowability determination: Time for application

(a) A casino operator which intends to claim a contribution of money or realty as an allowable supplement to investments or cumulative investments shall apply to the commission for an allowability determination at the time provided in N.J.A.C. 19:54-2.5 for eligibility determinations by substituting allowability for eligibility and the making of the contribution for commencement of an investment project.

(b) Failure of the casino operator to timely apply for an allowability determination shall disallow the pertinent contribution as a supplement to investments or cumulative investments unless the operator can establish to the satisfaction of the commission that there was good cause for the failure to timely apply in which case the commission may accept an untimely application for allowability.

19:54-2.24 Allowability determination: Application

(a) A casino licensee may apply to the commission for a determination of allowability as to a contribution of money or realty by filing with the commission an application statement which shall include the following:

1. The amount of the contribution;

2. The name and address of the recipient of the contribution;

3. A description of the recipient including whether it is a charitable or non-profit organization, whether it is exempt from Federal, State or local taxes and whether the contribution entitles the operator to a Federal or State tax deduction; and

4. The purpose of the contribution including the nature and location of the facility, project or program to be planned, acquired, constructed, improved, maintained and operated by the recipient.

(b) The foregoing application statement shall be completed, signed and filed in conformance with the general application rules set forth in N.J.A.C. 19:41-7. In addition to the foregoing information, the applicant shall provide any other information, assurances and documentation requested by the commission to establish the allowability of the proposed contribution.

(c) Nothing herein shall be deemed to prohibit the commission from exercising its discretion to accept an application for approval of a facility, project or program filed directly by a potential recipient of allowable contributions where the commission preliminarily determines that the facility, project or program would probably be approved and that there is a reasonable probability that a casino operator will agree to make contributions to the potential recipient for such facility, project or program. With regard to such preliminary determination, the commission shall not be required to afford a hearing to any potential recipient.

19:54-2.25 Allowability: Standards and conditions

(a) In determining allowability, the commission shall determine whether the proposed contribution best serves the public interest by the direct improvement, furtherance, and promotion of the tourist industry in this State or of the health and well-being of the people of this State through a facility, project or program approved by the commission.

(b) A positive allowability determination shall not be given unless it affirmatively appears that:

1. The proposed recipient is the State of New Jersey, a political subdivision of the State, a public or quasi-public corporation of the State, or a private non-profit corporation chartered in New Jersey;

2. If the proposed recipient is a private non-profit corporation, it will directly apply such contribution to plan, acquire, construct, improve, maintain or operate a facility, project or program approved by the commission as best serving the public interest by improving, furthering and promoting the tourist industry or the health and well-being of the people of this State;

3. If the proposed recipient is any other entity listed in 1 above, the entity can and will accept the contribution on the condition that it be directly applied to the purpose approved by the commission; and

4. If the proposed recipient is a private non-profit corporation, it is not directly or indirectly affiliated with or related to the contributing casino operator.

(c) In determining whether a proposed contribution best serves the public interest and whether a facility, project or program should be approved to receive such contributions, the commission shall be entitled to consider any pertinent factors, including, without limitation; the ability of the recipient to properly apply the contribution and to develop, manage or operate the approved facility, project or program; the availability of alternate sources of funding for such facility, project or program; and any factors or information pertinent to an eligibility determination under N.J.A.C. 19:54-2.8. The commission may also establish and recognize priorities and policies to be favored in determining allowability in the same manner as provided for eligibility of investments.

12:54-2.26 Allowability determination: Hearing and procedure

Upon receipt or acceptance of the application, the Commission shall process same and shall conduct such hearings as may be necessary or appropriate in the same manner ***and within the same time period*** as provided by these regulations for eligibility applications. In addition, the Commission may rely upon prior determinations as to the allowability of contri-

butions to certain recipients and as to the approval of certain facilities, projects or programs as proper recipients. Nothing herein shall be construed to limit the authority of the Commission to deny allowability for contributions to persons who have previously received allowable contributions.

19:54-2.27 Allowability: Recipient obligations and suitability

(a) The intended recipient of an allowable contribution shall:

1. Have the obligation to provide the commission and the division with any requested information relevant to the allowability of the contribution;

2. Supply assurances that the contribution, if allowed, shall be applied to the approved purposes; and

3. Abide by any conditions imposed by the commission in allowing the contribution. Any such conditions on the allowability of a contribution may be modified by the commission for good cause shown and with the agreement of the recipient and casino operator.

(b) A recipient of an allowable contribution shall cooperate with the commission, the division and the State Treasurer, shall promptly advise the commission of any material change of fact affecting allowability and shall otherwise assist the proper administration of these regulations. Each such recipient shall agree to permit authorized representatives of the commission, the division and the State Treasurer to conduct reasonable on-site inspections of any facility or project to which allowable contributions have been made and to examine, copy or audit any relevant books and records of the recipient organization.

(c) If a recipient is a private entity, its management and supervisory personnel and other persons who may control or direct the entity shall provide any assistance or information requested by the commission or the division relative to the suitability of such persons. If any such person is found disqualified under the criteria contained in section 86 of the Act, no further contributions shall be allowed to the entity unless the commission finds that, in the public interest and consistent with the policies of the Act, such disqualification criterion shall not bar the entity from receiving allowable contributions.

(d) In the event that a recipient fails to meet any allowability conditions imposed by the commission, the casino operator shall forfeit any credit for equity investment or cumulative investment attributable to the non-conforming amount of the contribution and shall be liable for any investment obligation which becomes unsatisfied or incurred in the same manner as provided in N.J.A.C. unsatisfied or incurred in the same manner as provided in N.J.A.C. 19:54-2.9 for failure to fulfill completion and operation conditions of an eligible investment. For purposes of this section, the nonconforming amount of a contribution shall be the value of that portion of the contribution which is not applied or used in accordance with the allowability conditions. Where a contribution is subject to conditions for a specified period, the casino operator shall be entitled to retain credit for the same percentage of the contribution value as the percentage of the specified period in which the conditions were met.

