



NEW JERSEY REGISTER

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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 15, 1991

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT AUGUST 19, 1991

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR

Governor Jim Florio

Executive Order No. 39(1991)

Prohibition in State Government of Discrimination Based on Sexual Orientation

Issued: August 16, 1991.

Effective: August 16, 1991.

Expiration: Indefinite.

WHEREAS, the State of New Jersey is committed to assuring that all of its citizens receive equal protection under the law; and

WHEREAS, New Jersey has demonstrated this commitment through laws which protect citizens from discrimination on the basis of race, sex, creed, religious affiliation, national origin and other identifying characteristics; and

WHEREAS, these laws have yet to recognize a portion of the population that deserves equal protection under the law; and

WHEREAS, the time has come to correct this inequity and bridge this gap in our system of comprehensive civil rights protection;

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

1. All Executive Branch departments, agencies, boards, commissions and other bodies shall prohibit discrimination based on sexual orientation in any matter pertaining to employment by the State, including but not limited to, hiring, job appointment, promotion, tenure, recruitment and compensation.

2. No Executive Branch department, agency, board, commission or other body shall discriminate on the basis of sexual orientation against any person in the provision of any service or benefit by such department, agency, board, commission or other body.

3. The Attorney General is hereby directed to develop guidelines for implementation of this Order.

4. All Executive Branch departments, agencies, boards, commissions and other bodies are directed to cooperate fully with the Attorney General to effectuate this Executive Order and to provide the Attorney General with information, data and assistance upon request.

5. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR

Governor Jim Florio

Executive Order No. 40(1991)

Expansion of Membership of Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts; Extension of Final Report Deadline

Issued: August 16, 1991.

Effective: August 16, 1991.

Expiration: Indefinite.

WHEREAS, Executive Order No. 213(1989) established the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts to investigate, research and report on the nature and scope of any discrimination in public works procurement and construction contracts awarded by the State and recommend remedies for any discrimination; and

WHEREAS, the mission of the Study Commission would also be aided by the inclusion of the Director of the Division on Civil Rights, Department of Law and Public Safety; and

WHEREAS, the final report of the Study Commission is now due on August 14, 1991 by virtue of Executive Order No. 16; and

WHEREAS, the Study Commission is continuing to investigate and research discrimination in public works procurement and construction contracts awarded by the State, but does not anticipate that it will complete its final report by August 14, 1991.

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

1. The membership of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts is hereby expanded to include the Director of the Division on Civil Rights, Department of Law and Public Safety.

2. The Study Commission shall report its findings and recommendations concerning past and present discrimination practices in public works procurement and construction contracts no later than June 30, 1992.

3. Except as provided in sections 1 and 2 of this Executive Order, all other terms of Executive Order No. 213(1989), as amended by Executive Orders No. 214(1989), No. 5(1990) and No. 16(1990), shall remain in full force and effect.

4. This Order shall take effect immediately.

(c)

OFFICE OF THE GOVERNOR

Governor Jim Florio

Executive Order No. 41(1991)

Governor's Commission on Eastern European History

Issued: August 23, 1991.

Effective: August 23, 1991.

Expiration: August 22, 1993.

WHEREAS, the Governor's Commission on Eastern European and Captive Nation History was created on April 10, 1984, by Executive Order No. 69, to conduct a thorough study of public school curricula, including textbooks and all other pertinent materials dealing with the history of the people of Eastern Europe and various nationalities existing within the Soviet Union, to examine such materials for veracity and historical accuracy, and to determine whether the history of these people was fairly and accurately presented in our State's schools; and

WHEREAS, the Commission was subsequently extended by Executive Order No. 122 to July 31, 1986, and Executive Order No. 156 to December 31, 1987; and

WHEREAS, on July 1989 the Commission issued a report of its findings and recommendations, which makes clear that there is a need to extend the life of the Commission because further work is necessary in order to fully complete its tasks; and

WHEREAS, the political, social and economic conditions in Eastern Europe have changed significantly since the Commission issued its report;

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

1. There is hereby recreated a Governor's Commission on Eastern European and Captive Nation History which shall be named the Commission on Eastern European History.

2. The Commission shall consist of no more than twenty members. The members of the Commission shall be the Commissioner of Education or his designee; the Director of the Office of Ethnic Affairs within the Department of State or his designee; and eighteen public members to be appointed by the Governor. The public members to be appointed shall be representatives of the various ethnic groups of Eastern Europe and of the nationalities existing within the Soviet Union, as well as historians and educators who have distinguished records of knowledge and involvement concerning the history and culture of Eastern Europe or of nationalities within the Soviet Union.

3. The Governor shall designate a chairperson and vice chairperson of the Commission from among the public members of the Commission.

GOVERNOR'S OFFICE

The chairperson, vice chairperson and public members shall serve at the pleasure of the Governor. Commission vacancies shall be filled by the Governor for the remainder of the unexpired term.

4. It shall be the duty of the Governor's Commission on Eastern European History to make recommendations as to the types of seminars that should be conducted for teachers to improve their knowledge about Eastern Europe; and to explore ways to develop alternative or supplementary teaching materials that will improve students' knowledge about Eastern Europe.

5. The Commission is authorized to call upon the Department of Education to supply such data, program reports, and other information

EXECUTIVE ORDERS

as it deems necessary to discharge its responsibilities under this Order. The Department of Education is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commission and to furnish it with such information and assistance as is necessary to accomplish the purpose of this Order and the Commission.

6. The Commission shall submit a report of its findings and recommendations to the Governor and to the State Board of Education on or before August 22, 1993.

7. This Order shall take effect immediately and shall be in effect through August 22, 1993.

REORGANIZATION PLAN

(a)

OFFICE OF THE GOVERNOR

Governor Jim Florio

Notice of a Plan for the Reorganization and Integration of Responsibility for Energy and Certain Public Utility Matters within the Department of Environmental Protection and the Redesignation of that Department as the Department of Environmental Protection and Energy

Take Notice that on June 20, 1991, Governor James J. Florio hereby issues the following Reorganization Plan (No. 002-1991) to provide for the increased coordination and integration of the State's utility, environmental and energy policies by the transfer of functions from the Board of Public Utilities now allocated in but not of the Department of Treasury to in but not of the Department of Environmental Protection.

GENERAL STATEMENT OF PURPOSE

Pursuant to its present statutory authority, it is the duty of the Board of Public Utilities to regulate the public utilities of the State for the provision of safe, adequate and proper service including electric, gas, solid waste, water and sewers, telecommunications and cable television. In this role, the Board regularly considers environmental matters in consultation with the Department of Environmental Protection. Additionally, the Board is charged with evaluation of the State's energy needs to ensure the continued supply of energy at reasonable prices and to avoid the potential adverse effects of an insufficient energy supply on the economy and to the State's quality of life and its environment.

The purpose of this Reorganization Plan is to create a governmental structure that will promote the statutory aims of the Board and ensure that public utilities provide safe, adequate and proper service in conjunction with the complementary statutory directives of environmental protection and energy management and conservation. In transferring existing functions of the Board of Public Utilities to in but not of the Department of Environmental Protection, this Plan recognizes the inter-relationship of energy management planning and environmental protection on the one hand and the provision of safe, adequate and proper utility service by the electric, gas, water, sewerage, and solid waste utilities on the other. This Plan will foster the efficient implementation of a coherent public policy which advances a coordinated and integrated energy conservation and planning policy.

This Plan proposes that the Commissioner and the DEP assume certain administrative responsibilities of the Board. Another significant aspect of this Plan is the merger of the solid waste regulation responsibilities of the DEP and the Board. These actions will promote the policy, regulatory and administrative integration of these two bodies, and thereby advance a coordinated approach to environmental and utility regulation and energy planning, and be more economical. This Plan also proposes that the DEP be renamed the Department of Environmental Protection and Energy to better reflect its new role, and that the Board be renamed the Board of Regulatory Commissioners.

THEREFORE, in accordance with the provisions of the "Executive Reorganization Act of 1969," L. 1969, c.203 (c. 52:14C-1 et seq.), I find with respect to each reorganization included in this Plan that each is necessary to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. It will promote more effective management of the Executive Branch and its departments because it will group similar functions within already existing agencies;
2. It will promote the better and more efficient execution of the law by integrating the State's utility, environmental and energy public policies;
3. It will group, coordinate and consolidate functions in a more consistent and practical way according to major purposes;
4. It will reduce expenditures by more closely aligning similar functions; and
5. It will eliminate duplication and overlapping of effort by consolidating certain functions and result in a savings of State funds.

THE PROVISIONS OF THE REORGANIZATION PLAN ARE AS FOLLOWS:

1.a. The Board of Public Utilities, including the functions, powers and duties assigned to it pursuant to Reorganization Plan No. 002 (1989) (C. 21 N.J.R. 1937, July 17, 1989), created pursuant to L. 1911 c.195 as amended (C. 48:2-1), and allocated in but not of the Department of Treasury pursuant to L. 1987, c.365, §9 (C. 52:18A-2.1), together with all of its functions, powers and duties, is continued and is transferred to and constituted as the Board of Public Utilities in but not of the Department of Environmental Protection, except as hereinafter provided.

b. The Board of Public Utilities shall remain constituted as a three-member board as now provided by law (C. 48:2-1), whose final agency decisions, consistent with other applicable principles, continue to be appealed to the Appellate Division of the Superior Court. Further, except as set forth herein, the Board shall continue to exercise its substantive authority independent of the supervision of any other department or agency.

c. Pursuant to the authority conferred by N.J.S.A. 52:14C-5: (i) the President of the Board shall be redennominated as Chairperson; and (ii) in the case of a vacancy on the Board, the Governor may appoint an acting member by filing a letter evidencing the appointment with the Secretary of State, which appointment shall be effective for no more than 90 days and which shall then expire and may not be repealed, or until such time as a member is nominated, confirmed, appointed and qualified to serve, whichever is sooner.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c.203. Specifically, this reorganization will promote a closer cooperation with the Department of Environmental Protection and further the important goals of coordinating and integrating the State's utility, environmental and energy policies to ensure the provision of safe, adequate and proper service from utilities consistent with the achievement of and energy conservation goals. Also, vesting the Governor with a limited authority to name an acting member to the Board of Public Utilities, a power which already exists with respect to the Commissioner of Environmental Protection, will ensure the Board's ability to carry out its important regulatory functions without delay.

2.a. The Division of Energy Planning and Conservation in the Board of Public Utilities, Reorganization Plan No. 002 (1989), ¶I(1)(a), created pursuant to L. 1977, c.146 as amended (C. 52:27F-7), together with all of its functions, powers and duties, is abolished and all of its functions, powers and duties are transferred to and vested in the Department of Environmental Protection and the Commissioner thereof.

b. There shall be created in the DEP an Office of Energy Planning which shall be assigned those responsibilities the DEP Commissioner deems appropriate, and which may include any functions, powers or duties formerly assigned to the Division of Energy Planning and Conservation.

c. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Division of Energy Planning and Conservation in the Board of Public Utilities, the same shall mean and refer to the Department of Environmental Protection and the Commissioner thereof.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c.203. Specifically, this reorganization will confer on the Department of Environmental Protection and its Commissioner the necessary authority to implement the important goals of coordinating and integrating the State's environmental, utility and energy policies. This reorganization will also promote and assist the development and utilization of cogeneration of energy and programs of energy conservation for both residential and commercial users. This Plan will provide for the collection and dissemination of energy data for the benefit of promoting the economy.

3.a. The Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Board of Public Utilities, Reorganization Plan No. 002 (1989), ¶I(1)(a), created by L.1977, c.146, §10 (C. 52:27F-12), together with all its functions, powers and duties as set forth in L. 1977, c.146, §11 (C. 52:27F-13), is continued and transferred to and constituted the Advisory Council on Energy Planning and Conservation in the Department of Environmental Protection.

b. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Board of Public Utilities, the same shall mean and refer to the Advisory Council on Energy Planning and Conservation in the Department of Environmental Protection.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c.203. Specifically, this reorganization will provide the Commissioner of the Department of Environmental Protection with a body that can advise him regarding the relationship between the State's economic, environmental and energy policies.

4. The responsibility and authority vested in the President of the Board of Public Utilities to act as chairperson of the Energy Master Plan Committee, established by L. 1987, c. 365, §14 (C. 52:27F-14), pursuant to Reorganization Plan No. 002 (1989), ¶ III.1., is hereby vested in the Commissioner of the Department of Environmental Protection; the responsibility and authority of the President of the Board of Public Utilities to serve as a member of the Energy Master Plan Committee is continued.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c.203. Specifically, this reorganization will help ensure close coordination and integration of the State's environmental and energy policies.

5. The responsibility and authority for requiring the periodic reporting by energy industries of energy information, and the analysis and reporting of same, set forth in L. 1977, c.146, §16 (C. 52:27F-18), is transferred to the Department of Environmental Protection and the Commissioner thereof.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c.203. Specifically, this transfer is consistent with the centralization of energy data collection and dissemination responsibilities within the Department of Environmental Protection as an aid to integrating energy, environmental and economic policy.

6. All responsibility and authority now vested in the Board of Public Utilities for the regulation of solid waste under L. 1985, c.38 (C. 13:1E-136 et seq.), as amended, or under any other law or regulation, including, but not limited to ratesetting, is hereby continued and transferred to the Commissioner of the DEP.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c.203. Specifically, this reorganization will help ensure the close coordination and integration of the State's environmental and public utility policies.

7. All responsibility for budget, fiscal and personnel matters (including adoption of a Code of Ethics as required by the State Conflicts of Interests Law (C. 52:13D-23) and acting as appointing authority with all of the rights thereunder) and day-to-day administration, including contracting and rulemaking authority in these areas, including such authority specifically conferred on the Board by N.J.S.A. 48:2-2, 3 and 7, is hereby transferred from the Board of Public Utilities to the Commissioner of the Department of Environmental Protection; except that (i) the Board shall make annual budget recommendations to the Director of the Division of Budget and Accounting; (ii) the Board will adopt and recommend a Code of Ethics required by the Conflicts Law to the Commissioner for his consideration and approval and transmittal to the Executive Commission on Ethical Standards with such modifications, if

any, as the Commissioner deems appropriate; (iii) the Board will be responsible for the allocation of its budget and the assignment of Board personnel; and (iv) BPU employees for payroll, administrative and other personnel related practices shall remain and continue to be categorized as BPU employees. Upon the request of the Board, the DEP Commissioner shall make available Department resources to the Board to carry out its responsibilities.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c.203. Specifically, this consolidation of budget and administrative authority in the DEP Commissioner, to be exercised in consultation with the Board as set forth above, will result in increased and more effective management of the Board's operations in light of the transfer of the Board to the DEP. The shifting of administrative functions from the Board will also permit the Board to focus on its policy and regulatory responsibilities.

8.a. The Board of Public Utilities is denominated the Board of Regulatory Commissioners. I find that this name change, authorized by N.J.S.A. 52:14C-5, will better reflect the responsibilities of the Board and its allocation within a renamed Department of Environmental Protection and Energy, *infra*. ¶9.

b. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise, reference is made to the entities recited in paragraphs 1 to 7 above to the Board of Public Utilities and the President thereof, the same shall mean and refer to the Board of Regulatory Commissioners and the Chairperson thereof.

9.a. The name of the Department of Environmental Protection is denominated the Department of Environmental Protection and Energy. I find this name change, authorized by N.J.S.A. 52:14C-5, will better reflect the Department's responsibilities for energy and public utility matters and better inform the public of the Department's role.

b. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise, reference is made to the entities recited in paragraphs 1 to 7 above to the Department of Environmental Protection or the Commissioner thereof, the same shall mean and refer to the Department of Environmental Protection and Energy or the Commissioner thereof.

10. All transfers directed by this Plan shall be made in accordance with the "State Agency Transfer Act," L. 1971, c.375 (C. 52:14D-1 et seq.).

11. All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies. A copy of this Reorganization Plan was filed on June 20, 1991 with the Secretary of State and the Office of Administrative Law (for publication in the *New Jersey Register*). This Plan shall become effective in 60 days on August 19, 1991 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than August 19, 1991, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

Take Notice that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the public laws and in the *New Jersey Register* under a heading of "Reorganization Plan."

RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Applicability

Proposed Amendment: N.J.A.C. 5:18-1.4

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

Authority: N.J.S.A. 52:27D-198.

Proposal Number: PRN 1991-455.

Submit comments by October 16, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX: 609-633-6729

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 5:18-1.4 clarifies that the requirements of the Uniform Fire Code shall, to the extent necessary to ensure the safety of persons using any building or portion of building that is subject to the Code, be applicable to the entire premises of which the building is a part.