(e) In the event that a proposed contribution consists of real property held by the casino operator as an eligible investment project, the commission shall require any eligibility conditions to continue as allowability conditions unless good cause appears to modify or eliminate such conditions.

19:54-2.28 Allowable contributions: Valuation

(a) An allowable contribution of money shall be valued at the amount of the money contributed for the approved use and purpose.

(b) An allowable contribution of realty shall be valued at the fair market value of the real property at the time of the contribution; provided, however, that if only a portion of the real property contribution is determined to be allowable only a proportionate amount of the fair market value of the entire property shall be recognized.

(c) In the event that the commission allows a contribution of real property, or any part thereof, held by the casino operator as eligible investment real property, the value of the contribution for the purpose of determining cumulative investment shall be the operator's cost in the real property or part thereof. For the purposes of determining equity investment from such contribution, the cost shall be reduced by the amount of any equity investments claimed and credited in the property and not forfeited as of the contribution date.

19:54-2.29 Amount of investments and cumulative investments: Certification of State Treasurer

In accordance with section 144(e) of the Act, the State Treasurer shall certify to the commission the amount of investments made by a casino operator in each calendar year and the amount of cumulative investments of that operator as of the close of the calendar year. The State Treasurer shall promulgate rules and regulations regarding such certification process including any filing or information requirements. In promulgating such regulations and certifying such amounts, the State Treasurer shall act consistent with the act and this subchapter and shall identify the equity investments and cumulative investments by the eligible investment project or allowable contribution with which they are associated.

19:54-2.30 Investment obligation and satisfaction determination; estimated tax payments

Upon receipt of the certification by the State Treasurer in accordance with N.J.A.C. 19:54-2.29, the commission shall determine whether the casino operator is required to make equity investments for the prior calendar year and whether the casino operator is obliged to pay an investment alternative tax for any unsatisfied investment obligations. Nothing herein shall be deemed to relieve a casino operator of the obligation to timely make investments or pay any investment alternative tax. If the commission has not made a determination of obligations within the time required for payment of a possible investment alternative tax, the casino operator shall file a return and pay any estimated tax at the time specified in the act and this subchapter.

19:54-2.31 Annual reports and returns

(a) In addition to filing an annual tax return as required by N.J.A.C. 19:54-1.7 (gross revenues tax), a casino operator shall file with the State Treasurer and the commission an Annual Report for purposes of the Investment Alternative Tax. The Report shall be filed no later than March 15 following the end of a calendar year. Such Annual Report shall reflect:

1. The investment obligations, if any, incurred by the operator in the tax year (estimated) and in each of the five previous calendar years;

2. The amount of eligible equity investments and cumulative investments claimed by the operator for each eligible project or allowable contribution;

3. The equity investments made by the operator in the tax year and each of the five preceding calendar years; and

4. The allocation of such investments to investment obligations incurred in the tax year and five previous calendar years.

(b) The report shall be made on a form promulgated and provided by the commission pursuant to section 151 of the Act. A casino operator shall provide all information required by the Report. The Report shall be signed by the president, financial vice president, treasurer, or corporate controller if the casino operator is a corporation, by a general partner if the operator is a partnership, by the chief executive officer if the operator is any other form of business association, or by the proprietor if the operator is a sole proprietorship. Additionally, the casino operator shall file any reports and supply any information required by the State Treasurer to certify the amounts of the equity investments and cumulative investments in accordance with N.J.A.C. 19:54-2.29.

(c) The initial Annual Report required by this section shall be filed no later than March 15 or three months following the effective date of these regulations, whichever is later.

19:54-2.32 Audits and records

(a) The casino operator shall permit duly authorized representatives of the commission, the division and the State Treasurer to conduct periodic and special audits of the operator's accounts, records and financial statements. In addition, the casino operator shall discharge all accounting and auditing responsibilities imposed by the act or the regulations of the commission and the State Treasurer, including the responsibility to have an annual audit performed by a certified public accountant in accordance with section 70(n) of the Act. In the event that any records or documents deemed pertinent by an auditor are in the possession of another licensee or person, the casino operator shall be responsible for making those records or documents available to the auditor. Further, the casino operator shall be jointly and severally liable for any relevant accounts, records or documents maintained or required to be maintained by any other licensee or person with regard to the investment obligation or investment alternative tax.

19:54-2.33 Determination of tax liability, notice, disputes, hearings

(a) If an investment or investment alternative tax as required by section 144 of the Act or by this subchapter is not made or paid, or if the investment or investment alternative tax when made or paid is incorrect or insufficient in the opinion of the State Treasurer, the amount of tax or investment due shall be determined by the State Treasurer from such information as may be available. The commission shall, upon request, provide the State Treasurer with any relevant information including audits performed by the commission or the division.

(b) If the State Treasurer determines that the casino operator has not satisfied its obligation as to making investments or paying investment alternative taxes, a notice of such determination shall be given to the casino operator and to other licensees liable for the payment under N.J.A.C. 19:54-2.3. Such determination shall finally and irrevocably fix the tax unless within 30 days after receiving notice of such determination, the casino operator or any other licensee liable for the payment shall apply to the State Treasurer for a hearing, or unless the State Treasurer on his own motion shall redetermine the same.

(c) In discharging his responsibilities under the act, the State Treasurer shall have all the authority granted by the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes, and all proceedings shall be conducted in accordance with said law, except to the extent that a specific provision of the Casino Control Act or these regulations may be in conflict therewith. Nothing herein shall prevent the State Treasurer from employing additional procedures including informal conferences with a casino additional procedures including informal conferences with a casino operator at which the casino operator may present legal and factual contentions to the Treasurer. Such informal conferences shall not, however, be a substitute for a formal hearing as defined and described in the said "State Tax Uniform Procedure Law."

19:54-2.34 Penalties and sanctions

(a) A casino operator who shall fail to file its Annual Report when due or to make an investment or to pay the investment alternative tax when the same becomes due shall be subject to such penalties and interests as provided in the "State Tax Uniform Procedure Law," Subtitle 9 of Title 43 of the Revised Statutes. If the State Treasurer determines that the failure to comply with any provisions of the act or these regulations was excusable under the circumstances, he may remit such part or all of such penalty as shall be appropriate under the circumstances.