Social Impact

A question has arisen as to whether the references in the Code to violations in buildings are meant to include the portion of the premises occupied by a use that is outside of the building. While it is the position of the Bureau of Fire Safety that support can be found in the Code for the proposition that these requirements apply to the exterior of the premises as well as to the buildings, and that the public interest requires such a result, it is desirable to eliminate any ambiguity and make the requirements of the Code clear to all.

Economic Impact

Owners of properties subject to the Code who have not corrected certain hazardous conditions in the exterior portions of their properties will now be under a clear mandate to do so. The cost of compliance will be entirely dependent upon the nature and extent of the hazardous condition and will, therefore, be different in each case.

Regulatory Flexibility Analysis

The amendment to N.J.A.C. 5:18-1.4, Applicability, makes clear that the chapter, in addition to the interior premises, also applies to the exterior portion of the premises, or to premises not containing a building, if compliance is necessary for the safety of the public or firefighters. This provision includes small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as any other type of owner of such property. The correction of fire safety violations is a matter that directly affects the health, safety and welfare of the public. Violations must be abated as quickly as possible and as completely as possible, in order to protect people's lives. In order to maintain public safety, the Department has determined that no differential treatment in these rules in regard to their application to small businesses is appropriate.

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

5:18-1.4 Applicability

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

(h) Any requirement in this chapter that is applicable to a building shall also be applicable to the exterior portion of the premises in which the building is located, or to a premises that does not include a building, if the Bureau or the fire official finds compliance

with such requirement in such exterior area or premises to be necessary for the protection of the safety of persons upon the premises, firefighters or the general public.

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING Development Fees

Proposed Amendments: N.J.A.C. 5:92-1.3, 1.4 and 8.4

Proposed New Rules: N.J.A.C. 5:91-15 and 5:92-18

Authorized By: New Jersey Council on Affordable Housing,

Charles Griffiths, Chairman.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1991-460.

Submit comments by October 16, 1991 to:

Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
CN 813
Trenton, NJ 08625-0813

The agency proposal follows:

Summary

The New Jersey Supreme Court, in *Holmdel Builder's Ass'n v. Holmdel Township*, 121 N.J. 550 (1990), determined that it is fair and reasonable for a municipality to impose development fees on developers when they possess, enjoy and consume land which constitutes the primary resource for housing. The court found that the collection of fees by municipalities from developers for the purpose of dedicating such fees for low and moderate income housing was constitutional, statutorily authorized and consistent with the Fair Housing Act, provided the Council develops rules governing the collection of development fees. The court concluded that the Council's exercise of rulemaking authority in the area of inclusionary zoning is incomplete because the Council has not yet specifically addressed mandatory development fees as available inclusionary zoning devices. The proposed rules fill this gap by addressing the area of development fees.

Before developing rules responding to *Holmdel*, the Council researched the literature on development fees and numerous development fee ordinances that had been adopted in New Jersey and in other states. Interviews were conducted with various participants in the Council's process who were familiar with development fee issues. The Council also published a Notice of Pre-proposal in the *New Jersey Register* (See 23 N.J.R. 646(b)), requesting comments on various issues related to development fees.

The results of all this input were incorporated into an agenda that was discussed fully by a task force consisting of municipal representatives, representatives of low and moderate income households, residential and non-residential developers, academics, representatives of the business community, legislative representatives and representatives of the executive branch of the New Jersey government. The discussions resulted in areas of agreement and disagreement that were presented to the Council members for their deliberation.

In drafting these rules, the Council has determined that the collection of fees should be an integral part of a comprehensive planning process that leads to substantive certification. Thus, as a general rule, municipalities that wish to collect development fees shall petition for substantive certification.

There are several exceptions to the general requirement that development fees will be approved only in the context of the substantive certification process. Some communities have already received substantive certification. Others have received a judgment of repose (a judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation). Still others are litigating exclusionary zoning cases. Some of these municipalities have already collected fees. The Council has created a process for these municipalities to collect and/or retain fees. However, apart from the exceptions specified in the rules,

the ability to collect development fees shall be limited to municipalities that petition for substantive certification.

Another exception under the proposed rules deals with urban aid municipalities. Urban aid municipalities present a special case. These municipalities have historically accepted a disproportionate share of New Jersey's poor and, as a result, many have exceedingly high fair share obligations. Therefore, it would be very difficult for these cities, as a class, to address their entire obligation in a six year period.

The Legislature has recognized the effort of urban aid cities in Section 302 and 320 of the Fair Housing Act. The Council has recognized the role urban aid municipalities have accepted in its methodology. Urban aid municipalities have not been assigned reallocated present need or prospective need. Therefore, the Council will allow these municipalities to collect fees outside of the substantive certification process.

Consistent with the Council's determination that collection of development fees should be part of a comprehensive planning process, the Council is requiring a plan for spending revenues derived from collecting development fees. The requirements of this plan have been added to N.J.A.C. 5:92-1.4, which sets forth the content of the housing element.

Some municipalities have already collected development fees. The Supreme Court has stated that, while municipalities have the authority under the Fair Housing Act to collect mandatory development fees, the Council must adopt rules that provide standards. This proposal establishes substantive (N.J.A.C. 5:92-18.8) and procedural (N.J.A.C. 5:91-15) requirements for those municipalities interested in retaining the development fees. The procedural rules create a process for developers that paid fees to participate in the review of past fee collections.

The Council has determined that it is vital for purposes of implementing the Fair Housing Act for municipalities to have the opportunity to retain development fees collected prior to December 13, 1990. Millions of dollars were collected as a result of ordinances regulating development during years of substantial real estate activity. These residential and commercial projects were not directly related to the satisfaction of a municipality's fair share obligation, yet they consumed the one irreplaceable resource for satisfying the town's obligation under the Fair Housing Act. Approvals of these projects were conditioned on payment of the fees (which were collected) to enable the municipalities to address their fair share obligations, despite the fact that the development sites were no longer available to satisfy that obligation. The development fees already collected represent an irreplaceable, yet limited, resource that will enable municipalities to further the goals of the Fair Housing Act.

As a matter of equity, developers that paid these fees have already reaped the benefit of developing their land. Therefore, a resource that could have been used for low and moderate income housing will have been dissipated, unless municipalities can retain development fees.

The rules provide maximum fees that municipalities may collect on residential and non-residential developments without a compensatory benefit. In establishing these fees, the Council studied municipal linkage and development fee ordinances nationwide. The Council also studied municipal development fee ordinances in New Jersey. Consistent with the Supreme Court's direction, the fees have been crafted so as not to be confiscatory.

The rules also allow communities to exact higher fees by allowing a compensatory benefit (such as density bonuses) by ordinance or through agreement with a developer. As a result, N.J.A.C. 5:92-8.4(d) through (g), regulating voluntary agreements, is no longer necessary and is being deleted.

The Council elected to base development fees on a percentage of equalized assessed valuation. The Council determined that this standard represents the fairest and most objective measure of a development's worth because it represents the actual value of the project. Indeed, the task force, consisting of various interest groups, agreed that the choice of equalized assessed value was the fairest and most reasonable manner in which to assess fees. The standard also allows for fees that are sensitive to different markets in different areas of the state. Since the basis of collection is a percentage, developments that can demand higher sales prices or rents may be assessed a higher fee than a development in another part of the State that might be worth less. As a result, developments in some of the poorer markets of the State will not be assessed with a disproportionate development fee.

The Council has established standards for the use of development fees. The Council has allowed municipalities to use development fees for any activity approved by the Council for addressing the municipal fair share. At least 30 percent of the fees shall be used to render housing units more affordable, such as by downpayment or rental assistance. The

Council recognizes that many lower income households have difficulty in purchasing or renting affordable units; and, therefore, it is the Council's judgment that a substantial percentage of the development fees should be devoted to assist these households. The Council believes that development fees are a new resource that should be used to develop units that are more affordable to the poor or assist the poor in attaining decent shelter.

The Council wishes to limit the amount of money that can be used for administration. Therefore, the Council proposes to limit the amount of fees that may be used for administrative costs to a maximum of 20 percent of the fees.

The collection and expenditure of development fees will be closely monitored. A municipality's failure to comply with accurate, timely monitoring reports may result in the Council taking an action to direct development fees to an agency designated to create or rehabilitate affordable housing, and the revocation of the Council's approval of the municipality's development fee ordinance. In addition, failure to comply with any other requirements of this subchapter may result in similar action.

Social Impact

The proposed rules will have a positive social impact in that they will allow municipalities to collect fees that can be used to subsidize low and moderate income households. This will allow communities to be more creative in developing plans for low and moderate income housing; and, therefore, low and moderate income households will be less dependent on the market for inclusionary development to address their needs.

In addition, the proposed rules require that 30 percent of the fees collected be used for rental assistance, downpayment assistance and other programs designed to render housing to be more affordable to low and moderate income households. This will be a major benefit to households who have substantial problems qualifying for sales and rental housing because of their lack of income.

Economic Impact

The proposed rules and amendments will not have a detrimental impact on the economy. The rules do not allow a community to collect substantial fees unless it permits some sort of compensatory benefit for the development of the affected property. Therefore, the rules will not add substantial costs to market housing that would negatively impact consumers' ability to purchase housing priced on what the market will bear. As a result, the rules should not adversely affect New Jersey's economic recovery.

Residential development fees may be imposed up to a maximum of one-half of one percent of the equalized assessed value, provided no increased density is permitted. If increased density is permitted, up to six percent of the equalized assessed value for each additional unit realized may be imposed on a developer by a municipality. Non-residential development fees may be imposed up to a maximum of one percent of the equalized assessed value for non-residential development.

Regulatory Flexibility Analysis

The proposed rules will not impose reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq.; therefore, a regulatory flexibility analysis is not required. The rules place requirements on municipalities regarding fees they are permitted to collect from developers of property within the municipality which fees are set by ordinance, within the limits prescribed by these rules.

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

SUBCHAPTER 15. RETENTION OF DEVELOPMENT FEES

5:91-15.1 Procedures for retaining development fees

(a) Municipalities that collected development fees prior to December 13, 1990, as outlined in N.J.A.C. 5:92-18.4 and 5, may retain at least some portion of such fees by conforming to the requirements of N.J.A.C. 5:92-18.8(a)9 (Development fee ordinance review).

(b) In addition, municipalities that collected development fees prior to December 13, 1990 shall provide notice to each developer that paid a development fee of its request for Council review of the development fee ordinance. The municipality shall provide each developer with a copy of all information required in N.J.A.C. 5:92-18.8(a)9 within seven days of the governing body's resolution to request review of its development fee ordinance.

(c) Municipalities that fail to provide all information to the Council, or fail to provide information to developers that paid development fees prior to December 13, 1990 within the time limits imposed by the Council, may be required by the Council to return the development fees to the developers that paid them.

(d) Developers shall have 14 days from the receipt of the information provided in (b) above to submit comments to the Council regarding the submissions made by the municipality. The developer shall simultaneously serve the municipality with a copy of the comments.

(e) Following the submissions from municipalities and developers, the Council shall review and approve or disapprove the ordinance. The Council may also determine the revenues that the municipality must return to the developers that paid the fees. Municipalities shall be able to retain fees that conform to the standards in this subchapter and N.J.A.C. 5:92-18.

5:92-1.3 Definitions

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

...
"Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:92-18.
 ...

...
"Judgment of repose" means a judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.
 ...

5:92-1.4 Housing element

(a) A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing, and shall contain at least:

1.-5. (No change.)

6. If a development fee is imposed pursuant to N.J.A.C. 5:92-18, a copy of the spending plan as required in (b) below; Recodify 6.-12. as 7.-13. (No change in text.)

(b) If a municipality intends to collect development fees, it shall prepare a plan to spend development fees that includes the following:

1. A projection of revenues anticipated from imposing fees on development, based on historic development activity;
2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
3. A description of the anticipated use of all development fees;
4. A schedule for the creation or rehabilitation of housing units;
5. If the municipality envisions being responsible for public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and
6. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

5:92-8.4 Vacant sites

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

[(d) All agreements, including those contemplated in (e), (f), and (g) below, that vary from the presumptive requirements of a 20 percent set-aside and a gross density of six units per acre, as set forth in (c) above, must satisfy the following conditions:

1. The agreement must continue to provide the requisite realistic opportunity for creation of the low and moderate income units, giving consideration to market conditions;
2. The agreement must not impose an excessive burden on the market units, giving due consideration to the due process and equal protection clauses of the Constitutions of both New Jersey and the United States, as well as fundamental fairness in the exercise of governmental power; and
3. The developer must have the experience and financial ability to perform its obligations under the agreement.

4. The burden of meeting the test in (d)1 through 3 above shall be upon the municipality proposing the agreement. Deviation from the presumptive requirements will not permit a municipality to lessen the standards required to meet its obligation to provide a realistic opportunity for its fair share of low and moderate income housing.

(e) All agreements where the market units are single family detached dwellings may provide that, in exchange for an increase over existing density, the developer either: construct low and moderate income units as part of an inclusionary development; or pay a voluntary fee to be utilized by the municipality for an RCA or municipally constructed low and moderate income housing or rehabilitation. The developer's expense in either case must bear a reasonable relationship to the increase in density, such that the agreement does not violate the test in (d)1 through 3 above. For single family detached dwellings, the fee negotiated may not be in excess of the following formula:

Total number of additional market units resulting from the bonus density multiplied by the projected selling price of the market units multiplied by six percent. For purposes of this section, the projected selling price shall be defined as the price at time of construction.

(f) In agreements where the market units are multi-family dwellings, the Council may permit deviations from the presumptive requirements of a 20 percent set-aside.

1. Where there is also an increase over existing density. For example, in cases where the allowable density exceeds the presumptive minimum density requirement (for example, 10 to 16 units per acre on a multi-family development) it may be reasonable to have a set-aside higher than 20 percent.

2. Where the developer builds a higher proportion of moderate to low income units; or

3. Where the agreement contains a comparable incentive.

4. In cases where the agreement includes a developer's fee in lieu of the construction of low and moderate income units on the site, the fee shall be consistent with the current, average internal subsidization that would have been required to provide low and moderate income units on the site.

5. Absent such incentives, a deviation from the presumptive requirement is not permitted. For example, an ordinance which requires a set-aside higher than 20 percent or a 20 percent set-aside plus additional fees, and which permits only the minimum six units per acre and an equal split of low to moderate income units without any additional bonus densities or without other significant cost reductions or other incentives to the developer would not meet the test of (d) above since it results in a significant reduction of the realistic opportunity.

6. No agreement may provide for a voluntary developer fee without also providing for a comparable off-setting incentive.

(g) In agreements that contain a fee in return for increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage, the fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received.]

SUBCHAPTER 18. DEVELOPMENT FEES

5:92-18.1 Purpose

(a) The New Jersey Supreme Court, in *Holmdel Builder's Ass'n v. Holmdel Township*, 121 N.J. 550 (1990) (issued December 13, 1990), determined that mandatory development fees are both statutorily and constitutionally permissible. The Court further anticipated that the Council would promulgate appropriate development fee rules specifying, among other things, the standards for these development fees. The purpose of this subchapter is to provide such guidance.

(b) Except as otherwise provided to these rules, a municipality may only collect and spend development fees through participation in the Council's substantive certification process. The exceptions to this rule are set forth in N.J.A.C. 5:92-18.3 through 18.6 inclusive. These exceptions are permitted because some communities have already received substantive certification; others have achieved a judgment of repose; and still others are litigating exclusionary zoning cases. Some of these municipalities have already collected

fees. The Council has created a process for these municipalities to collect and/or retain fees. However, in the future, the ability to collect and spend development fees shall be limited to municipalities that petition for substantive certification. Urban aid municipalities are also considered a special case. These municipalities have historically housed a disproportionate share of New Jersey's poor and, as a result, may have exceedingly high fair share obligations that would be extremely difficult to address in a six year period. Therefore, the Council will allow these municipalities to collect fees outside of substantive certification provided the municipality adheres to the rules in this subchapter. The rules that follow provide basic requirements for collecting and spending development fees. They then provide additional requirements for municipalities in various categories.

5:92-18.2 Basic requirements

(a) Except as set forth in N.J.A.C. 5:92-18.3 through 18.6 inclusive, the Council shall not review or approve any development fee ordinance unless the municipality has petitioned for substantive certification.

(b) No municipality shall collect development fees unless the municipality has adopted a housing element and the Council has approved its development fee ordinance.

(c) No municipality shall spend development fees unless the Council has approved a plan for spending such fees. With the exception provided for in N.J.A.C. 5:92-18.3, municipalities that have not received substantive certification or a judgment of repose shall not spend development fees until they have received substantive certification or a judgment of repose.

5:92-18.3 Urban aid municipalities

Municipalities that qualify for state aid pursuant to P.L.1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall not collect or spend development fees without conforming to the requirements set forth in N.J.A.C. 5:92-18.2. Council approval of the municipal development fee ordinance shall allow the municipality to collect development fees for a period specified by the Council not to exceed six years, commencing with the Council's approval of the development fee ordinance. Notwithstanding any other provision of this Chapter, these municipalities shall have one year from the Council's approval of their development fee ordinance to submit a plan for spending development fees. These municipalities may collect and spend development fees without petitioning for substantive certification.

5:92-18.4 Municipalities that collected fees and received certification/repose

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have received substantive certification or a judgment of repose. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinance, provided it conforms to the procedures in N.J.A.C. 5:92-18.8, Development fee ordinance review and N.J.A.C. 5:92-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without conforming to N.J.A.C. 5:92-18.2.

(c) Notwithstanding any other provision of this chapter, the municipalities in this category shall submit plans to spend the development fees (regardless of when these fees were collected) prior to the expiration of their substantive certification periods or their judgments of repose.

5:92-18.5 Municipalities that collected fees and are proceeding toward certification/repose

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have petitioned for substantive certification or are proceeding toward a judgment of repose. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such

ordinance provided they conform to the procedures in N.J.A.C. 5:92-18.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without conforming to N.J.A.C. 5:92-18.2.

(c) Notwithstanding any other provision of this chapter, municipalities in this category shall submit plans to spend the development fees and receive approval of these plans prior to receiving substantive certification or a judgment of repose.

5:92-18.6 Municipalities that have not collected fees that have received substantive certification, a judgment of repose or are proceeding toward substantive certification or a judgment of repose

(a) This rule deals with municipalities that have not collected development fees and that have received substantive certification, a judgment of repose or are proceeding toward substantive certification or a judgment of repose. Municipalities in this category shall not collect fees until they have adopted a housing element and received the Council's approval of its development fee ordinance. No municipality in this category shall spend development fees unless the Council has approved a plan for spending such fees.

(b) Municipalities that have not received substantive certification or a judgment of repose shall submit plans for spending the development fees and receive approval for these plans prior to receiving substantive certification or a judgment of repose.

(c) Notwithstanding any provision of this chapter, municipalities in this category that have received substantive certification or a judgment of repose shall submit plans for spending the development fees prior to the expiration of the substantive certification period or period of repose.

5:92-18.7 Other municipalities that have not collected fees

(a) Except as provided for in N.J.A.C. 5:92-18.3 through 18.6 inclusive, municipalities that have not collected fees shall not collect fees until they have adopted a housing element, petitioned for substantive certification and received the Council's approval of its development fee ordinance.

(b) No municipality in this category may spend development fees unless the Council has approved a plan for spending such fees and granted substantive certification. Municipalities shall submit these plans when they petition for substantive certification. Municipalities that have petitioned for substantive certification prior to the effective date of this rule shall submit plans for spending development fees prior to receiving substantive certification.

5:92-18.8 Development fee ordinance review

(a) The Council shall not review a development fee ordinance unless the municipality has submitted:

1. A copy of an adopted housing element that complies with the Municipal Land Use Law, N.J.S.A. 40:55D et seq.;
2. A copy of the proposed ordinance designed to collect development fees;
3. A description of any changes to the municipal zoning ordinance during the previous two years;
4. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance;
5. If the municipality has received a court ordered judgment of repose, a copy of the compliance plan, implementation ordinances and information regarding the period of time encompassed by the judgment of repose;
6. A description of the types of developments that will be subject to fees;
7. A description of the amount and nature of the fees imposed;
8. A statement regarding the use of density bonuses or other devices to counterbalance development fees; and
9. If development fees have been collected prior to December 13, 1990 and the municipality wishes to retain some or all of these fees, the following information must be submitted to the Council within 90 days of the effective date of this rule:

i. A copy of the ordinance pursuant to which the fees were collected; and the proposed ordinance, if any, designed to reimpose some or all of these fees;

ii. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance used to collect the fees;

iii. The name of each developer that paid a development fee;

iv. The amount paid by each developer and the formula for the amount collected;

v. The equalized assessed value of each development at the time of collection;

vi. An accounting of all money collected and identification of the municipal account that houses all development fees;

vii. If any money collected through a development fee ordinance has been spent, an accounting of the expenditure; and

viii. Any other information the Council may require.

(b) Municipalities that collected fees prior to December 13, 1990, shall be able to retain such revenues or reimpose such fees to the extent that the fees collected by the municipality do not exceed the amount permitted under these regulations. Municipalities interested in retaining development fees collected prior to December 13, 1990 shall also conform to the procedures outlined in N.J.A.C. 5:91-15 (Procedures for Retaining Development Fees).

5:92-18.9 Content of plans to spend development fees

Plans to spend development fees shall consist of the information required by N.J.A.C. 5:92-1.4(b).

5:92-18.10 Development fees; residential

(a) Residential development fees shall be a maximum of one-half of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

(b) Where there is a zoning change that permits increased residential development, the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized as a result of the rezoning. Example: if a rezoning allowed two extra units to be constructed, the fees could equal one-half of one percent of equalized assessed value on the first unit and six percent of equalized assessed value on the two incremental units.

(c) Municipalities may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low and moderate income units provided the Council determines the municipal housing element and fair share plan provides a realistic opportunity for addressing the municipal fair share obligation. The fee may equal the cost of subsidizing the low and moderate income units that are replaced by the development fee. For example, an inclusionary development may include a 20 percent set-aside, no set-aside and a fee that is the equivalent of a 20 percent set-aside or a combination of a fee and set-aside that is the equivalent of a 20 percent set-aside.

(d) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that offer a financial incentive for paying higher fees. The financial incentive may be in the form of a tax abatement. No agreement may provide for a voluntary developer fee without also providing for a comparable off-setting incentive. All agreements are subject to Council approval.

5:92-18.11 Development fees; non-residential

(a) Non-residential development fees shall be a maximum of one percent of the equalized assessed value for non-residential development.

(b) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that offer a financial incentive for paying higher fees. Such agreements may include, but are not limited to, a tax abatement, increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage in return for an increased fee. The fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received. All agreements are subject to Council approval.

5:92-18.12 Eligible exactions, ineligible exactions and exemptions

(a) Except as provided for in N.J.A.C. 5:92-18.10, inclusionary developments shall be exempt from development fees. All other forms of new construction may be subject to development fees.

(b) Development fees may be collected when an existing structure is expanded or undergoes a more intense use. The development fee that may be collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(c) Municipalities shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density.

(d) Developments that have received preliminary or final approval or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a major change in the approval. Municipalities that collected development fees prior to December 13, 1990 may not retain any fees imposed subsequent to granting preliminary or final development approval, unless the developer seeks a major change in the approval.

(e) Municipalities may exempt specific types of development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. For example, all retail development may be exempt from fees.

(f) Municipalities may exempt specific areas of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality.

5:92-18.13 Collection of fees

Municipalities may collect up to 50 percent of the fee on any specific development at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy.

5:92-18.4 Housing trust fund

All development fees shall be deposited in a separate interest bearing housing trust fund. In establishing the housing trust fund, the municipality shall provide whatever express written authorization that may be required by the bank to permit the Council to direct the disbursement of development fees pursuant to N.J.A.C. 5:92-18.17 and 18.18.

5:92-18.15 Use of money

(a) A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, regional contribution agreements, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element. Municipalities are encouraged to use development fee revenues to attract other funds such as, but not limited to, available public subsidies and funds from private lending institutions.

(b) Funds shall not be expended to reimburse municipalities for past housing activities.

(c) At least 30 percent of the revenues collected from development fees shall be devoted to render units more affordable. Examples of such activities include, but are not limited to: downpayment assistance, low interest loans, and rental assistance. This requirement may be waived in whole or in part when the municipality demonstrates the ability to address the requirement of affordability assistance from another source.

(d) Municipalities may contract with a private or public entity to administer the implementation of any part of its housing element, including the requirement for affordability assistance.

(e) No more than 20 percent of the revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement: a rehabilitation program; a new construction program; a regional contribution agreement; a housing element; and an affirmative marketing pro-

gram. Administrative funds may be used for: income qualification of households; monitoring the turnover of sale and rental units; and compliance with Council monitoring requirements. Development fees shall not be used to defray the costs of existing staff.

5:92-18.16 Monitoring

Municipalities that collect development fees shall complete and return all monitoring forms related to the collection of fees, expenditure of revenues and implementation of the plan certified by the Council or approved by the court. Quarterly financial reports, and annual program implementation and auditing reports, shall be completed on forms designed by the Council.

5:92-18.17 Penalties

(a) The municipality's ability to collect fees and the Council's approval of an ordinance and spending plan shall be conditioned on compliance with all requirements of this subchapter. Occurrence of the following may result in the Council taking an action pursuant to (b) below:

1. Failure to submit a plan pursuant to N.J.A.C. 5:92-1.4(b) within the time limits imposed by the Council;
2. Failure to meet deadlines for information required by the Council in its review of a housing element, development fee ordinance, or plan for spending fees;
3. Failure to proceed through the Council's administrative process toward substantive certification in a timely manner;
4. Failure to address the Council's conditions for approval of a plan to spend development fees within the deadlines imposed by the Council;
5. Failure to address the Council's conditions for substantive certification within deadlines imposed by the Council;
6. Failure to submit accurate monitoring reports within the time limits imposed by the Council;
7. Failure to implement the plan to spend development fees within the time limits imposed by the Council, or within reasonable extensions granted by the Council;
8. Expenditure of development fees on activities not permitted by the Council;
9. Revocation of certification; or
10. Other good cause demonstrating that the revenues are not being used for the intended purpose.

(b) Consistent with this rule, any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event that any of the conditions described in N.J.A.C. 5:92-18.17(a) occur, the Council shall be authorized, on behalf of the municipality, to direct the manner in which all development fees collected pursuant to that ordinance shall be expended. Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of the Council upon the municipal clerk's receipt of written notification from the Council that such a condition has occurred. In furtherance of the foregoing, any such municipality shall, in establishing a bank account pursuant to N.J.A.C. 5:92-18.14, ensure that the municipality has provided whatever express written authorization may be required by the bank to permit the Council to direct the disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by the Council to the municipality's clerk.

(c) The Council may, after hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., revoke development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such municipality to collect development fees for the remaining period of the substantive certification period or judgment of repose. With regard to municipalities that qualify for state aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) the Council shall not approve any ordinance permitting such municipalities to collect development fees for the remainder of the approval period (of up to six years) following a Council determination that they failed to comply with this subchapter.

(d) Neither loss of development fees, nor loss of the municipality's ability to collect development fees shall alter the municipality's

responsibilities pursuant to substantive certification or a court ordered judgment of repose.

5:92-18.18 Designation of entities to receive development fees

(a) The Council shall solicit plans from public sector entities and non-profit agencies to create or rehabilitate affordable housing.

(b) The Council shall designate such agencies to receive revenues from development fees when the Council takes an action pursuant to N.J.A.C. 5:92-18.17.

(c) To the extent practicable, when the Council takes an action pursuant to N.J.A.C. 5:92-18.17, the Council shall assign development fee revenues to projects planned within the municipality that generated the revenues or within close proximity to the municipality (such as within the county or region).

5:92-18.19 Ongoing collection of fees

(a) Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and have received Council approval to collect development fees, shall not collect such fees for more than the period specified by the Council, not to exceed a six year period unless the municipality has refiled an adopted housing element with the Council and received the Council's approval of its development fee ordinance. These municipalities shall submit a plan for spending development fees within one year of the Council's approval of their development fee ordinance. Municipalities that fail to renew their ability to collect development fees within the six year period may resume the collection of development fees by complying with the requirements of this section.

(b) Except as provided for in (a) above, the ability for all other municipalities to collect development fees shall expire with their substantive certification or judgment of repose unless the municipality has filed an adopted housing element with the Council; petitioned for substantive certification; and received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to collect development fees prior to the expiration of their substantive certification or judgment of repose may resume the collection of development fees by complying with the requirements of this section.

5:92-18.20 Severability

If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining parts of this subchapter. If any part of this subchapter is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Business Services

Appropriation of Free Balance and Restricted Appropriations; Method of Determining Tuition Rates for Regular Public Schools, County Vocational Schools and County Special Services Schools; Excess Surplus Calculation

Proposed Amendments: N.J.A.C. 6:20-2.13, 2A.11 and 3.1

Proposed New Rules: N.J.A.C. 6:20-3.3, 3.4 and 5.8

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-14, 18A:4-15, 18A:7A-14, 18A:7D-1, 18A:7D-3, 18A:7D-4, 18A:7D-6, 18A:7D-16, 18A:7D-28, 18A:7D-32, 18A:38-19, 18A:46-21, 18A:46-31 and 18A:54-20.1.

Proposal Number: PRN 1991-456.

Submit written comments by October 16, 1991 to:

Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The Quality Education Act of 1990 (QEA), P.L. 1990, c.52, and its subsequent amendments, P.L. 1991, c.62, dramatically altered the face of school funding in New Jersey. Every child in New Jersey now has an opportunity to receive a thorough and efficient education, regardless of where he or she lives. In addition, the QEA amendments provide for lower local property taxes for most communities.

The Department of Education will make sure that all public funds dedicated for education will be spent in an efficient and effective manner to provide equal educational opportunities for all of New Jersey's pupils. Last year the State Board of Education adopted rules for a new double entry accounting system consistent with generally accepted accounting principles (GAAP) to be used by all New Jersey public schools. Together QEA and GAAP will establish the necessary accountability for public education's financial resources so that New Jersey's pupils and taxpayers get the most efficient world-class education they both deserve.

The QEA necessitated changes in N.J.A.C. 6:20, Business Services. The first set of amendments and new rules were published in the June 3, 1991 issue of the New Jersey Register (see 23 N.J.R. 1733(a)) and were adopted in the September 3, 1991 New Jersey Register. The amendments and new rules contained in this proposal are intended to establish the requisite procedures and to bring N.J.A.C. 6:20 into conformity with the QEA as amended.

A review of the amendments and new rules follows:

N.J.A.C. 6:20-2.13 and 2A.11 Appropriation of free balance and restricted appropriations

These new rules are proposed for both subchapter 2, Bookkeeping and Accounting in Local School Districts, and subchapter 2A, Double Entry Bookkeeping and GAAP Accounting in Local School Districts. These new rules will establish the requirement that appropriations be used exclusively for their intended purpose when associated with budget gap waivers, level II remedial plans, level III corrective action plans, educational improvement plans and "T&E" directives.

These rules also establish the associated administrative procedures to establish and subsequently appropriate reservations of fund balance when appropriations are not used for their intended purpose. These reservations of fund balance must be appropriated in the next original annual budget which is certified for taxes.

These rules will make sure that funds are used for the intended purpose of benefiting children by providing additional educational opportunities and programs. These rules also will provide tax accountability and will adjust the net budget used for budget caps which was previously inflated by these appropriations.

N.J.A.C. 6:20-3.1 Methods of determining tuition rates for regular public schools

These amendments are proposed in order to determine tuition rates for public schools on a basis consistent with the QEA and to improve upon the present method. Under the QEA, State foundation aid is weighted differently for pre-school/kindergarten, grades one through five, grades six through eight and grades nine through 12; and additional cost factors are used for special education classes by handicap classification. The QEA also requires the Department to conduct cost studies every two years in regard to the weights and additional cost factors for these categories to determine if revisions are needed, and accordingly the annual school budget under QEA collects select data in the same configuration. Most State aid categories including foundation aid for capital outlay will be paid on a resident enrollment basis; however, for certain categories, such as at-risk and bilingual, State aid will be paid to the receiving district. To accommodate these intricate changes, the process by which the Commissioner certifies the actual cost per pupil needs to be revised to comport with the grade and program categories, State-aid distribution, and other aspects of the QEA.

In conducting research for these revisions, it was determined that on a Statewide basis percentage variances were immaterial between the existing three ratio methods (number of teachers, average daily enrollment and square footage) which are used for cost allocations amongst programs, and that applying only the method based on average daily

enrollment resulted in comparable tuition rates. The proposed amendments will both streamline the process and ensure technical accuracy.