(b) If the State Treasurer determines that any part of any underpayment required to be shown on an Annual Report is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment.

(c) Any person failing to file an Annual Report, failing to make the investment or pay the investment alternative tax, or filing or causing to be filed, or making or causing to be made, or giving or causing to be given any Annual Report, certificate, affidavit, representation, information, testimony or statement required or authorized by the act, or rules or regulations adopted thereunder which is willfully false, or failing to keep any records required by the act or rules and regulations adopted thereunder, shall, in addition to any other penalties herein or elsewhere prescribed, be guilty of a misdemeanor and subject to not more than three years imprisonment or a fine of $100,000 or both.

(d) The certificate of the State Treasurer certifying the amount of investments or cumulative investment or the fact that an investment or investment alternative tax has not been made or paid, that an Annual Report has not been filed, that information has not been supplied or that inaccurate information has been supplied pursuant to the provisons of the act or rules or regulations adopted thereunder, shall be presumptive evidence thereof. The state Treasurer shall immediately forward a duly certified copy of such certificate to the commission. Such certified copy shall become part of the records of the commission and shall be admissible in any court or before any administrative body in this State.

(e) In addition to the foregoing, any casino operator or other licensee which violates any of the provisions of the Act or these regulations regarding the investment obligation or investment alternative tax shall be liable to any sanction, penalty or other consequence which the commission may be authorized to impose, such as those delineated in sections 111, 129 and 130 of the Act.

19:54-2.35 Delegation by State Treasurer

The State Treasurer may delegate any of his responsibilities, including the responsibility to determine amount of investments and cumulative investments, determine deficien-

cies, conduct hearings and issue certificates, to an appropriate designee such as the Division of Taxation which shall perform these responsibilities, except only to the extent that a specific provision of the Casino Control Act or this subchapter may be in conflict therewith.

19:54-2.36 Exchange of information

The State Treasurer or his designee shall permit the commission and the division to examine any records relating to the tax obligations of a casino operator or other casino licensee and shall immediately apprise the commission and division of any irregularity in the records, returns, reports or other information supplied or to be supplied by such licensee.

19:54-2.37 Commission authority and responsibility

(a) The commission is charged under section 63(d) of the Act with the responsibility to collect all taxes imposed by the Act. Consistent with that responsibility, the commission is empowered to determine whether a casino operator or other casino licensee has fully satisfied its obligations with regard to the investment tax and to required that a casino operator or licensee make additional payments including payment of interest or penalty, or take additional steps to comply. The commission may render such a determination where the State Treasurer has taken no action and, where the State Treasurer has acted, the commission may make further determinations not inconsistent with the authority reposed by the Act in the Treasurer.

(b) The commission and division shall be notified of any formal or informal hearing to be held by the State Treasurer in regard to tax obligations of a casino operator or other casino licensee, and the commission and division shall be allowed to appear and participate in such hearing. In the event of an appeal to the Tax Court to to any court of this State, the commission shall be permitted to intervene in order to contest any factual question or to argue any legal issue arising under the act or the regulations thereunder. Nothing herein shall limit the authority of the commission to hold its own hearings to determine any matter where the State Treasurer has not acted, or where the Treasurer has acted, to determine any matters not inconsistent with the authority reposed in the Treasurer by the Act.

MISCELLANEOUS NOTICES

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Petition for Rulemaking

N.J.A.C. 4:1-10.1, Allocation and Reallocation of Titles

Petitioner: John A. Sweeney, Esq. on behalf of the Board of Trustees of the New Jersey Civil Service Association.
Authority: N.J.S.A. 52:14-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on December 5, 1983, John A. Sweeney, Esq., on behalf of the Board of Trustees of the New Jersey Civil Service Association, filed a petition to amend N.J.A.C. 4:1-10.1 Allocation and Reallocation of Titles which provides for the Civil Service Commission to move titles between the competitive and noncompetitive divisions. The subsection addressed in the petition, subsection (c), requires that appointing authorities be informed of contemplated reallocations and be allowed 20 days to state objections. Petitioner requests that subsection (c) be amended to inform the majority representatives as well as appointing authorities of any contemplated allocation or reallocation before it goes into effect.

Department of Civil Service Response

The petition to amend N.J.A.C. 4:1-10.1(c) to include majority bargaining representatives has been given careful review and consideration by this Department. There is, however, no roster or listing that would provide the names of such majority representatives in the hundreds of Civil Service local jurisdictions by job titles. Thus, there is no available means to adopt the rule petition to provide the requested notice of reallocation between the competitive and noncompetitive divisions. It would also be anticipated that the appointing authorities would discuss any such proposed reallocation with appropriate local officials and employee representatives in order to determine if an objection should be made.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Flood Hazard Area Regulations

Proposed New Rule: N.J.A.C. 7:13

Proposed Recodification: N.J.A.C. 7:13-1.11 to N.J.A.C. 7:13-7.
Authority: N.J.S.A. 58:16A-50 et seq., N.J.S.A. 58:10A-1 et seq. and N.J.S.A. 13:1D-1 et seq.
DEP Docket No. 068-83-11.

Take notice that the public record will remain open until February 15, 1984 for receipt of written data, views or arguments relevant to the Flood Hazard Area Regulations, proposed on December 19, 1983 at 15 N.J.R. 2104(a). Submissions and inquiries about submissions should be made to:

William Whipple, Administrator
Water Supply Administration
Division of Water Resources
CN 029
Trenton, N.J. 08625

The Department of Environmental Protection thereafter may adopt the proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

LAW AND PUBLIC SAFETY

(c)

BOARD OF PHARMACY

Prescription and Computer Recordkeeping Regulations N.J.A.C. 13:39-6
30-Day Waiver of Executive Order No. 66(1978)

Authorized by: Governor Thomas H. Kean

Take notice that the Board of Pharmacy regulations concerning prescription and computer recordkeeping, N.J.A.C.