As in the past a receiving district elects to either prepare and submit its own calculation of tuition rates or have the Division of Finance calculate the tuition rates for them. The first method will now allow a district to select by line item an equitable basis for allocating costs amongst tuition categories rather than the present methods stipulated by the Department when actual costs cannot be readily ascertained. The latter method will use actual cost figures available in the audit for certain items, the cost of select items submitted by the receiving district which are readily identifiable with grade or program categories, and the remaining cost items allocated amongst grade and program categories as appropriate on a pro rata method based on average daily enrollment (thereby eliminating the current annual practice of collecting allocated data on the number of teachers and square footage from all schools).

N.J.A.C. 6:20-3.3 and 3.4 Method of determining tuition rates for county vocational schools and county special services schools

These new rules for county vocational and county special services schools are proposed to fulfill the requirement of the QEA that the Commissioner prescribe and the State Board approve rules to determine maximum tuition rates for each vocational program classification (N.J.S.A. 18A:54-20.1) and each special education category (N.J.S.A. 18A:46-31) based on the actual cost per pupil for each. The intent of the law was to provide county vocational and special services schools a mechanism to recover costs which are in excess of their State aid, county contribution, non-resident fees and other miscellaneous sources of income from those local school districts whose students are enrolled in such county school programs. The proposed rules would enable these county schools to charge tuition to cover their net costs plus maintain a reasonable surplus which is consistent with surplus provisions of the QEA.

N.J.A.C. 6:20-5.8 Excess surplus calculation

These new rules establish the method by which the Division of Finance will calculate excess surplus which, beginning in 1992-93, will be deducted from a district's State foundation aid as required by N.J.S.A. 18A:7D-4. The method elaborates on the terminology and mechanics contained in the statute.

Social Impact

The amendments and new rules will help ensure that the QEA is implemented in an efficient and effective manner. These amendments and new rules are intended to supplement and improve upon the existing rules for certain essential activities which support the educational process. They provide the foundation for a financial management system which will ensure accountability and the use of all financial resources in a manner that provides additional world-class educational opportunities for all of New Jersey's pupils.

These amendments and new rules along with existing rules help protect the public interest by assuring that educational support activities will be conducted prudently and in accordance with law. Experience gained through auditing and monitoring has shown that these rules resolve problems by providing accountability, have a positive impact on educational programs and on students and benefit taxpayers by clearly demonstrating the use of public education funds and providing the ability to detect and correct the inappropriate or inefficient use of such funds.

Economic Impact

These amendments and new rules along with existing rules provide an orderly and efficient method for the conduct of essential district board of education support activities. These rules provide a financial management system which will prevent waste and mismanagement and safeguard the assets of each district board of education. These amendments and new rules along with the existing rules will provide valuable financial information on school spending patterns and trends for local, State and Federal policymakers. The amendments and new rules will assure compliance with the provisions of the QEA and together with the existing rules protect the public investment in education which includes the additional \$758 million in State aid provided by this Act.

There may be short-term costs for district boards of education which may have to modify existing computer software, hire consultants or send personnel for training. However, such costs are necessitated by the legislation itself and not by these proposed amendments and new rules.

Regulatory Flexibility Statement

The adoption of these amendments and new rules will impose no reporting, recording or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All requirements of these amendments and new rules impact solely upon New Jersey public school districts and upon schools operated by the New Jersey Department of Education.

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

6:20-2.13 Appropriation of free balance and restricted appropriations

(a) (No change.)

[(b) A district board of education, upon the advice of the chief school administrator, may request an exception from the Commissioner, to the provision of (a) above.]

(b) A district board of education shall use appropriations exclusively for the specific purpose intended when associated with the following:

1. Approvals by the legal voters or the board of school estimate, as applicable, and/or the Commissioner to exceed the maximum permissible net budget (commonly referred to as a budget cap waiver) pursuant to N.J.S.A. 18A:7D-28;

2. Improvement (remedial) or corrective action plans approved by the Commissioner for districts in level II or level III monitoring pursuant to N.J.S.A. 18A:7D-14 or educational improvement plans approved by the Commissioner for special needs districts pursuant to N.J.S.A. 18A:7D-32; and

3. Written directives of the Commissioner or his or her authorized representatives for specific purposes deemed necessary for a thorough and efficient system of education in accordance with N.J.S.A. 18A:7A-1 et seq. and the New Jersey Constitution.

(c) Budgeted appropriations of special needs districts and other districts subject to the provisions of this section shall not be modified after the approval to advertise without the prior written permission of the Commissioner.

(d) A reservation of fund balance shall be established by district board of education resolution immediately upon the determination that appropriations subject to the provisions of (b) above will not be utilized or were not utilized, in whole or in part, for the intended purposes.

1. The reservation of fund balance may be established by the reduction of budgeted appropriations, from existing free fund balances or a combination of the two.

2. The reservation of fund balance shall be appropriated in the next original annual budget which is certified for taxes.

i. Fund balances reserved prior to the approval of the next fiscal year's budget by the Commissioner shall be appropriated in that budget and fund balances reserved after such approval shall be reserved and appropriated in the subsequent original annual budget which is certified for taxes.

ii. The annual independent audit shall contain a note to the financial statements indicating the amount of reserved fund balance reflected in the financial statements and the fiscal year in which it will be appropriated.

(e) A district board of education, upon the advice of the chief school administrator, may request an exception from the Commissioner to the provisions of this section if it can document that the imposition of such provisions would cause severe and immediate hardship or prevent it from providing a thorough and efficient system of education.

6:20-2A.11 Appropriation of free balance and restricted appropriations

(a) (No change.)

[(b) A district board of education, upon the advice of the chief school administrator, may request an exception from the Commissioner, to the provision of (a) above.]

(b) A district board of education shall use appropriations exclusively for the specific purpose intended when associated with the following:

1. Approvals by the legal voters or the board of school estimate, as applicable, and/or the Commissioner to exceed the maximum permissible net budget (commonly referred to as a budget cap waiver) pursuant to N.J.S.A. 18A:7D-28;

2. Improvement (remedial) or corrective action plans approved by the Commissioner for districts in level II or level III monitoring pursuant to N.J.S.A. 18A:7D-14 or educational improvement plans approved by the Commissioner for special needs districts pursuant to N.J.S.A. 18A:7A-32; and

3. Written directives of the Commissioner or his or her authorized representatives for specific purposes deemed necessary for a thorough and efficient system of education in accordance with N.J.S.A. 18A:7A-1 et seq. and the New Jersey Constitution.

(c) Budgeted appropriations of special needs districts and other districts subject to the provisions of this section shall not be modified after the approval to advertise without the prior written permission of the Commissioner.

(d) A reservation of fund balance shall be established by district board of education resolution immediately upon the determination that appropriations subject to the provisions of (b) above will not be utilized or were not utilized, in whole or in part, for the intended purposes.

1. The reservation of fund balance may be established by the reduction of budgeted appropriations, from existing free fund balances or a combination of the two.

2. The reservation of fund balance shall be appropriated in the next original annual budget which is certified for taxes.

i. Fund balances reserved prior to the approval of the next fiscal year's budget by the Commissioner shall be appropriated in that budget and fund balances reserved after such approval shall be reserved and appropriated in the subsequent original annual budget which is certified for taxes.

ii. The annual independent audit shall contain a note to the financial statements indicating the amount of reserved fund balance reflected in the financial statements and the fiscal year in which it will be appropriated.

(e) A district board of education, upon the advice of the chief school administrator, may request an exception from the Commissioner, to the provisions of this section if it can document that the imposition of such provisions would cause severe and immediate hardship or prevent it from providing a thorough and efficient system of education.

6:20-3.1 Method of determining tuition rates for regular public schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 and 18A:46-21 shall mean the local cost per pupil in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7D-6 and 18A:7D-16 that is, [four year high school, senior high school, junior high school, elementary school,] regular education classes: preschool/Kindergarten, grades one through five, grades six through eight, and grades nine through 12; and special education classes by handicap classification.

1. All expenditures for each purpose except Federal and State special project expenditures and those specifically excluded in (b)5 below shall be included, regardless of the sources of revenue;].

2. "Average daily enrollment" for the purpose of determining the "actual cost per pupil," shall be the sum of the days present and absent of all pupils enrolled in the register or registers of the program for which the rate is being determined during the year divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

3. The "actual cost per pupil" for all grade and program categories shall be reduced as appropriate by State aid for programs for at-risk pupils and bilingual pupils received pursuant to N.J.S.A. 18A:7D-20 and 21, respectively, for both resident and nonresident pupils and State aid for minimum teacher salaries received pursuant to N.J.S.A. 18A:29-5. Such reductions shall be made in accordance

with the option selected in (b) below for certification of the "actual cost per pupil" for each tuition category.

(b) The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each receiving district board of education based upon either:

1. [An optional] A report prepared and submitted annually by the receiving district board of education indicating the actual amounts [expended] of expenditures and adjustments whenever practicable or amounts equitably allocated and supported by documentation for each applicable item in the grade/program category for which the tuition rate is required, according to the prescribed bookkeeping and accounting system; or

2. A report prepared annually by the Commissioner for each receiving district board of education [in accordance with (d) below]. This report shall determine the "actual cost per pupil" for each tuition category utilizing the following:

i. Expenditures reflected in the receiving district's annual independent audit;

ii. Supplemental data for average daily enrollment and items of expenditure detailed in (d)2 below submitted by category by the receiving district on a form prescribed by the Commissioner;

iii. Data contained on the receiving district's application for State aid for minimum teachers' salaries; and

iv. Criteria contained in (d) below.

(c) Once having determined to annually submit the [optional] report [annually] pursuant to (b)1 above to the Commissioner [pursuant to (b)1 above], a receiving district [may not have the Commissioner certify the "actual cost per pupil" pursuant to (b)2 above without the approval of the Commissioner. A receiving district requesting a change from the optional report] must submit a written request to the Commissioner in order to change to the certification method in (b)2 above. The request must indicate reason(s) for the change and shall be subject to the Commissioner's approval.

(d) The share of each item of expenditure for each grade/program category on the report in (b)2 above shall be determined on a pro rata or actual basis [in accordance with the following ratios] as follows:

1. Administration: Ratio of number of teachers in each program to total number of teachers in the system.

2. Instruction:

i. Principal's salaries: Ratio of number of teachers in each program to total number of teachers in the system;

ii. Supervisors of instruction: Ratio of number of teachers in each program to total number of teachers in the system;

iii. Teachers' salaries shall be on an actual basis;

iv. Other instructional staff, secretarial and clerical assistants, and other salaries for instruction: Ratio of average daily enrollment in each program to average daily enrollment for all programs;

v. Textbooks, school library and audio-visual materials, teaching supplies, and other expenses: Ratio of average daily enrollment in each program to average daily enrollment for all programs.

3. Attendance and health services: Ratio of average daily enrollment in each program to average daily enrollment for all programs.

4. Transportation curricular activities: Ratio of average daily enrollment in each program to average daily enrollment for all programs. Transportation salaries and other expenses shall be excluded.

5. Operation, salaries and all other costs: Ratio of square feet of floor space used by each program to total floor space used for all programs. Such floor space shall not include offices, boiler rooms, corridors or other rooms not used by pupils. Whenever a room shall be used for two or more programs, such square footage shall be prorated as to time devoted to each program.

6. Maintenance, salaries and all other costs: Ratio of square feet of floor space used by each program to total floor space used for all programs.

7. Fixed charges: Ratio of average daily enrollment in each program to average daily enrollment for all programs. Rental on a site or school building acquired by a lease purchase agreement pursuant to N.J.S.A. 18A:20-4.2: Only the portion of the rental which is interest shall be included based upon the ratio of square feet of

floor space used by each program for which such site or school building is used to total floor space used for all programs.

8. Tuition shall be excluded.

9. Food services, salaries and expenses: Ratio of average daily enrollment in each program to average daily enrollment for all programs.

10. Student body activities, salaries and expenses shall be on an actual basis.

11. Community services shall be excluded.]

1. The actual expenditures for each category as reflected in the receiving district's annual independent audit will be used for the following items:

i. Teachers' salaries for regular education classes; and

ii. Direct instructional expenditures for salaries, equipment and other expenses for special education classes.

2. Expenditures submitted by category on the supplemental data report and determined on either an actual basis or an equitable basis of allocation, such as square footage or average daily enrollment, selected by the receiving district and supported by documentation will be used for the following items:

i. Rental of land and buildings;

ii. Interest on lease purchase agreements;

iii. Student body activity expenditures of the general fund;

iv. Salaries and other expenses for local special projects;

v. Capital outlay; and

vi. Building use charges as defined in (d)6 and 7 below.

3. Expenditures for regular education class categories as reflected in the receiving district's annual independent audit will be allocated in proportion to the average daily enrollment in the grade categories for regular education classes for the following items:

i. Other salaries for instruction such as teaching assistants and aides as well as others providing or assisting directly in the instructional program;

ii. Textbooks;

iii. School library and audio/visual materials;

iv. Teaching supplies;

v. Purchased professional educational services;

vi. Purchased technical educational services;

vii. Equipment other than that specifically designated for special education or bilingual classes;

viii. Other direct expenses of regular education classes; and

ix. Direct instructional expenditures for salaries and other expenses for basic skills/remedial programs.

4. Expenditures as reflected in the receiving district's annual independent audit will be allocated in proportion to the average daily enrollment in each category for all categories listed in (a) above for the following items:

i. System-wide administration;

ii. Principals' and assistant principals' salaries;

iii. Salaries of supervisors of instruction;

iv. Salaries of other instructional staff for guidance counseling, psychological services, child study team services, school libraries and other professional services which support the instructional program;

v. Salaries of secretaries and clerical personnel which support the instructional program;

vi. Attendance and health;

vii. Contracted transportation or transportation provided by district owned vehicles for curricular activities such as field trips, athletic trips and other trips which are part of the instructional program;

viii. Operation and maintenance of plant expenditures except those for equipment;

ix. Fixed charges: Employee retirement and social security contributions except T.P.A.F. contributions, insurance and judgments including unemployment compensation (U.C.C.), interest on current loans, and other fixed charges except rental of land and buildings and interest on lease purchase agreements which are determined pursuant to (d)2 above and principal on lease purchase agreements and tuition which are excluded pursuant to (d)5 below;

x. Food service expenditures of the general fund; and

xi. Direct instructional expenditures for salaries, equipment and other expenses for bilingual education programs.

5. Expenditures will be excluded from the actual cost per pupil for tuition purposes for the following items:

i. Transportation to and from school which is paid by the resident district;

ii. Employee retirement and social security contributions for T.P.A.F. members which are fully funded by the State;

iii. Principal on lease purchase agreements;

iv. Tuition;

v. Community services;

vi. Supplemental instruction, speech instruction and home instruction pursuant to N.J.S.A. 18A:7D-16 and which are funded for both resident and nonresident pupils;

vii. Resource room which is determined pursuant to (d)9 below and permitted as a separate charge over and above tuition for regular education classes; and

viii. Accredited adult education programs and nonaccredited adult and evening programs.

[12].6. Building use charge is determined as follows: [Ratio of square feet of floor space used by each program to total floor space used for all programs multiplied by the amount which remains after the following calculation:]

i. (No change.)

ii. Multiply the debt service interest charges paid on debt for the buildings in which the program is located by the ratio of State support obtained in [(c)12i] (d)6i above;

iii. Subtract the amount obtained in [(c)12ii] (d)6ii above from the debt service interest charge paid on debt for the buildings in which the program is located[.];

iv. Distribute the amount obtained in (d)6iii above in accordance with (d)2 above.

[13].7. Special building use charge is determined as follows:

i. Whenever a receiving district receives more than 50 percent of the average daily enrollment in a program for which a tuition rate is being determined, except for special education programs, the receiving district may include in accordance with (d)2 above the [actual] amount expended for principal and interest on major repairs and major renewals of furniture, equipment and apparatus for the building in which the program is located, provided that:

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

ii. Receiving districts for which this section is applicable may include in accordance with (d)2 above the entire rental on a site or school building acquired by a lease purchase agreement pursuant to N.J.S.A. 18A:20-4.2 provided that:

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

8. The actual and prorated expenditures for all grade/program categories shall be adjusted to determine the "actual cost per pupil" for tuition purposes as follows:

i. State aid for programs for at-risk pupils received pursuant to N.J.S.A. 18A:7D-20 for both resident and nonresident pupils shall be deducted in proportion to the average daily enrollment for each category weighted on a basis consistent with N.J.S.A. 18A:7D-20. For this purpose the average weight for the grade categories in N.J.S.A. 18A:7D-20 shall be used to determine the weighted average daily enrollments for special education classes;

ii. State aid for programs for bilingual pupils received pursuant to N.J.S.A. 18A:7D-21 for both resident and nonresident pupils shall be deducted in proportion to the average daily enrollment for each category; and

iii. State aid for minimum teacher salaries received pursuant to N.J.S.A. 18A:29-5 shall be deducted for teachers on an actual basis and for other teaching staff members in proportion to the average daily enrollment for each category.

9. In addition to the tuition charged for each grade category, receiving district boards of education may charge for pupils receiving services in a resource room an additional amount up to the actual direct instructional cost per pupil for such services calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 100-1 issued by and available from the Division of

Finance, State Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625).

(e) A tentative tuition charge shall be established for budgetary purposes by written contractual agreement between the receiving district board of education and the sending district board of education and such tentative charge shall equal an amount not in excess of the receiving district's estimated cost per pupil for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the estimated average daily enrollment of pupils expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the [commissioner] Commissioner.

1. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, except for a contractual agreement for a pupil enrolled in a special education class, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the county superintendent. Such contractual agreement shall require the sending district board of education to pay [ten] 10 percent of the tentative tuition charge no later than [an agreed upon date] the first of each month from September through June of the contract year. The contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, shall require that all adjustments which shall be made because of a difference in cost or in the number of pupils sent shall only be made during the third school year following the contract year. All contractual agreements shall contain a payment schedule for all adjustments which may be necessary.

2. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of pupils in each tuition category expected to be sent during the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per pupil in each tuition category for the ensuing school year and the tentative tuition charge no later than January [1] 15 preceding the beginning of the ensuing school year. The receiving district board of education shall submit to the sending district board of education a copy of its calculations to determine the estimated cost per pupil in each tuition category for the ensuing school year no later than January [1] 15 preceding the beginning of the ensuing school year. Such calculations shall be on a form prepared by the [commissioner] Commissioner.

3. If the [commissioner] Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, was greater than the actual cost per pupil during the school year multiplied by the actual average daily enrollment received, the receiving district board of education shall return to the sending district board of education in the third school year[,] following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. Such adjustment for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year following the contract year.

4. If the [commissioner] Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, was less than the actual cost per pupil during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the third school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year[,] following the contract year. The county superintendent of schools of the county in which the sending district

board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the third school year following the school year for which the tentative charge was paid would cause a hardship.

(f) The [commissioner] Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to [these] the rules in this section. The [commissioner] Commissioner shall also prepare the contract forms and the forms to be used by the receiving district board of education to establish the estimated cost per pupil for each tuition category for the ensuing school year.

(g) In any year in which the receiving district board of education can prove to the satisfaction of the [commissioner] Commissioner that the maintenance charge for the use of the school facilities is not adequate, the [commissioner] Commissioner may approve the additional charge for the use of such school facilities.

6:20-3.3 [(Reserved)] Method of determining tuition rates for county vocational schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-21 and 18A:54-20.1 shall mean the adjusted net cost per pupil in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with N.J.S.A. 18A:7D-14 and 18A:7D-16.

1. Tuition rates shall be determined for the following categories:

i. Regular vocational classes:

- (1) Low cost;
- (2) Moderate cost; and
- (3) High cost;

ii. Special vocational classes:

- (1) Low cost;
- (2) Moderate cost; and
- (3) High cost; and

iii. Special education classes by handicap classification.

2. All expenditures for each purpose except Federal and State grant project expenditures shall be included.

3. "Average daily enrollment" for the purpose of determining the "actual cost per pupil" shall be the sum of the days present and absent of all pupils enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

4. The "actual cost per pupil" for all tuition categories shall be adjusted to reflect net costs plus a reasonable surplus.

(b) The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each county vocational school district board of education utilizing the following:

1. Revenues, expenditures and fund balances reflected in the county vocational school's annual independent audit;

2. Average daily enrollment data by category submitted by the county vocational school on a form prescribed by the Commissioner; and

3. Criteria contained in (c) below.

(c) The share of each item of expenditure for each tuition category shall be determined on a pro rata or actual basis as follows:

1. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment, and other expenses for the tuition categories listed in (a)1 above shall be allocated on an actual basis;

2. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for basic skills/remedial programs shall be allocated amongst regular vocational class categories listed in (a)1i above in proportion to the average daily enrollment for such categories;

3. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for other unrestricted instructional programs indirectly related to the regular and special vocational classes listed in (a)1i and ii above shall be allocated amongst those categories in proportion to the average daily enrollment for such categories;

4. Expenditures indirectly related to all tuition categories listed in (a)1 above shall be allocated amongst all categories in proportion to the average daily enrollment for such categories for the following items:

i. System-wide administration;

ii. Undistributed instructional support services;

iii. Bilingual education programs;

iv. Attendance and health;

v. Transportation;

vi. Operation and maintenance of plant;

vii. Fixed charges except for retirement and social security contributions for T.P.A.F. members which are fully funded by the State;

viii. Food service expenditures of the general fund;

ix. Student body activity expenditures of the general fund;

x. Community services; and

xi. Capital outlay.

(d) The total direct and indirect expenditures determined for each tuition category in (c) above shall be adjusted to reflect the net cost by deducting in proportion to the average daily enrollment for each tuition category the amount obtained from the sum of all State aid (except State grants), county appropriations pursuant to N.J.S.A. 18A:54-29.2, non-resident fees pursuant to N.J.S.A. 18A:54-20.1 and miscellaneous income less expenditures for supplementary, speech, and home instruction and post-secondary programs for which no tuition may be charged pursuant to N.J.S.A. 18A:7D-16 and 18A:54-20.1, respectively, and expenditures for resource room, special schools and evening schools.

1. Whenever funds have been appropriated by the county, the county vocational school district may charge the non-resident fee mentioned in (d) above in addition to tuition for any pupils who are not residents of the county. The fee per non-resident pupil shall not exceed the amount obtained by dividing the county appropriation by the number of pupils who are residents of the county pursuant to N.J.S.A. 18A:54-20.1.

(e) The net cost determined for each tuition category in (d) above shall be adjusted as appropriate to include in the certified maximum tuition rate for each category an amount which will permit the county vocational school district to maintain at its discretion for the year the tuition rate applies an ending general fund free balance not to exceed 7.5 percent of the district's net budget as defined in N.J.S.A. 18A:7D-3 which is consistent with the excess surplus provision of N.J.S.A. 18A:7D-4.

1. If the district's ending general fund free balance is less than 7.5 percent of its net budget for the year the tuition rate applies, the difference will be allocated amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the district's ending general fund free balance is equal to or greater than 7.5 percent of its net budget for the year the tuition rate applies, no amount shall be added to the net cost of any tuition category; and if such balance is in excess of 7.5 percent of the subsequent year's net budget, the district may be subject to a reduction of foundation aid due to excess surplus pursuant to N.J.A.C. 6:20-5.8.

(f) The tuition for each program category shall be at the same rate per pupil for each sending district whether within or without the county pursuant to N.J.S.A. 18A:54-20.1.

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the non-resident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made in accordance with N.J.A.C. 6:20-3.1(e) except that the tentative tuition rates shall be based on the county vocational school district's estimated adjusted net cost per pupil consistent with the calculation in (c), (d) and (e) above.

(h) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the county vocational school district boards of education to establish the estimated adjusted net cost per pupil for each tuition category (tentative tuition rates) for the ensuing school year.

6:20-3.4 [(Reserved)] Method of determining tuition rates for county special services schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-31 shall mean the adjusted net cost per pupil in average daily enrollment for special education classes, based upon audited expenditures for that year for each handicap classification contained in N.J.S.A. 18A:7D-16.

1. All expenditures for each purpose except Federal and State grant project expenditures shall be included.

2. "Average daily enrollment" for the purpose of determining the "actual cost per pupil" shall be the sum of the days present and absent of all pupils enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

3. The "actual cost per pupil" for all tuition categories shall be adjusted to reflect net costs plus a reasonable surplus.

(b) The Commissioner shall certify the "actual cost per pupil" for a given year for each special education class by handicap classification for each county special services school district board of education utilizing the following:

1. Revenues, expenditures and fund balances reflected in the county special services school's annual independent audit;

2. Average daily enrollment data by category submitted by the county special services school on a form prescribed by the Commissioner; and

3. Criteria contained in (c) below.

(c) The share of each item of expenditure for each tuition category (special education classes by handicap classification) shall be determined on a pro rata or actual basis as follows:

1. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for each tuition category shall be allocated on an actual basis;

2. Expenditures indirectly related to all tuition categories shall be allocated amongst all categories in proportion to the average daily enrollment for such categories for the following items:

i. System-wide administration;

ii. Undistributed instructional support services;

iii. Bilingual education programs;

iv. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for other unrestricted instructional programs indirectly related to the special education classes;

v. Attendance and health;

vi. Transportation;

vii. Operation and maintenance of plant;

viii. Fixed charges except for retirement and social security contributions for T.P.A.F. members which are fully funded by the State;

ix. Food service expenditures of the general fund;

x. Student body activity expenditures of the general fund;

xi. Community services; and

xii. Capital outlay.

(d) The total direct and indirect expenditures determined for each tuition category in (c) above shall be adjusted to reflect the net cost by deducting in proportion to the average daily enrollment for each tuition category the amount obtained from the sum of all State aid (except State grants), county appropriations pursuant to N.J.S.A. 18A:46-41, non-resident fees pursuant to N.J.S.A. 18A:46-31 and miscellaneous income less expenditures for supplementary, speech and home instruction for which no tuition may be charged pursuant to N.J.S.A. 18A:7D-16 and expenditures for resource room.

1. Whenever funds have been appropriated by the county, the county special services school district may charge the non-resident fee mentioned in (d) above in addition to tuition for any pupils who are not residents of the county. The fee per non-resident pupil shall not exceed the amount obtained by dividing the county appropriation by the number of pupils who are residents of the county pursuant to N.J.S.A. 18A:46-31.

(e) The net cost determined for each tuition category in (d) above shall be adjusted as appropriate to include in the certified maximum

tuition rate for each category an amount which will permit the county special services school district to maintain at its discretion for the year the tuition rate applies on ending general fund free balance not to exceed 7.5 percent of the district's net budget as defined in N.J.S.A. 18A:7D-3 which is consistent with the excess surplus provision of N.J.S.A. 18A:7D-4.

1. If the district's ending general fund free balance is less than 7.5 percent of its net budget for the year the tuition rate applies, the difference will be allocated amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the district's ending general fund free balance is equal to or greater than 7.5 percent of its net budget for the year the tuition rate applies, no amount shall be added to the net cost of any tuition category; and if such balance is in excess 7.5 percent of the subsequent year's net budget, the district may be subject to a reduction of foundation aid due to excess surplus pursuant to N.J.A.C. 6:20-5.8.

(f) The tuition for each category of special education class shall be at the same rate per pupil for each sending district whether within or without the county pursuant to N.J.S.A. 18A:46-31.

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the non-resident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made in accordance with N.J.A.C. 6:20-3.1(e) except that the tentative tuition rates shall be based on the county special services school district's estimated adjusted net cost per pupil consistent with the calculation in (c), (d) and (e) above.

(h) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the county special services school district board of education to establish the estimated adjusted net cost per pupil for each tuition category (tentative tuition rates) for the ensuing school year.

(i) A new county special services school district board of education shall use the method of determining tentative tuition rates contained in N.J.A.C. 6:20-3.2.

6:20-5.8 Excess surplus calculation

(a) Beginning in fiscal year 1992-93, a district board of education without an approval surplus reduction plan shall have its foundation aid reduced pursuant to N.J.S.A. 18A:7D-4 by the amount of excess surplus, equal to any beginning general fund free balance for the prebudget year which exceeds 7.5 percent of the district's net budget for the prebudget year, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The terms, net budget and prebudget year, are defined in N.J.S.A. 18A:7D-3. The Division of Finance shall calculate excess surplus as follows:

1. For the purpose of this calculation the beginning general fund free balance for the prebudget year shall equal the ending general fund free balance for the fiscal year prior to the prebudget year as reflected in the district board of education's annual independent audit less any portion of that free balance appropriated in the prebudget year in the budget certified for taxes;

i. The general fund free balance shall be exclusive of funds held in the capital reserve account; and

ii. The general fund free balance shall be exclusive of reserves not available for expenditure or segregated legally for a specific future use;

2. For district boards of education which receive Federal impact aid, the beginning general fund free balance obtained in (a)1 above shall be multiplied by the inverse percentage of impact aid to all general fund revenues for the prebudget year in order to determine the portion of beginning general fund free balance not associated with impact aid; and

3. Any beginning general fund free balance of the prebudget year calculated in (a)1 or 2 above, as applicable, which exceeds 7.5 percent of the net budget for the prebudget year shall be considered excess surplus and deducted from foundation aid for the budget year.

(b) A district board of education that has an approved surplus reduction plan in accordance with the provisions of N.J.S.A. 18A:7D-29 shall have its foundation aid reduced pursuant to N.J.S.A. 18A:7D-4 in a manner consistent with the calculation in (a) above except as follows:

1. In fiscal year 1992-93, excess surplus shall equal any beginning general fund free balance for the budget year which exceeds the percentage of the district's net budget for the prebudget year as stipulated in the approved surplus reduction plan, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The associated reduction in foundation aid shall be made in fiscal year 1993-94 because the beginning general fund free balance for the budget year will not be available until after the calculation of foundation aid for fiscal year 1992-93 and the approval of the budget for that year.

2. In fiscal year 1993-94, excess surplus shall equal any beginning general fund free balance for the budget year which exceeds 7.5 percent of the district's net budget for the prebudget year, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The associated reduction in foundation aid shall be made in fiscal year 1994-95 for the same reason stated in (b)1 above.

3. Beginning in fiscal year 1994-95, excess surplus shall be calculated and foundation aid reduced for all districts in strict accordance with (a) above.

(c) District boards of education which do not receive foundation aid are not subject to the excess surplus deduction.

(d) District boards of education will be notified of the amount of excess surplus and the corresponding reduction in foundation aid as part of the annual State aid notice.

HEALTH

(a)

DIVISION OF HEALTH POLICY AND RESEARCH Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey

Proposed Readoption: N.J.A.C. 8:52

Authorized By: Public Health Council, Louise Chut, Ph.D.,
Chairperson.

Authority: N.J.S.A. 26:1A-15.

Proposal Number: PRN 1991-462.

Submit comments by October 16, 1991 to:

Dennis McDonough, M.P.H.
Chief, Health Aid Services
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The Department of Health, pursuant to the statutory authority of N.J.S.A. 26:1A-15, proposes to readopt N.J.A.C. 8:52, Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey.

Local health departments in New Jersey are mandated by these rules to provide certain basic public health services within their jurisdiction. Services must be provided to prevent and control communicable disease, improve the health and welfare of infants, children and pregnant women; identify chronic conditions such as hypertension, diabetes and certain cancers where early identification and adherence to medical regimens can improve health outcome by minimizing and/or preventing related medical complications; and educating the public to identify and alter those factors which increase one's risk to serious injury, illness, and death.

Pursuant to Executive Order No. 66(1978), the rules of N.J.A.C. 8:52, Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey, are due to expire on December 15, 1991. The Department of Health has reviewed these

rules and determined that they are necessary, reasonable, understandable, and proper for the purpose for which they were originally promulgated.

The Department will continue to pursue its ongoing efforts with the Minimum Standards Revision Advisory Committee to assess and modify those rules which have become technically inaccurate or whose application is inappropriate. The new rules will be consistent with the role and function of local health departments, to be identified in the State Health Plan which will be developed over the next year. The standards will also reflect the health objectives established for the State in Healthy New Jersey 2000, released by the Department of Health in June, 1991.

Current rules provide standards in the following areas: general provisions, core activities (Administration, Environmental Health, Communicable Diseases, Maternal and Child Health and Adult Health Services) and elective activities.

A summary of the current text of N.J.A.C. 8:52 follows:

N.J.A.C. 8:52-1.1, Purpose, establishes the rationale for promulgating the chapter.

N.J.A.C. 8:52-1.2 and 1.3, Scope and Compliance, respectively, explain that this chapter establishes the core activities which all local boards of health are required to provide and the statutory authority of the State Health Department to ensure their provision.

N.J.A.C. 8:52-1.4, Definitions, lists key terms and their definitions, as they apply to the rules.

N.J.A.C. 8:52-1.5, Contractual services, establishes a mechanism by which local boards of health can contract with each other in a provider-recipient relationship for the provision of core services.

N.J.A.C. 8:52-1.6, Modification or waiver of program standard, outlines the criteria and procedure of how a local board of health may procure partial or full exemption from a core activity.

N.J.A.C. 8:52-1.7, County Environmental Health Activities, points out the responsibilities of the local board of health in the County Environmental Health Act.

N.J.A.C. 8:52-1.8, Personnel, describes the academic and experience requirements for health educators and public health nurses in administrative and supervisory positions.