13:39-6, will expire on February 14, 1984 pursuant to the sunset provision of Executive Order No. 66(1978). These regulations have been proposed for readoption without change in the February 6, 1984 issue of the New Jersey Register at 16 N.J.R. 217(a). The regulations, however, can not be readopted by the Board of Pharmacy prior to their scheduled expiration on February 14, 1984 which will result in a gap of the regulations' continued effectiveness. This gap places the State in the position of being unable to enforce certain provisions of the law governing the practice of pharmacy and poses significant problems for numerous medicaid fraud and pharmacy investigations currently in progress Statewide.

The Board of Pharmacy has therefore requested from Governor Thomas H. Kean a 30 day waive of the five year sunset provision of Executive Order No. 66(1978) for the prescription and computer regulations, thus extending the expiration date of the current regulations from February 14, 1984 through, to and including March 14, 1984.

On February 3, 1984, Governor Kean found that good cause had been shown to grant the Board's request and by the authority vested in him by Executive Order No. 66(1978), directed that the five year sunset provision of Executive Order No. 66 be waived for the Board of Pharmacy prescription and computer regulations and extended the expiration of the regulations for a period of 30 days, from February 14, 1984 through, to and including March 14, 1984.

ENERGY

(a)

THE COMMISSIONER

Notice of Public Hearing on the Commercial and Apartment Conservation Service ("CACS") Program

Please **take notice** that the New Jersey Department of Energy ("NJDOE") intends to conduct a public hearing on a proposed new rule comprising the Commercial and Apartment Conservation Service Program. The Program is intended to provide energy audits of commercial and apartment buildings by New Jersey public utilities.

The purpose of the hearing is to receive comments on the CACS Program. The NJDOE will hold the public hearing on March 23, 1984 at 10:00 A.M. at:

Hearing Room #1
1100 Raymond Boulevard, 2nd Floor
Newark, New Jersey 07102

Persons who wish to speak at the hearing should contact the NJDOE at (201) 648-3896 by March 21, 1984 and should bring four copies of their testimony to the hearing.

A copy of the proposed new rule comprising the Commercial and Apartment Conservation Service Program is on file at the NJDOE offices, 101 Commerce Street, Newark, New Jersey 07102 and is available for public inspection during regular business hours.

The text of the proposed new rules is published in this issue of the New Jersey Register at 16 N.J.R. 419(a). The Department will receive written comments on the proposal until March 23, 1984.

This Notice is published as a matter of public information.

TREASURY-GENERAL

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Architect/Engineer Selection New Project

Applications (DBC Form 48B) for the project described below are due in DBC no later than 5:00 P.M., February 24, 1984, and shall be submitted to the attention of Ron Wengerd, Secretary of the A/E Selection Board. Submissions received after this time and date will not be considered. If not currently prequalified by DBC, applicants must submit a completed DBC Form 48A by the closing date of February 10, 1984.

DBC	No. Project Title and Location	Est. Constr. Cost
C234	Food Service Renovations Trenton State Prison Trenton, NJ	$2,000,000

DBC is seeking to engage the services of an architectural firm to develop a program, prepare the design documents, and administer the construction contracts for the referenced project. The renovations to the cafeteria and the food preparation and storage areas will require phased construction.

Only architectural firms with a DBC rating of at least $5,000,000 and relevant experience will be considered. Applicants should identify their pertinent engineering consultants on the 48B submittal. The consulting firm selected for the project will be required to coordinate its design efforts with the requirements established by the department of corrections' kitchen consultant. At least one firm of a joint venture must have a DBC rating of $5,000,000 or more.

OTHER AGENCIES

(c)

CASINO CONTROL COMMISSION

Petition for Rulemaking

N.J.S.A. 5:12-144, Investment Obligations and Investment Alternative Tax

Petitioner: Department of the Public Advocate, Division of Public Interest Advocacy.

Authority: N.J.S.A. 5:12-69(c), 5:12-70(e), 5:12-144, N.J.A.C. 19:42-8 and N.J.S.A. 52:14B-4(f).

Take notice that on January 25, 1984, the Casino Control Commission rejected the rulemaking petition of the Department of the Public Advocate insofar as it requested the Commission to adopt rules which would target casino investments toward the redevelopment of Atlantic City by imposing specific investment requirements on casino licensees. The rule proposals submitted by the Public Advocate were published in the November 21, 1983 Register at 15 N.J.R. 1931(a). Written comments were received from the Division of Gaming Enforcement. These comments opposed the rules proposed by the Public Advocate due to their inflexibility and inconsistency with certain requirements of section 144 of the Casino Control Act (N.J.S.A. 5:12-144).

Although the Commission is generally supportive of the objectives intended to be achieved by the Public Advocate's proposed rules, the Commission believes that its proposed rules, published at 15 N.J.R. 1838(a) and adopted on January 25, 1984, are fully consistent with these objectives and are otherwise better suited to the implementation of the Commission's responsibilities under section 144 of the Act. Accordingly, the Commission has acted favorably upon that portion of the Public Advocate's petition which requested the Commission to republish and adopt its "Proposed Rules Concerning Investment Obligation and Investment Alternative Tax" which were originally published at 12 N.J.R. 166 (March 6, 1980). See the notice of adoption concerning this proposal in this Register.

INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between February 22, 1983, and February 6, 1984, and which have not been adopted and filed by February 6, 1984. **The index does not contain rules proposed in this Register and listed in the Table of Rules in This Issue. These proposals will appear in the next Index of Proposed Rules.**

A proposed rule listed in this index may be adopted no later than one year from the date the proposal was originally published in the Register. Failure to timely adopt the proposed rule requires the proposing agency to re-submit 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 of the Office of Administrative Law (N.J.A.C. 1:30).

The *Index of Proposed Rules* appears in the second issue of each month, complementing the *Index of Adopted Rules* which appears in the first Register of each month. Together, these indices make available for a subscriber to the Code and Register all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activity from the initial proposal through final promulgation.