N.J.A.C. 8:52-2.1, Administrative services, establishes the administrative mechanisms to manage the activities of local health departments.

N.J.A.C. 8:52-2.2, Health promotion, outlines a structured program to address community health education needs.

N.J.A.C. 8:52-2.3, Public health nursing services, states the provision of public health nursing services.

N.J.A.C. 8:52-3.1, Recreational bathing, describes the general requirements for the surveillance and inspection of public bathing places.

N.J.A.C. 8:52-3.2, Campgrounds, describes the general requirements for the surveillance and inspection of campgrounds.

N.J.A.C. 8:52-3.3, Youth camps, describes the general requirements for the surveillance and inspection of youth camps.

N.J.A.C. 8:52-3.4, Food surveillance, describes the general requirements for the surveillance and inspection of public food establishments. It also sets forth the requirements for food service managers.

N.J.A.C. 8:52-3.5, Occupational health, outlines a program for local boards of health to address occupational health needs.

N.J.A.C. 8:52-3.6, Public health nuisances, outlines an investigation, enforcement, and educational program to control public health nuisances within a community.

N.J.A.C. 8:52-4.1, Reportable diseases, outlines a surveillance, investigation and control program of reportable diseases.

N.J.A.C. 8:52-4.2, Immunization, outlines a program to promote and provide immunizations to preschool and schoolage children.

N.J.A.C. 8:52-4.3, Rabies and zoonosis control, outlines an educational and monitoring program for the control of rabies and zoonosis.

N.J.A.C. 8:52-4.4, Tuberculosis control, outlines a program to control and prevent the spread of tuberculosis.

N.J.A.C. 8:52-4.5, Sexually transmitted disease, outlines a program to control and prevent the spread of sexually transmitted diseases.

N.J.A.C. 8:52-4.6, Human Immunodeficiency Virus (HIV) infection, outlines a program to prevent and control HIV infection.

N.J.A.C. 8:52-5.1, Infants and preschool children, defines the general responsibilities of local boards of health in the provision of comprehensive preventive health care through child health conferences.

N.J.A.C. 8:52-5.2, Childhood lead poisoning, describes a program to prevent and control lead poisoning in young children.

N.J.A.C. 8:52-5.3, Improved pregnancy outcome, establishes a program to reduce infant mortality and improve access to prenatal care.

N.J.A.C. 8:52-6.1, Cancer services, requires a cancer prevention program be established for high risk populations.

N.J.A.C. 8:52-6.2, Diabetes services, outlines an educational program for diabetes and the general public.

N.J.A.C. 8:52-6.3, Cardiovascular disease services, outlines an education and service program to control cardiovascular diseases for high risk populations.

N.J.A.C. 8:52-6.4, Health services for older adults, outlines an education and service program related to the health care needs of individuals age 65 and older.

N.J.A.C. 8:52-7.1, Provision of elective activities, states that local boards of health providing elective programs are strongly recommended to implement the standards as designed, and in accordance with recognized public health practices.

N.J.A.C. 8:52-7.2, Emergency medical services, describes a comprehensive emergency health services program for local boards of health.

N.J.A.C. 8:52-7.3, Institutional sanitation, outlines an inspection and education program for general sanitation in institutions.

N.J.A.C. 8:52-7.4, Ambulatory health care for children, describes a comprehensive ambulatory health care program for children, especially those considered to be medically indigent.

N.J.A.C. 8:52-7.5, Dental Health; children, outlines a prevention and dental services program for children.

N.J.A.C. 8:52-7.6, Family planning, defines a family planning information and services program.

N.J.A.C. 8:52-7.7, Obstetrics, describes a comprehensive public health obstetrical services program.

N.J.A.C. 8:52-7.8, School health, outlines a program to provide school health services to children.

N.J.A.C. 8:52-7.9, Alcoholism control, describes a planned program to prevent and control alcoholism.

N.J.A.C. 8:52-7.10, Ambulatory health care for adults, outlines a comprehensive ambulatory health care program for adults, especially those considered to be medically indigent.

N.J.A.C. 8:52-7.11, Drug abuse control, describes a planned prevention and control program for drug abuse.

N.J.A.C. 8:52-7.12, Nutrition, defines a planned community nutrition program to promote good nutritional status.

N.J.A.C. 8:52-7.13, Dental health; adults, outlines a prevention and dental service program for adults.

N.J.A.C. 8:52-7.14, Vision, hearing and speech, defines a screening program for vision, hearing and speech for the general population.

N.J.A.C. 8:52-7.15, Home health care, describes a program to provide home health care with a public health nursing component as needed for individuals with acute and chronic disease and/or disability.

Social Impact

The public will continue to benefit with the continuation of these rules. These rules set the minimum standards of performance for local health departments to protect the public health of all community residents. These rules strive to sustain the current level of public health services and maintain their quality at the local level.

Economic Impact

The readoption of these same rules will have no significant economic impact on local health departments. It will not interfere with their current budget nor require an increase within the next year for new public health services.

The total budgets of New Jersey's local health departments is approximately \$95,000,000. This figure includes the cost of services which are mandated by the NJ Department of Environmental Protection as well as the cost of providing services not mandated by Minimum Standards. It is estimated that two-thirds of the total budgets of local health departments, including approximately seventy-five percent of the \$64,000,000 of local tax revenues used to support health services, is used for the support of activities mandated by Minimum Standards. These activities require expenditures for personnel, contracts and program services.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because the rules proposed for readoption do not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules, provide minimum requirements for local health department services and personnel.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:52.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services Manual Home Care Expansion Program Cost Sharing by Beneficiaries

Proposed Amendment: N.J.A.C. 10:60-4.3

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

Authority: N.J.S.A. 30:4E, 30:4D-7, 7a, b and c, 30:4D-12.

Agency Control Number: DMAHS 91-P-17.

Proposal Number: PRN 1991-466.

Submit comments by October 16, 1991 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance
and Health Services

CN 712

Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services (Division) is proposing an amendment to N.J.A.C. 10:60-4.3 regarding eligibility requirements in the Home Care Expansion Program (HCEP). The H.C.E.P. program is a completely State-funded program. The proposed amendment pertains to cost sharing by covered individuals.

The cost share system was developed based on the then existing process for collecting cost share for individuals being served in the Community Care Program for the Elderly and Disabled (CCPED). This cost share process involved a monthly calculation based on a standard maintenance allowance deduction, currently \$1,221 a month, and deductions for paid medical or remedial expenses. Out of the 800 people being served in the Home Care Expansion Program, only 20 to 25 people a month have income that, after the standard maintenance allowance, makes them potentially liable to pay cost share.

The Division has found that the present cost share system requires administrative time and resources to tabulate, record and bill individuals potentially liable for cost share. At the same time, recipients and their case managers are also involved in verifying paid bills, filling out forms and correcting data sent to the Division. In addition, computer reports are generated to track missing information and billings for cost share.

The proposed amendment simplifies the cost share procedure. Under the revised system, recipients with income remaining after deducting the standard maintenance allowance (which is presently established at \$1,221 per month) from net income will be charged a flat monthly amount. This amount has initially been established at \$20.00 a month, with a possible future increase if the income eligibility standard increases. The Division has determined this flat monthly amount of \$20.00 to be reasonable based on its review of approximately 1,000 HCEP eligible individuals from May 1, 1989 to October 30, 1990. It should be noted that the figure of \$1,221 is currently the Medicaid "institutional cap," which is codified at N.J.A.C. 10:71-5.6(c)5V. Any change in the institutional cap would affect cost sharing by individuals in the HCEP Program, because individuals whose income exceeds the "cap" standard will have to contribute to the cost of their care.

Billing for cost share would be entirely automated and directed at clients with income over the Medicaid institutional standard, up to the maximum income allowed for participation in HCEP.

Social Impact

With the revised computation method, a few people will be billed that would not have had a cost share under the present system, and some individuals will benefit because they will experience a reduction in cost share owed. Overall, the number of affected persons is small. Of the 800 people being served in the Home Care Expansion Program, approx-

imately 20 to 25 have monthly income in excess of the Medicaid institutional cap.

This revision to the cost share computation method will not affect providers, because neither the fee schedule nor the availability of services is being changed.

Economic Impact

As noted above, some covered individuals will be affected by the changed computation method. Division income records indicate that, overall, the number of affected individuals will be small, and that, consequently, the total of the cost share payments will also be a small amount.

Providers will not be affected by the changed methodology, because neither the fee schedule nor the availability of services is being altered by the proposed amendment.

The proposed amendment to the rule would be budget neutral for the Division, because both with the previous methodology and with the proposed computations, a small number of persons is subject to cost sharing and the amount contributed by these individuals is modest.

Regulatory Flexibility Statement

This proposed amendment does not impact upon small businesses as defined in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-16 et seq. because cost sharing does not affect payment to providers. The proposed amendment does impact upon individuals who are eligible for HCEP and the Division of Medical Assistance and Health Services, which is a governmental agency administering the program, neither of whom would be considered small businesses. Therefore, a regulatory flexibility analysis is not required.

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

10:60-4.3 Services available under HCEP

(a) The seven services provided under HCEP are:

1. Case management: A process in which a social worker or professional nurse shall be responsible for planning, locating, coordinating, and monitoring a group of services designed to meet the individual health needs of the beneficiary being serviced. The case manager shall be responsible for the initial and ongoing assessment of the beneficiary's need for home care services, [the determination of cost-share liability,] and shall be the pivotal person in establishing a service package to meet those needs.

i. (No change.)

2.-7.-(No change.)

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

(d) Cost sharing for HCEP is as follows:

1. Beneficiaries may be required to share in the cost of their services **when monthly income exceeds a standard monthly maintenance allowance**. [Cost-share is calculated by the case manager on a monthly basis and shall be the amount of the beneficiary's monthly income in excess of a standard monthly maintenance allowance plus allowable medical or remedial expenses paid that month.] Beneficiaries [are then] **shall be billed monthly [if this determination indicates that cost share is owed.] for an established amount to be determined by the Division, which is set at \$20.00 a month. The standard monthly maintenance allowance has been set to be equal to the Medicaid institutional standard "CAP," as defined in N.J.A.C. 10:71-5.6(c)5V.**

2.-3. (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Presumptive Eligibility Process; Administration

Proposed Amendments: N.J.A.C. 10:72-6.1, 6.2, 6.4 and 6.5

Proposed Repeal and New Rule: N.J.A.C. 10:72-6.3

Proposed New Rule: N.J.A.C. 10:72-6.4

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

Authority: N.J.S.A. 30:4D-3i, 30:4D-7, 30:4D-7a, b and c; 30:4D-12; Section 1920(a) of the Social Security Act, codified as 42 U.S.C. 1396 r-l.

Agency Control Number: 91-P-25.

Proposal Number: PRN 1991-454.

Submit comments by October 16, 1991 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

CN 712

Trenton, NJ 08625-0712

The agency proposal follows:

Summary

These amendments, repeal and new rules are proposed to accommodate administrative changes in the presumptive eligibility process and to conform to the requirements of Title XIX as amended by Section 1920(a) of the Social Security Act, codified as 42 U.S.C. 1396 r-l.

Under the current rules, the presumptive eligibility process flows directly from the provider determining presumptive eligibility to the county welfare agency, which is charged with establishing the temporary eligibility record and taking steps to follow through with the completion of the application process. The Division of Medical Assistance and Health Services is involved only as a monitor to the process. The proposed amendments, repeal and new rules transfer the responsibility of establishing the presumptive eligibility record to the Division of Medical Assistance and Health Services. The responsibilities of both the applicant and the provider will not change, and the county welfare agencies will retain responsibility for completing the application process with the applicant. Regarding recodification as a result of these proposed amendments and new rules, new rule text is being added at N.J.A.C. 10:72-6.3 setting forth the Division responsibilities. The existing rule text at N.J.A.C. 10:72-6.3, which is being repealed, outlines the CWA responsibilities. New rule text regarding the CWA responsibilities is being added at N.J.A.C. 10:72-6.4; existing rules at N.J.A.C. 10:72-6.4 and 6.5 are being recodified as 10:72-6.5 and 6.6, with technical revisions.

Section 1920(1)(b)(1)(B) of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1990, extends the time provided to a presumptively eligible pregnant woman to apply for Medicaid. The provisions initially enacted for presumptive eligibility established a 14-day period of time for a pregnant woman to apply for Medicaid or her presumptive eligibility period would terminate. For those women who did submit an application, the period of presumptive eligibility extended 45 days, or until a finding of eligibility or ineligibility was made.

In New Jersey, the presumptively eligible pregnant woman, as part of the presumptive eligibility determination process, completes the face page of a New Jersey Care . . . Special Medicaid Programs application for Medicaid, thus initiating, but not completing, the application process. This procedure eliminated the need to terminate some cases at 14 days by permitting all cases to continue for the full 45-day presumptive eligibility period. The presumptively eligible pregnant woman must still complete the application process by a face-to-face interview and by providing the necessary documentation of eligibility.

The proposed amendments, repeal and new rules continue presumptive eligibility to the end of the month following the month presumptive eligibility was established, for all cases where the pregnant woman failed to apply. In New Jersey, for those pregnant women who

do not take the necessary steps to fulfill the requirements which would complete the application process, the length of presumptive eligibility will change to conform to the provisions of these amendments and new rules. For those who do apply, there should be a finding of eligibility or ineligibility prior to the end of the presumptive eligibility period unless there is good cause for the delay in completing a final determination.

Social Impact

The administrative change increasing the involvement of the Division of Medical Assistance and Health Services in this process should have a positive impact on the county welfare agencies, the recipients and the providers. The county agencies will be better able to concentrate on full Medicaid eligibility while the presumptively eligible pregnant woman will experience improved verification of her temporary eligibility status. Providers will have access to one central source of information and verification as well as earlier claims payment for services rendered to pregnant women. The change in length of the presumptive eligibility period has no significant effect on presumptive eligibility in New Jersey since this state does not terminate presumptive eligibility at 14 days.

Economic Impact

None of the changes encompassed in the proposed amendments and new rules will have an effect on the number of pregnant women who will be presumptively eligible; therefore, there will be no increase in expenditures for services. Existing resources will be used to implement the administrative changes herein at no significant cost to the State. There should be some savings realized by the counties since this task, which was formerly performed by 21 separate county agencies together with all other functions, will now be automated and centralized at the Division.

Regulatory Flexibility Statement

Rules for presumptive eligibility apply to those HealthStart providers authorized to perform or conduct presumptive eligibility determinations. This participation in presumptive eligibility determinations is not a requirement because HealthStart providers elect to do this as part of the presumptive eligibility process. The proposed amendments and new rules do not change that.

Because presumptive eligibility is available to cover pregnant women, and because of the nature of medical treatment, medical professionals have been designated to conduct preliminary eligibility determinations in order to qualify pregnant women as presumptively eligible for Medicaid. Consequently, the provider staff becomes integral to the woman's application process.

It is the New Jersey Department of Health requirement that establishes the professional qualifications of the provider staff. These proposed amendments and new rules do not require the provider to hire any additional staff to complete the application.

There are no capital costs associated with the proposed amendments and new rules; they are designed to minimize any economic impact by facilitating payment to the providers through a prompt determination of eligibility for Medicaid.

Although the qualified providers who establish that a pregnant woman is presumptively eligible can be considered in many cases to be a "small business" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the proposed amendments and new rules do not place additional reporting, recordkeeping or compliance requirements on qualified providers. The proposed amendments and new rules place additional responsibility on the Division of Medical Assistance and Health Services, which is a governmental entity, and, as such, does not constitute a small business. Consequently, a regulatory flexibility analysis is not required.

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

10:72-6.1 Scope

(a) The presumptive eligibility determination makes it possible for a pregnant woman to receive ambulatory prenatal care from a Medicaid participating provider for a **temporary period** [not to exceed 45 calendar days] **prior to application for Medicaid benefits and while a Medicaid application is being processed by the county welfare agency.** Presumptive eligibility continues until the county welfare agency reaches its formal eligibility determination as follows:

1. (No change.)
2. The period of presumptive eligibility will terminate [with the earlier of]:

i. [The] **If the woman has filed an application with the county welfare agency, on or before the last day of the month subsequent to the month in which she was determined presumptively eligible, or on the date a determination of eligibility or ineligibility for Medicaid is made by the county welfare agency; or**

ii. [Forty-five days from the date the presumptive eligibility determination was made by the qualified provider; if no determination of eligibility or ineligibility has yet been made by the county welfare agency] **If the pregnant woman fails to file an application with the county welfare agency, on the last day of the month subsequent to the month in which she was determined presumptively eligible.**

(b) A qualified provider shall be:

1.-3. (No change.)

4. Trained and approved by the Division of Medical Assistance and Health Services for the purposes of making presumptive eligibility determinations.

i. The Division of Medical Assistance and Health Services will monitor the presumptive eligibility determinations made by qualified providers. In the event the review discloses a pattern of incorrect presumptive eligibility determinations or failure to adhere to procedural requirements, appropriate staff of the Division will [meet with the qualified provider to discuss] **initiate** corrective action [and to provide additional training if indicated]. Continued incorrect presumptive eligibility determinations or failure to adhere to procedural requirements will result in the Division revoking approval for that provider to make presumptive eligibility determinations.

10:72-6.2 Responsibilities of a qualified provider

(a) From preliminary information provided by a woman whose pregnancy has been medically verified, the qualified provider shall determine if the pregnant woman meets the eligibility criteria of this chapter as it applies to pregnant women. The qualified provider must obtain sufficient information from the pregnant woman to complete the Certification of Presumptive Eligibility (FD-334) by having the pregnant woman complete, sign and date [an application] **a referral for Medicaid benefits as designated and provided by the Division of Medical Assistance and Health Services.** For purposes of the presumptive eligibility determination, the qualified provider shall request from the pregnant woman only that information necessary to determine her presumptive eligibility or ineligibility. The qualified provider shall make the determination of eligibility based solely on information obtained in the interview and shall not require any verification or documentation of the pregnant woman's statements.

1. For any pregnant woman determined presumptively eligible, the qualified provider shall complete and sign the [Certification of Presumptive Eligibility] **FD-334.** The completed [Certification of Presumptive Eligibility] **FD-334 together with the pregnant woman's [application] New Jersey Care Pregnant Women and Infants Application Referral (FD-335)** for Medicaid shall be mailed or otherwise forwarded to the county welfare agency of the pregnant woman's county of residence within two working days of the presumptive eligibility determination. **The qualified provider shall also forward a copy of the pregnant woman's Certification of Presumptive Eligibility (FD-334) to the Division of Medical Assistance and Health Services.** The qualified provider shall inform the pregnant woman that her presumptive eligibility provides only limited services for [no more than 45 days] **a period of time not to exceed the length of the presumptive eligibility period,** and that she must contact the county welfare agency in order to set up an appointment to complete the application process for Medicaid benefits. The qualified provider shall give the presumptively eligible pregnant woman a copy of both the Certification of Presumptive Eligibility (FD-334) and her [application] **New Jersey Care Pregnant Women and Infants Application Referral (FD-335)** for Medicaid benefits. The qualified provider shall advise the presumptively eligible pregnant woman, in writing, of the address and telephone number of the appropriate county welfare agency office.

2. (No change.)

10:72-6.3 Responsibility of the county welfare agency

(a) Upon the receipt of a Certification of Presumptive Eligibility together with the Medicaid application from a qualified provider, the county welfare agency shall:

1. Review the Certification of Presumptive Eligibility and the Medicaid application for completeness. Any certification that is not signed and dated by the qualified provider and does not include the estimated date of conception and delivery and the date of the presumptive eligibility determination shall be deemed to be incomplete. Any Medicaid application that does not contain the applicant's name, address, date of birth, race, signature and date shall be deemed to be incomplete. If either the certification or application is incomplete, the county welfare agency shall promptly return both documents to the qualified provider for completion along with a cover specification of the incomplete information. The county welfare agency shall retain a copy of any such material returned to the qualified provider;

2. If the Certification of Presumptive Eligibility and the Medicaid application are complete, create in the Medicaid Status File, an eligibility record for the presumptively eligible pregnant woman. The record shall include a termination date that equals the 45th calendar day from the date the qualified provider determined the woman to be presumptively eligible. The county welfare agency shall accept the completed and signed application just as any other bona fide application for Medicaid benefits;

3. Within five working days of receipt of a completed Certification of Presumptive Eligibility, notify the qualified provider of the pregnant woman's Medicaid identification number and issue to the presumptively eligible pregnant woman a Medicaid eligibility card which identifies the woman's presumptive eligibility status;

4. Notwithstanding the application disposition standards in N.J.A.C. 10:72-2.1(d), arrive at a case disposition within 45 days of the date of the presumptive eligibility determination.

i. The policy at N.J.A.C. 10:72-2.1(d)2 concerning delayed application processing applies equally to the processing of the application of a presumptively eligible pregnant woman, in the event the 45-day processing standard is exceeded, the qualified provider must be notified within two working days of the 45th day that the woman is no longer presumptively eligible and that processing of her Medicaid application has been delayed.

ii. In the event the processing of the application is delayed beyond the 45-day processing standard, the county welfare agency shall provide the applicant written notification prior to the expiration of the process period setting forth the specific reasons for the delay;

5. In the case of a presumptively eligible pregnant woman who is determined ineligible for Medicaid within the 45-day processing period, terminate eligibility on the Medicaid Status File immediately with a termination date of the day of the ineligibility determination. Within two working days of the determination of ineligibility, the county welfare agency shall notify the provider, in writing, of the pregnant woman's ineligibility for Medicaid;

6. In the case of a presumptively eligible pregnant woman who is determined eligible for Medicaid within the 45-day processing standard, assign a Medicaid number appropriate to the pregnant woman's eligibility status and, within two working days of the determination of eligibility for Medicaid, notify the qualified provider of the eligibility determination. In such instances, the termination date on the presumptive eligibility record should be updated to reflect the last day of presumptive eligibility; and

7. In circumstances when the determination of eligibility or ineligibility is not made within the 45-day processing standard, the county welfare agency is not required to notify the qualified provider of its final decision.

(b) The county welfare agency is required to conduct a face-to-face interview and verify all factors of eligibility before determining a presumptively eligible woman eligible for Medicaid benefits.]

10:72-6.3 Responsibility of the Division of Medical Assistance and Health Services

(a) Upon receipt of a properly completed Certification of Presumptive Eligibility (FD-334) from the qualified provider, Division staff shall:

1. Assign a presumptive eligibility number from a log of unissued numbers;

2. Create an eligibility record on the Medicaid Eligibility Status File;

3. Issue a Medicaid Eligibility Identification (MEI) Card; and

4. Notify the qualified provider and the appropriate county welfare agency of the presumptive eligibility identification number assigned to the recipient.

10:72-6.4 Responsibility of the county welfare agency

(a) Upon receipt of the Certification of Presumptive Eligibility (FD-334) and a properly completed New Jersey Care Pregnant Women and Infants Application Referral (FD-335) from the qualified provider, the county welfare agency shall:

1. Check the Medicaid and Medically Needy Eligibility Status Files for existing Medicaid eligibility.

i. If the recipient is receiving Medicaid benefits as an AFDC child or adult, a Medicaid Special individual, or a New Jersey Care or Medically Needy pregnant woman, no further action shall be required by the county welfare agency.

ii. If the recipient is receiving Medicaid benefits as a Medically Needy child or Medically Needy disabled adult, a separate case shall be established which would entitle the recipient to receive additional prenatal service available to Medically Needy pregnant women. In such instances, the county welfare agency shall schedule a face-to-face interview with the recipient to verify all factors of eligibility before a final determination of eligibility or ineligibility is made.

iii. If the recipient is an AFDC adult or child, and there are indications of a change in circumstances, such as a marriage of the pregnant woman, the county welfare agency may schedule a face-to-face interview with the recipient to verify all factors of continued eligibility as an AFDC case before a final determination of eligibility or ineligibility is made. However, she cannot be found ineligible for Medicaid solely because she does not meet AFDC standards for cash assistance, but must be evaluated for eligibility for other Medicaid programs without regard to any changes which occurred after the determination of presumptive eligibility.

2. Notwithstanding the application disposition standards in N.J.A.C. 10:72-2.1(d), the county welfare agency shall arrive at a case disposition within the presumptive eligibility period.

1. The policy at N.J.A.C. 10:72-2.1(d)2 concerning delayed application processing applies equally to the processing of the application of a presumptively eligible pregnant woman. In the event the processing standard is exceeded, the qualified provider shall be notified that the processing of the woman's Medicaid application has been delayed. The Division of Medical Assistance and Health Services shall also be notified of any such delay, and shall take steps to continue her presumptive eligibility until a final determination is made.

ii. In the event the processing of the application is delayed beyond the presumptive eligibility period, the county welfare agency shall provide the applicant with written notification prior to its expiration setting forth the specific reasons for the delay.

3. In the case of a presumptively eligible pregnant woman who is determined ineligible for Medicaid within the presumptive eligibility period, the woman's eligibility shall terminate as of the day of the ineligibility determination.

10:72-[6.4]6.5 [Applicant responsibilities] Responsibility of the applicant

A presumptively eligible pregnant woman must contact the county welfare agency during the presumptive eligibility period so that a face-to-face interview can be scheduled. As part of the eligibility determination process for [her] Medicaid [application], the pregnant woman must be interviewed by county welfare agency staff, complete any forms required as a part of the application process, and assist the county welfare agency in securing evidence that verifies her statements regarding eligibility.

10:72-[6.5]6.6 Notification and fair hearing rights

(a) For a presumptively eligible pregnant woman who is subsequently determined [eligible] ineligible for Medicaid benefits:

1-2. (No change.)

(b) For a presumptively eligible pregnant woman whose eligibility for Medicaid has not yet been determined within [45 days from the date of the presumptive eligibility determination] **the presumptive eligibility period:**

1. (No change.)

2. In accordance with N.J.A.C. 10:72-2.1(d)3, the county welfare agency shall provide the pregnant woman with written notification prior to the expiration of the [45-day period] **presumptive eligibility period**, setting forth the specific reasons for the delay in the Medicaid application processing. The pregnant woman is entitled to a fair hearing based on the county welfare agency's failure to determine her Medicaid eligibility or ineligibility within the [45-day] application processing period.

(c) (No change.)

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Unfair Claims Settlement Practices Payment of PIP Claims

Proposed Amendment: N.J.A.C. 11:2-17.7

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

Authority: N.J.S.A. 39:6A-5b (as amended by P.L. 1990, c.8,
section 8), 17:1-8.1, 17:1C-6(e), 17:29B-1 et seq.

Proposal Number: PRN 1991-461.

Submit comments by October 16, 1991 to:

Verice M. Mason, Assistant Commissioner
Division of Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments to N.J.A.C. 11:2-17.7 appeared as a proposal in the New Jersey Register on June 4, 1990 at 22 N.J.R. 1677(a) and invited comments until July 5, 1990. No comments were received from the public, and the proposed amendments were never adopted by the Department. Therefore, this proposal is being resubmitted in accordance with N.J.A.C. 1:30-4.2.

Pursuant to the current language in N.J.A.C. 11:2-17.7, personal injury protection (PIP) coverage benefits, like all other first party claims, must be paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of said loss. This requirement for PIP was based on the requirement in N.J.S.A. 39:6A-5b as it existed prior to the passage of The Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 ("FAIR Act"). Under section 8 of the FAIR Act, PIP benefits must now be paid within 60 days. Accordingly, the Department proposes to amend its rules to conform with the new legislative requirement, which appears in Title 39 (Motor Vehicles) of the New Jersey Statutes.

In addition to the above-noted amendment, N.J.A.C. 11:2-17.7 is also proposed for amendment to provide technical and non-substantive corrections to the current rule.

Social Impact

Since the proposed amendment merely conforms the Department's rules to statutory law, it does not in and of itself impose any social impact on any person or entity.

Economic Impact

Since the proposed amendment merely conforms the Department's rules to statutory law, it does not in and of itself impose any economic impact on any person or entity.

Regulatory Flexibility Statement

Since the proposed amendment merely conforms the Department's rules to statutory law, it does not impose any reporting, recordkeeping or other compliance requirements on "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (or any other person or entity). Accordingly, a regulatory flexibility analysis is not required by N.J.S.A. 52:14B-19.

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

11:2-17.7 Rules for prompt investigation and settlement of claims

(a) (No change.)

(b) **The maximum payment period for all personal injury protection (PIP) claims shall be 60 calendar days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same; provided, however, that an insurer may secure a 45-day extension in accordance with N.J.S.A. 39:6A-5.**

[(b)](c) Unless a clear justification exists, or unless otherwise provided by law, [it is expected that] the maximum payment periods for [all] property/liability claims shall be **as follows:**

1. For all first party claims[,] other than **personal injury protection (PIP) and auto physical damage (see N.J.A.C. 11:3-10.5(a)), 30** calendar days from receipt by the insurer of properly executed proofs of loss.

2-3. (No change.)

Recodify existing (c) as (d) (No change in text.)

[(d)](e) If the insurer is unable to settle the claim within the time periods specified in [(b)](c) and [(c)](d) above, the insurer must send the claimant written notice by the end of the payment periods specified in [(b)](c) and [(c)](d) above. The written notice must state the reasons additional time is needed, and must include the address of the office responsible for handling the claim and the insured's policy number and claim number. This notice shall also include a telephone number which is toll free, or which can be called collect, or which is within the claimant's area code. This number shall provide direct access to the responsible claims office or shall enable the claimant to gain such access at no greater expense than the cost of a telephone call within his or her area code. An updated written notice setting forth the reasons additional time is needed shall be sent within 45 days after the initial notice and within every 45 days thereafter until all elements of the claim are either honored or rejected. This subsection shall not apply after a claimant has filed a lawsuit pursuant to his or her claim.

Recodify existing (e) as (f) (No change in text.)

[(f)](g) Where there is a reasonable basis supported by specific information available for review by the Department of Insurance that the first party claimant has fraudulently caused or contributed to the loss by arson, or other fraudulent schemes, the insurer [is] **shall** be relieved from the requirements of [(b), (c) and (d)] (c), (d) and (e) above. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

PUBLIC UTILITIES

(b)

BOARD OF PUBLIC UTILITIES

Periodic Reporting by Energy Industries of Energy Information

Proposed Repeal: N.J.A.C. 14A:11-2

Authorized By: Board of Public Utilities, Edward H. Salmon,
President, Jeremiah F. O'Connor and Carmen J. Armenti,
Commissioners.

Authority: N.J.S.A. 52:27F-18.

BPU Docket Number: AX91071225.

Proposal Number: PRN 1991-459.

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

Submit written comments by October 16, 1991 to:

William Barretti
Office of the Economist
Board of Regulatory Commissioners
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

N.J.A.C. 14A:11 provides for the periodic reporting by energy industries of energy information. Subchapter 2 of this chapter, which pertains specifically to suppliers of home heating oil, requires said suppliers to initially report to the Board the reseller tank car price or the rack price for each terminal location in New Jersey for No. 2 home heating oil for each class of customer. In addition, any change in the reseller tank car price or the rack price is required to be reported to the Board within 24 hours of such price change.

The Board believes that the reporting of this information is of limited value except during a period designated as an energy emergency. The Board notes that, currently, N.J.A.C. 14:29 contains those rules that are to be implemented when the Governor, by Executive Order, has proclaimed a state of emergency under N.J.S.A. 52:27F-17. Subchapter 7 of that chapter provides for the reporting of energy information during such an emergency period by those persons who supply petroleum products to retail dealers. As this rule would include suppliers of No. 2 heating oil, the Board is of the opinion that N.J.A.C. 14A:11-2 no longer serves any useful purpose and, therefore, should be repealed.

Social Impact

The proposed repeal will have no adverse effect on the Board's ability to gather pertinent and timely information regarding home heating oil.

Economic Impact

The proposed repeal will have a positive economic impact on suppliers of home heating oil in that reporting requirements in non-emergency situations will be eliminated.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not necessary in that the proposed repeal will reduce rather than impose any additional recordkeeping, bookkeeping or filing requirements on all suppliers of home heating oil, including small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 14A:11-2.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Route U.S. 9 in Cape May County

Proposed Amendment: N.J.A.C. 16:28-1.41

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1991-457.

Submit oral or written comments by October 16, 1991 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy & Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment will establish a revised milepost within the speed limit zone along Route U.S. 9 in Middle Township, Cape May

County, to increase the length of the Middle Township Elementary School Zone for reduced speed at certain time.

The Department's Bureau of Traffic Engineering and Safety Programs, in the interest of safety, and as part of a review of current conditions, conducted a traffic investigation. The investigation showed that a revision of a rule to correct the position of a milepost within the speed limit zone along Route U.S. 9 in Middle Township, Cape May County was warranted. Upon review, the Bureau found that the rule text required correction, as it did not match the signs, milepost or municipal request.

The Department, therefore, proposes to amend N.J.A.C. 16:28-1.41, based upon the traffic investigation.

The reference to said milepost was proposed at 22 N.J.R. 1694(b) and adopted at 22 N.J.R. 2339(b).