The proposed rules are listed below in order of their Code citation. Accompanying the Code citation for each proposal is a brief description of its contents, the date of its publication in the Register, and its Register citation.

The full text of the proposed rule will generally appear in the Register. If the full text of the proposed rule was not printed in the Register, it is available for a fee from:

Administrative Filings
CN 301
Trenton, New Jersey 08625

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW-TITLE 1			
1:1-1.3	Reaching the merits	9-6-83	15 N.J.R. 1398(a)
1:2-2	Readopt conference hearing rules	1-17-84	16 N.J.R. 94(a)
1:2-3	Readopt hearings on the papers	1-17-84	16 N.J.R. 95(a)
AGRICULTURE-TITLE 2			
2:5-3	Poultry embargo (with Emergency Adoption)	12-5-83	15 N.J.R. 2048(a)
2:5-4	Area quarantine for avian influenza (with Emergency Adoption)	12-19-83	15 N.J.R. 2176(a)
2:69-1.11	Commercial values for fertilizers and conditioners	5-2-83	15 N.J.R. 658(a)
2:76-1	Agriculture retention and development	12-19-83	15 N.J.R. 2086(a)
2:76-2	Agricultural management practices	1-17-84	16 N.J.R. 95(b)
BANKING-TITLE 3			
3:1-2.21	New capital stock savings and loan associations	2-6-84	16 N.J.R. 174(a)
3:1-13.1	Public hearing: insurance tie-in prohibition by lenders	8-1-83	15 N.J.R. 1207(a)
3:1-10	Readopt Restrictions on Real Property Transactions	1-3-84	16 N.J.R. 2(a)
3:11-5	Bank investments and domestic operating subsidiaries	11-7-83	15 N.J.R. 1787(a)
3:19-2.1	Repeal maximum interest rate on home repair contracts	11-7-83	15 N.J.R. 1788(a)
3:22-1	Repeal maximum finance rate on insurance premiums	10-17-83	15 N.J.R. 1707(a)
CIVIL SERVICE-TITLE 4			
4:1-5.5	Awarding back pay	1-17-84	16 N.J.R. 97(a)
4:1-7.6	Title reevaluation requests and appeals (State)	8-15-83	15 N.J.R. 1290(b)
4:1-14.6	Interim appointments	12-5-83	15 N.J.R. 1975(a)
4:1-18.9, 18.10	Flexitime and operation hours (State)	3-21-83	15 N.J.R. 373(a)
4:1-18.11	Alternative workweek programs (State)	3-21-83	15 N.J.R. 374(a)
4:2-14.1	Interim appointments	12-5-83	15 N.J.R. 1975(a)
4:3-8.2	Repeal county welfare board promotion rules	11-7-83	15 N.J.R. 1788(b)
4:3-14.2	Interim appointments	12-5-83	15 N.J.R. 1975(a)
COMMUNITY AFFAIRS-TITLE 5			
5:11	Readopt Relocation Assistance and Eviction rules	2-6-84	16 N.J.R. 175(a)
5:23-1.4, 2.23	UCC: Certificate of continued occupancy	2-6-84	16 N.J.R. 179(a)
5:23-4.5A, 4.18, 4.21	UCC: Private onsite inspection and plan review agencies	1-3-84	16 N.J.R. 3(a)
5:23-4.26	Construction boards of appeal	12-19-83	15 N.J.R. 2088(a)
5:23-6.1, 6.2	Technical standards for fire suppression systems	2-6-84	16 N.J.R. 180(a)
5:27-1.6, 1.9	State-contracted community residences	2-6-84	16 N.J.R. 181(a)
5:30-10.1, 10.2	Local finance: municipal port authorities	8-15-83	15 N.J.R. 1304(a)
5:37-11.6	Municipal and county employees deferred compensation programs: annual audit	9-6-83	15 N.J.R. 1408(b)
5:80-2	Private investment in HFA-financed housing	8-1-83	15 N.J.R. 1208(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
EDUCATION-TITLE 6			
6:2-1.1-1.20	Appeals to the State Board	12-5-83	15 N.J.R. 1977(b)
6:20-3.1	Determining tuition rates (public schools)	12-19-83	15 N.J.R. 2089(a)
6:20-3.1	Determining public school tuition rates: extention of comment period	2-6-84	16 N.J.R. 254(a)
6:28	Special Education rules	12-5-83	15 N.J.R. 1981(a)
6:28-11	Programs for preschool handicapped children	4-4-83	15 N.J.R. 556(a)
6:39-1.1-1.4	Statewide testing program	6-20-83	15 N.J.R. 979(b)
ENVIRONMENTAL PROTECTION-TITLE 7			
7:1-3	Interim environmental cleanup responsibility rules (with Emergency Adoption)	1-17-84	16 N.J.R. 151(a)
7:1E-App. A	List of hazardous substances—Part V (with Emergency Adoption)	1-17-84	16 N.J.R. 158(a)
7:7	Coastal Permit Program rules	12-19-83	15 N.J.R. 2090(a)
7:7A	Repeal	12-19-83	15 N.J.R. 2090(a)
7:7D	Repeal	12-19-83	15 N.J.R. 2090(a)
7:11-2.10-2.13	Sale of water from D/R Canal and Spruce Run/Round Valley	8-15-83	15 N.J.R. 1311(a)
7:13	Flood hazard area rules	12-19-83	15 N.J.R. 2104(a)
7:13-1.11(c)30	Delineated floodways for Delaware Bay tributaries	9-19-83	15 N.J.R. 1541(a)
7:13-1.11(d)	Floodway delineation in Roseland, Essex County	8-15-83	15 N.J.R. 1313(a)
7:13-1.11(d)	Floodway delineation along Third River in Clifton	9-6-83	15 N.J.R. 1412(a)
7:13-1.11(d)	Floodway delineation along Rockaway Creek, Hunterdon County	1-3-84	16 N.J.R. 5(a)
7:13-1.11(d)42	Delineated floodways for Green Brook and Bound Brook	9-19-83	15 N.J.R. 1540(a)
7:14-4.4	NJPDES: local control over dischargers	7-5-83	15 N.J.R. 1059(b)
7:14-8	Water pollution control: readopt civil penalty assessment rules	2-6-84	16 N.J.R. 181(b)
7:14A-1.9, 10.1, 10.5, 13.1, 13.2, 13.5-13.8	NJPDES: local control over dischargers	7-5-83	15 N.J.R. 1059(b)
7:14A-4.4, 4.7, 6.1, 6.2, 6.15	Hazardous waste land disposal	12-5-83	15 N.J.R. 1997(a)
7:14A-14	NJPDES: oil and grease effluent limitations	8-15-83	15 N.J.R. 1313(b)
7:15	Water quality management planning and implementation process	5-16-83	15 N.J.R. 765(b)
7:20A-1.3, 2.2, 2.7-2.11, 2.19, 2.21, 2.22	Water diversion for agriculture and horticulture	12-19-83	15 N.J.R. 2122(a)
7:25-4, 11, 20	Readopt Endangered, Nongame and Exotic Wildlife rules	1-17-84	16 N.J.R. 97(b)
7:25-15.1	Relay of hard clams	2-6-84	16 N.J.R. 186(a)
7:26-1.4, 10.6, 10.8, 11.3, 12.2	Hazardous waste land disposal	12-5-83	15 N.J.R. 1997(a)
7:26-8.14	Delist leather tanning and TiO_2 wastestreams	11-7-83	15 N.J.R. 1816(a)
7:26-8.15(f)	Delist Indomethacin as hazardous waste	11-7-83	15 N.J.R. 1817(a)
7:26-15.5, 15.7	Recycling Grants and Loans	1-3-84	16 N.J.R. 6(a)
7:28-42	Radio frequency radiation	1-3-84	16 N.J.R. 7(a)
HEALTH-TITLE 8			
8:21-1.32	Drug manufacturer's labeling requirements	1-17-84	16 N.J.R. 99(a)
8:21-2.31-2.33	Repeal (see 8:21-13)	8-15-83	15 N.J.R. 1318(a)
8:21-13	Wholesale food establishments	8-15-83	15 N.J.R. 1318(a)
8:21A-2.45	Retention period for radioactive drug samples	11-7-83	15 N.J.R. 1818(a)
8:31-16.1	Hospital long-range strategic plans	1-17-84	16 N.J.R. 100(a)
8:31-28	Readopt Certification of Need and Designation of Regional Services	1-17-84	16 N.J.R. 101(a)
8:31B-4.32	Waiver extension of Medicare/Medicaid reimbursement principles (with Emergency Adoption)	2-6-84	16 N.J.R. 252(a)
8:33J	Certificate of Need: Nuclear Magnetic Resonance Services	1-17-84	16 N.J.R. 102(a)
8:33K	Certificate of Need: Residential Alcoholism Treatment Beds Standards	1-17-84	16 N.J.R. 104(a)
8:35	Repeal (see 8:43B-8)	2-6-84	16 N.J.R. 188(a)
8:43B-8	Hospital licensure: obstetric and newborn services	2-6-84	16 N.J.R. 188(a)
8:43B-10	Pharmaceutical services in hospital facilities	1-17-84	16 N.J.R. 107(a)
8:71	Additions to generic drug list (see 15 N.J.R. 846(a), 16 N.J.R. 142(a))	6-6-83	15 N.J.R. 846(a)
8:71	Generic drug list additions (see 16 N.J.R. 142(b))	11-7-83	15 N.J.R. 1819(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
8:71	Readopt generic drug product list	1-17-84	16 N.J.R. 116(a)
8:71	Additions to generic drug list	2-6-84	16 N.J.R. 202(a)
HIGHER EDUCATION-TITLE 9			
9:1	Colleges and universities: licensing and degree program approval	9-6-83	15 N.J.R. 1418(a)
9:2-3.8	Layoff notice at State Colleges	5-2-83	15 N.J.R. 663(a)
9:4-1.5	County colleges' chargeback calculation	1-17-84	16 N.J.R. 117(a)
9:4-3.7, 8	County colleges contract rules	11-21-83	15 N.J.R. 1916(a)
9:4-5.7	Layoff notification at county colleges	7-5-83	15 N.J.R. 1070(b)
9:7-3.1	Tuition Aid Grants: 1984-85 Award Table	1-3-84	16 N.J.R. 9(a)
9:9-1.2, 9.3	Guaranteed Student Loan and Parent Loan amounts	2-6-84	16 N.J.R. 203(a)
9:12-1.11	Educational Opportunity Fund: Minimum academic progress	2-22-83	15 N.J.R. 207(a)
9:14-1.3, 1.4	Aid to independent colleges and universities	1-3-84	16 N.J.R. 10(a)
HUMAN SERVICES-TITLE 10			
10:49-1.4	Proposal withdrawal: Personal care services	3-21-83	15 N.J.R. 420(b)
10:49-1.16	LTCF: loss of provider certification	1-17-84	16 N.J.R. 118(a)
10:52-1	Readopt with amendments: Manual for Hospital Services (Coverage)	12-19-83	15 N.J.R. 2125(a)
10:63-1	Long Term Care Services Manual: readopt General Provisions	2-6-84	16 N.J.R. 204(a)
10:63-1.4	Long Term Care: services requiring consultations or referrals	9-19-83	15 N.J.R. 1543(a)
10:63-1.6	Lont-term care: authorization process	11-21-83	15 N.J.R. 1917(a)
10:63-1.15	LTCF: loss of provider certification	1-17-84	16 N.J.R. 118(a)
10:66-1.6, 3.3	Proposal withdrawal: Personal care services	3-21-83	15 N.J.R. 420(b)
10:81-3.34	PAM: Temporary absence of children from home	12-19-83	15 N.J.R. 2134(a)
10:81-9	PAM: readopt Definitions	2-6-84	16 N.J.R. 206(a)
10:82-4.10, 4.12	ASH: income from rentals	12-5-83	15 N.J.R. 2019(a)
10:85-3.1	GAM: Household size	2-22-83	15 N.J.R. 212(a)
10:85-3.3	GAM: residential health care allowance rate	1-17-84	16 N.J.R. 119(a)
10:85-5.3	GAM: DRG rates for outpatient services	5-2-83	15 N.J.R. 666(a)
10:85-9	GAM: Readopt legally responsible relatives rules	12-5-83	15 N.J.R. 2019(b)
10:87	Readopt Food Stamp Program rules	12-19-83	15 N.J.R. 2134(b)
10:90-4.8	AFDC: Recovery of overpayments and correction of underpayments	7-18-83	15 N.J.R. 1162(a)
10:97	Vending Facility Program for Blind	12-5-83	15 N.J.R. 2020(a)
10:100-1.23	SSI payment levels recodified as 10:100-App. A (with Emergency Adoption)	7-18-83	15 N.J.R. 1188(a)
10:121-4	Readopt Release of Criminal History Record Information	1-17-84	16 N.J.R. 119(b)
10:123-1	Repeal (see 10:5)	2-22-83	15 N.J.R. 208(a)
10:125	Repeal (see 10:5)	2-22-83	15 N.J.R. 208(a)
10:126	Repeal (see 10:5)	2-22-83	15 N.J.R. 208(a)
10:128	Residential Child Care rules	1-3-84	16 N.J.R. 10(b)
10:133	Aversive conditioning of autistic patients	9-6-83	15 N.J.R. 1432(a)
INSURANCE-TITLE 11			
11:3-6.1-6.4	Automobile insurance identification cards	3-7-83	15 N.J.R. 315(a)
11:3-8	Nonrenewal of auto insurance policies	1-17-84	16 N.J.R. 120(a)
11:3-14	Auto insurance: personal injury protection options	12-19-83	15 N.J.R. 2139(a)
11:3-15	Auto insurance policies: buyer's guide and written notice	12-19-83	15 N.J.R. 2142(a)
11:5-1.25	Correction: Sale of interstate properties	12-5-83	15 N.J.R. 2026(a)
11:10	Dental plan organizations	3-21-83	15 N.J.R. 423(a)
11:10-2	Employees' dental benefit plans: alternate coverage	8-15-83	15 N.J.R. 1350(a)
11:14	Auto body repair facilities	1-3-84	16 N.J.R. 25(a)
LABOR-TITLE 12			
12:17-5.1	Claim for partial unemployment benefits	9-6-83	15 N.J.R. 1435(b)
LAW AND PUBLIC SAFETY-TITLE 13			
13:2-23	Readopt ABC rules for licensee conduct	1-3-84	16 N.J.R. 29(a)
13:2-24.12	ABC: marketing and advertising	11-21-83	15 N.J.R. 1921(a)
13:2-27.2	ABC: sale of out-of-state deposit containers	1-3-84	16 N.J.R. 31(a)
13:3-1.10, 1.13, 1.15, 1.18, 2.1, 2.3, 3.1	ABC: amusement games licensing	2-6-84	16 N.J.R. 208(a)
13:19-1	Motor vehicle license suspensions: prehearing conferences	12-19-83	15 N.J.R. 2143(a)
13:19-13	Motor vehicle insurance surcharges	1-17-84	16 N.J.R. 124(a)
13:20-2.3	Commercial motor vehicles: maximum width computation	9-19-83	15 N.J.R. 1559(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
13:20-7.4	Motor vehicle inspection: repeal odd-even system (with Emergency Adoption)	8-1-83	15 N.J.R. 1261(a)
13:21-21	Used motor vehicles: temporary transit permits	8-1-83	15 N.J.R. 1233(a)
13:23	Licensing of commercial drivers' schools	2-6-84	16 N.J.R. 209(a)
13:33-1	Board of Examiners of Opthalmic Dispensers and Technicians: readopt administrative rules	2-6-84	16 N.J.R. 215(a)
13:35-2.4(k)	Chiropractic school accreditation	4-4-83	15 N.J.R. 503(a)
13:35-2.13	Graduate physician pending licensure: privileges and conditions	2-6-84	16 N.J.R. 216(a)
13:35-6.8	Prescribing, administering or dispensing laetrile	12-5-83	15 N.J.R. 2029(b)
13:35-6.10	Advertising by medical board licensees	1-3-84	16 N.J.R. 32(a)
13:37-2-6, 9, 10, 11	Board of Nursing: licensure by examination and endorsement; foreign nurses; nursing procedures	11-7-83	15 N.J.R. 1850(a)
13:39-6	Readopt Board of Pharmacy rules on Prescriptions	2-6-84	16 N.J.R. 217(a)
13:40-5.1	Preparation of land surveys	11-7-83	15 N.J.R. 1834(a)
13:44-1.1, 1.2	Veterinary examiners: approval of schools; licensure examination	7-18-83	15 N.J.R. 1175(a)
13:45A-20	Resale of tickets of admission to places of entertainment	9-6-83	15 N.J.R. 1445(a)
13:45A-21	Sale of Kosher food	11-21-83	15 N.J.R. 1924(a)
13:45A-21	Sale of Kosher food	2-6-84	16 N.J.R. 220(a)
13:45B-4	Temporary help service firms	2-22-83	15 N.J.R. 233(a)
13:46-5.1	Boxer licensure and medical examinations	5-16-83	15 N.J.R. 786(a)
13:47A-12	Limited registration for securities broker-dealers and agents	12-19-83	15 N.J.R. 2146(a)
13:49-1-8	Death Investigations rules: extension of comment period	10-3-83	15 N.J.R. 1672(a)
13:70-4	Thoroughbred racing: readopt Licensing rules	2-6-84	16 N.J.R. 221(a)
13:70-14.16	Thoroughbred rules: equine fatality report	2-6-84	16 N.J.R. 222(a)
13:71-7, 8, 17	Harness racing: readopt Licensing, Officials, and Starting rules	2-6-84	16 N.J.R. 221(a)
13:71-18.2	Harness racing: testing of drivers	2-6-84	16 N.J.R. 223(a)
13:71-20.24	Harness rules: equine fatality report	2-6-84	16 N.J.R. 224(a)
PUBLIC UTILITIES-TITLE 14			
14:3-7.3, 7.5	Customer accounts: deposits for service	8-15-83	15 N.J.R. 1355(a)
14:17-6.21	CATV: petitions to set aside variance refusal	1-17-84	16 N.J.R. 125(a)
14:18-1.2, 3.9	CATV: credit for service outages	9-6-83	15 N.J.R. 1447(a)
ENERGY-TITLE 14A			
14A:4-1.3, 2.1, 2.2, 2.3	Solar systems: qualifications for property tax deduction	1-3-84	16 N.J.R. 34(a)
14A:5-1.3, 2.1, 2.2, 2.3	Solar systems: qualifications for sales tax exemption	1-3-84	16 N.J.R. 37(a)
14A:6-1.5, 1.7	Recycling Grants and Loans	1-3-84	16 N.J.R. 6(a)
14A:11-1	Reporting of energy information: readopt Suppliers of Motor Gasoline rules	2-6-84	16 N.J.R. 224(b)
STATE-TITLE 15			
TRANSPORTATION-TITLE 16			
16:28-1.44	Speed rate on Route 27, Somerset and Middlesex Counties	1-3-84	16 N.J.R. 39(a)
16:28A-1.7, 1.18	Parking on US 9 (Freehold) and Route 27 (Rahway)	1-17-84	16 N.J.R. 126(a)
16:32	Designated routes for special categories of trucks	10-3-83	15 N.J.R. 1644(a)
16:32-1.2	Pre-proposal: Regulation of 102-inch-wide trucks	10-3-83	15 N.J.R. 1636(b)
16:41B	Newspaper dispensers on State highways	2-6-84	16 N.J.R. 225(a)
16:44-3.2	Contract administration: distribution and sale of plans	11-21-83	15 N.J.R. 1930(a)
16:53	Readopt Autobus Specifications	1-17-84	16 N.J.R. 127(a)
16:76	Private Carrier Capital Improvement Program	12-19-83	15 N.J.R. 2149(a)
TREASURY-GENERAL-TITLE 17			
17:19-2	Contractor classification: Bid prequalification	2-22-83	15 N.J.R. 235(a)
17:21	Repeal lottery game rules	8-15-83	15 N.J.R. 1361(a)
TREASURY-TAXATION-TITLE 18			
18:5	Readopt Cigarette Tax rules	2-6-84	16 N.J.R. 228(a)
18:6	Readopt Unfair Cigarette Sales Act rules	2-6-84	16 N.J.R. 228(b)
18:7	Readopt Corporation Business Tax rules	2-6-84	16 N.J.R. 229(a)
18:7-5.2	Corporation Business Tax: Entire net income	3-21-83	15 N.J.R. 427(a)
18:8	Readopt Financial Business Tax rules	2-6-84	16 N.J.R. 232(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
18:12-7.12	Homestead Rebate: filing extention for claims (with Emergency Adoption)	2-6-84	16 N.J.R. 252(b)
18:15-2	Application for farmland assessment	12-19-83	15 N.J.R. 2152(a)
18:22	Readopt rules on Public Utility Taxes	2-6-84	16 N.J.R. 233(a)
18:23	Readopt Railroad Property Tax rules	2-6-84	16 N.J.R. 233(b)
18:23A	Readopt rules on Tax Maps	2-6-84	16 N.J.R. 234(a)
18:24-7.12	Sales tax and motor vehicle reinspection	2-6-84	16 N.J.R. 235(a)
18:24-30	Sales tax exemption: prescription and over-the-counter drugs	6-6-83	15 N.J.R. 885(b)
18:30	Readopt Capital Gains and Other Unearned Income Tax rules	2-6-84	16 N.J.R. 235(b)
18:35-2.2, 2.12	Debts owed to State: setoff of tax refunds or rebates	12-5-83	15 N.J.R. 2031(a)
TITLE 19 SUBTITLES A-L-OTHER AGENCIES (Except Casino Control Commission)			
19:25-12, 16	Readopt rules on campaign expenditures and public financing of gubernatorial primaries	2-6-84	16 N.J.R. 236(a)
TITLE 19 SUBTITLE K-CASINO CONTROL COMMISSION			
19:43-1.2	Casino service industries: license requirements	1-3-84	16 N.J.R. 40(a)
19:45-1.1, 1.11, 1.25-1.29, 1.45, 1.47, 1.48	Casino Credit practices	10-17-83	15 N.J.R. 1743(a)
19:45-1.11	Questioning and detainment of persons	7-18-83	15 N.J.R. 1177(b)
19:46-1.5, 1.6	Use and handling of gaming tokens	1-3-84	16 N.J.R. 41(a)
19:46-1.27	Gaming equipment: slot stools	9-6-83	15 N.J.R. 1465(a)
19:47-1.2, 1.4	Craps: "Horn High Bet" wagers	8-1-83	15 N.J.R. 1241(a)
19:47-2.2	Correction: Double shoe in blackjack		14 N.J.R. 832(a)
19:47-2.12	Blackjack: drawing of additional cards	8-1-83	15 N.J.R. 1242(a)
19:54-2	Investment obligations and investment alternative tax	11-21-83	15 N.J.R. 1931(a)

The following rules were proposed in the New Jersey Register, but have not been timely adopted and therefore have expired pursuant to N.J.A.C. 1:30-4.2(c).

8:71	Generic drug list (see 15 N.J.R. 1100(c))	2-7-83	15 N.J.R. 126(b)
8:71	Generic drug list (see 15 N.J.R. 691(b), 1100(a), 16 N.J.R. 141(b))	2-7-83	15 N.J.R. 127(a)

CONTENTS

(Continued From Front Cover)

RULE ADOPTIONS

MISCELLANEOUS NOTICES

Filing Deadlines

March 19 issue:
Proposals ..... February 22
Adoptions ..... March 5