Social Impact

The proposed amendment will establish a revised milepost within the speed limit zone along Route U.S. 9 in Middle Township, Cape May County. The motoring public would be pleased that the Department has effected the change to the Middle Township Elementary School Zones, in the interest of safety, adding .149 mile to the zone.

Economic Impact

The Department will incur indirect costs for personnel requirements, in order to complete the required paperwork. There will be no added costs to the public, because the costs were already included in the operational budget.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment effects a change in the milepost designation, increasing the length of Middle Township Elementary School Zone where a reduced speed limit is in force at certain times. The motoring public is primarily affected by this amendment.

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

16:28-1.41 Route U.S. 9

(a) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Cape May County:

i. (No change.)

ii. Middle Township:

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

(3) Zone 3: 30 miles per hour between Locust Lane and 1000 feet north of Orbit Drive except for 25 miles per hour when passing through the Middle Township Elementary School Zone (mileposts [12.249] **12.10** to 12.421) while "25 MPH when flashing" signs are operating, during recess or while children are going to or leaving school, during opening or closing hours (mileposts 11.94 to 13.34); thence

(4)-(5) (No change.)

iii.-iv. (No change.)

2. (No change.)

(b) (No change.)

(b)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING

State Highway Access Management Code

Appendix B: State Highway Access Levels By Route and Milepost

Appendix E: Access Application Thresholds

Appendix E1: Access Application Thresholds Based on NJDOT Data

Appendix J: Significant Increase In Traffic

Reproposed New Rules: N.J.A.C. 16:47, Appendices B, E, E1 and J

Authorized By: Robert A. Innocenzi, Deputy Commissioner,
 New Jersey Department of Transportation.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and State
 Highway Access Management Act, P.L.1989, c.32.
 Proposal Number: PRN 1991-463.

Submit written comments by October 16, 1991 to:
 Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625
 (609) 530-2041

Summary of Hearing Officer's Recommendations and Agency Responses:

The repropoed new rules for N.J.A.C. 16:47 were published on May 20, 1991, at 23 N.J.R. 1525(a). Five public hearings were held on the proposal, as follows:

Date	Time	Place
July 8, 1991	2:00-5:00 PM	Matawan Borough Hall, Matawan
July 9, 1991	3:00-8:00 PM	DOT Headquarters, Trenton
July 11, 1991	2:00-5:00 PM	Paterson Municipal Building, Paterson
July 17, 1991	3:00-8:00 PM	Cherry Hill Municipal Building, Cherry Hill
July 18, 1991	3:00-8:00 PM	New Brunswick Public Library, New Brunswick

Complete transcripts of the hearings are available from the Department, 1035 Parkway Avenue, CN600, Trenton, NJ 08625. Mr. Thomas Johnson, from the Department's Bureau of Community Involvement, was the hearing officer. Mr. Johnson made no recommendation.

The Department recommends that the highway desirable typical section appearing in Appendix B be repropoed. Appendices E and E1 have been modified to reflect the superseding edition of Institute of Transportation Engineers **Trip Generation Report**. The flowchart for Appendix J, Significant Increase in Traffic, has also been modified.

Summary of Public Comments and Agency Responses:

The Department received over 315 comment letters identifying concerns about the Access Code. The reproposal addresses and responds to comments relating to Appendix B, E, E1 and J. The Department responses to comments submitted on other sections of PRN 191-277 will be published along with the adoption of PRN 1991-277. The Department of Transportation also maintains a file containing the comment letters, which can be reviewed at the Department's Bureau of Access and Development Impact Analysis, 1035 Parkway Avenue, Trenton, New Jersey.

Appendix B

1. COMMENT: Increased capacity does not simply accommodate traffic, but generates it.

RESPONSE: The Department does not agree that increased capacity generates traffic. However, increasing capacity does have a beneficial effect on the level of service of a highway.

2. COMMENT: State highways through towns should serve the people who live there, not through traffic.

RESPONSE: The comment contradicts the public purpose of the State highway system as stated in the Act. N.J.S.A. 27:7-90 states that the purpose of the State highway system is to serve as a network of arterial routes for the safe and efficient movement of people and goods. The State has a public trust responsibility to preserve the functional integrity of the State highway system for present and future generations.

3. COMMENT: The Department should perform a town by town review of parking regulations to find ways to improve traffic flow rather than widening highways.

RESPONSE: The Department believed that the municipalities were well suited to identify the need for parking within their borders. In March of 1991, the Department sent packages containing DTS and AL designations to every municipality, asking for their comments. Some municipalities did respond with concerns about parking being eliminated and the Department addressed their concerns. In addition, the Department will be conducting dialogues with the counties during the year following adoption of the Access Code.

4. COMMENT: The Access Code tends to widen the highways first and then to provide separate access roads along the sides or rears of the lots, which would create more bottlenecks in Harrison Township.

RESPONSE: The Access Code is not causing these conditions in Harrison Township. The Code does not designate a sequence of events; however, this could be addressed in an access management plan.

5. COMMENT: Any corrective measures for the traffic problems in Princeton would be most appreciated.

RESPONSE: The access management controls contained in the Access Code are designed to promote mobility on all State highways and should minimize future congestion in Princeton.

6. COMMENT: Princeton does not desire extra wear and tear on the local roads.

RESPONSE: The proposed access classification criteria will not create additional traffic on State or local roads.

7. COMMENT: A bypass is needed around Princeton, such as Route I-95, or one north of Kingston.

RESPONSE: The goal of the Access Code is to maximize the efficiency of the existing highway system, not promote the building of new roads.

8. COMMENT: The Department should coordinate and cooperate with the local governments to establish a circumferential route around Princeton which will accomplish the Department's objective with the least disruption.

RESPONSE: Please refer to response number 7. The Department is coordinating with county and local governments to ensure that the Access Code is compatible with their plans and ordinances.

9. COMMENT: Better mass transit is the key to ending gridlock in central Union County.

RESPONSE: The commenter fails to realize the limits of the Act. The State Highway Access Management Act is not authorized to compel transit use. Access applicants may document transit use or implement travel demand management plans to lessen their impacts on State highways.

10. COMMENT: Union County will work with the Department to develop a viable plan which allows better traffic flow without turning the center of our County into a major highway.

RESPONSE: In the year following the adoption of the Access Code, the Department will be meeting with each county to discuss the proposed typical sections and access levels for the various State highways in their county.

11. COMMENT: Access level 4 should be used with DTS 2B and 2C, which require a center left-turn lane.

RESPONSE: The Department agrees with this comment. Repropoed Appendix B now shows the highway segments that will be classified 2B and 2C with the access level 4 designation.

12. COMMENT: Widening Route 1 will help the economy of the area instead of demolishing it by widening Route 27.

RESPONSE: There is not sufficient evidence to link roadway widening projects with long term gains or losses in local economies. Please refer to response number 22.

13. COMMENT: The solution for increased traffic north of Princeton is better mass transit on Route 1, keeping low-occupancy private-car traffic there to a minimum, and continued mass transit capability along Route 27. The answer to needs along Route 27 is not lanes but buses.

RESPONSE: While the Department supports better mass transit, this is not the major focus of the Access Code.

14. COMMENT: The Urban Principal Arterial access classification for Route 4 in Teaneck appears to be appropriate.

RESPONSE: The Department is pleased that there is agreement with the access classification proposed for Route 4 in the Township of Teaneck.

15. COMMENT: Route 4 within Teaneck should be given a more restrictive access level, such as access at streets or interchanges only.

RESPONSE: The Department believes that access level 3 provides continuity along Route 4. An access applicant must satisfy local development regulations as well as State requirements before being able to proceed with his or her proposal. Therefore, if Teaneck does not approve a site plan, the Department will not circumvent that decision. Also, the municipality will be able to develop an access management plan, in conjunction with the Department, that is more restrictive than provisions of the Access Code, once the Code is adopted.

16. COMMENT: The desirable typical section for Route 4 in Teaneck Township is unacceptable because the median and lanes are excessively wide, and the shoulders and sidewalks are unnecessary. The widening will obliterate the greenbelt, place more traffic closer to the homes, allow commercial access, and limit sight distances. The greenbelt would be better preserved by a modified 6B desirable typical section, which ex-

cluded shoulders and sidewalks, has an eight foot median, and six 11 foot traffic lanes.

RESPONSE: This section of Route 4 has been reclassified from an eight-lane to a six-lane cross-section, which will require less right-of-way and reduce the possible volume of traffic on Route 4.

17. **COMMENT:** Route 9 from milepost 63.3 to 64.6 in Little Egg Harbor and milepost 71.05 to 74.4 in Stafford and Barnegat are examples of two lane highways that principally operate as land service roadways that provide full access to existing commercial uses. Access level 2 is not an appropriate designation.

RESPONSE: The purpose of arterial State highways is to move through traffic, not solely allow unrestricted access. Access level 2 is appropriate to preserve the highway for future generations. For State highways to be divided, left turns into and out of the developments along the highway will be allowed until the highway becomes divided, because permits must be issued based on existing conditions. To accommodate the left turns, jughandles will be built in conjunction with widening of the highway. The Department is encouraging the use of alternative access. Lots along highways with access level 2 designations can have access from existing streets that are parallel or perpendicular to the highway, or new streets built to connect to the highway. All direct access will be subject to vehicle trip limits.

18. **COMMENT:** The Borough of Morris Plains objects to the pavement and right-of-way widths for Routes 10, 53, and 202 because they are excessive, will require acquisition of adjacent properties, and result in extensive damage.

RESPONSE: The desirable typical section for Routes 10, 53, and 202 in the Borough of Morris Plains all have been modified. The revised typical sections are as follows; Route 10 was revised from a 6A to a 4A for the portion between mileposts 10.46-10.63, Route 53 was revised from a 4B to a 2B, and Route 202 was revised from a 4E to a 4D.

19. **COMMENT:** Route 12 from milepost 0.95 to milepost 10.58 in Hunterdon County is a two lane highway that primarily operates as a land service roadway that provides full access to existing commercial uses. Access level 2 is not an appropriate designation.

RESPONSE: Please refer to response number 17.

20. **COMMENT:** Route 24 from Route 287 east to the Morristown border should be access level 5 with the remainder of Route 24 in Morristown access level 6. Route 202 in the Town of Morristown should be access level 6.

RESPONSE: The access level for the portions of Route 24 and 202 in the Town of Morristown have been changed from access level 4 to 5, which will allow left-turns to be made from the through lanes. The difference between AL 5 and the requested AL 6 is that the spacing standards apply to level 5. Since the purpose of arterial State highways is to move through traffic and not solely allow unrestricted access, access level 5 is proposed.

21. **COMMENT:** Parking should not be eliminated from Routes 24 and 202 in the Town of Morristown.

RESPONSE: The desirable typical sections for the portions of Route 24 and 202 that presently have parking but are not designated to have it in Appendix B have been changed to include parking.

22. **COMMENT:** We strongly urge that the Code designate Route 27 and 206 as two lane roads permanently through the Princetons.

RESPONSE: Appendix B has been modified in this reproposal to designate Routes 27 and 206 as keeping their current number of lanes through most of the Princetons.

23. **COMMENT:** Increasing traffic by widening Route 27, will put at risk many children and teenagers who walk and bike along the highway.

RESPONSE: Please refer to response number 22.

24. **COMMENT:** It does not seem reasonable, sensible or economical to spend huge sums of money to widen Route 27 for traffic congestion only during commuting hours.

RESPONSE: Please refer to response number 22.

25. **COMMENT:** The Route 27 bridge over Harry's Brook in Princeton Township should be rehabilitated, not replaced with a wider bridge.

RESPONSE: The Access Code does not govern whether a bridge will be rehabilitated or replaced, nor is it a design for any highway segment. The proposed desirable typical section for this section of Route 27 is two lanes, with shoulders. The Department has flexibility in determining the actual widths of the lanes and shoulders.

26. **COMMENT:** Parking should not be eliminated from Route 27 in Princeton.

RESPONSE: The proposed desirable typical section for Route 27 in Princeton does not preclude on-street parking.

27. **COMMENT:** South Brunswick Township opposes the four lane designation of Route 27 through Kingston.

RESPONSE: Appendix B has been modified in this reproposal and now proposes the DTS cross-section remain as it is for the segment of Route 27 through Kingston.

28. **COMMENT:** Somerset County feels that a proposed 116 foot right-of-way for Route 27 between mileposts 6.90 and 15.23 is too excessive.

RESPONSE: The DTS is not a highway design, but a regional planning guide that establishes maximum limits on the dimensions and configuration of a highway segment. The Department views the number of lanes as being the more important aspect of the DTS, because it has greater relationship to highway capacity than does the right-of-way width. When highway improvements are designed the Department has flexibility in determining the actual right-of-way width by adjusting shoulders, medians, sidewalk areas, and auxiliary lanes. The Department met with local officials and agreed upon the need for five lanes, which exist on a portion of this section. The Desirable Typical Section originally proposed is being retained for Route 27 from milepost 6.90 to milepost 15.20.

29. **COMMENT:** The widening of Nassau Street and Route 206 would destroy Princeton by lowering property values and creating havoc with trees, the environment, historic places including Morven and Drumthwacket, businesses, residences, and new sidewalks and would not solve the traffic problem.

RESPONSE: The Access Code is not intended to solve existing traffic problems. The Department has no plans to widen Routes 27, Nassau Street or 206 in Princeton. Please refer to response number 22.

30. **COMMENT:** Department plans to widen Routes 27 and 206 is for the benefit of the trucking industry. Why can't the Department say no to the trucking industry?

RESPONSE: Please refer to response number 22.

31. **COMMENT:** Princeton does not need big trailer trucks to create huge tie-ups and destructive traffic accidents on Route 27 and Route 206.

RESPONSE: The repropoed access classification criteria for Routes 27 and 206 should not affect the truck traffic on those routes.

32. **COMMENT:** Route 28 as a four-lane highway with no parking on Main Street in Somerville will have a terminal effect on the business community.

RESPONSE: The portion of Route 28 that coincides with Main Street has been redesignated as a two-lane highway with shoulders and a two-way left-turn lane due to comments received from Somerville Borough. The description for repropoed Appendix B indicates the shoulder area may also have parking. The Department does not intend to eliminate parking along Route 28 in Somerville. Furthermore, many businesses exist in the CBD without direct access to the highway and the Department fails to see how the Access Code will have a terminal effect on those businesses.

33. **COMMENT:** Raritan Borough disagrees with the Route 28 classifications of desirable typical section 4D, access level 4 and access classification 14 and 15. They suggest maintaining left turn ability for all existing developments. The access level requires ingress and egress from driveways and roads by right turn only unless a left turn lane is provided.

RESPONSE: The Department has changed the proposed DTS of 4D from milepost 0.1 to milepost 2.2 to a DTS of 2C. This designation will be more compatible with existing land use on this segment of Route 28 and still provide the capacity that is anticipated to serve the regional traffic in this area. Existing access points are grandfathered by the Access Code. Individual owners of lots, such as single-family residences, will not be affected by the Code unless the use of the lot changes or expands and a significant increase in traffic is generated as a result. In that case, they could be required to obtain a new access permit.

34. **COMMENT:** The portions of Route 28 from mileposts 0.10 to 2.20 in Bridgewater Township should be changed from desirable typical section 4D to 2C. Route 28 should also have an access classification of 16, not 14 or 15, because it serves as a main street for several municipalities and is better suited for local and short trips.

RESPONSE: Please see response number 33.

35. **COMMENT:** Existing developed conditions along Route 28 in the Borough of Fanwood are not taken into consideration in the proposal to widen the right of way from 66 feet to 102 feet.

RESPONSE: Appendix B has been modified in this reproposal to designate Route 28 in the Borough of Fanwood as keeping the current number of lanes.

36. COMMENT: Widening Route 28 in Union County and increasing the number of jughandles will adversely affect the central business districts of the communities along Route 28, destroying rateables, making one side almost inaccessible to the other, threatening pedestrian traffic, taking away sidewalks, bringing traffic up to the doorsteps of many homes, and encouraging speeding through the towns.

RESPONSE: Appendix B has been modified in this reproposal to designate Route 28 from Plainfield to Roselle Park as keeping its current number of lanes. The access level for Roselle Park Borough has been changed from a 3 to 4. This is the same as the existing access level with left-turns being made via left-turn slots.

37. COMMENT: Route 30 from milepost 21.6 to 27.95 in Winslow and Hammonton is a two lane highway that primarily operates as a land service roadway that provides full access to existing commercial uses. Access level 2 is not an appropriate designation.

RESPONSE: Please see response number 17.

38. COMMENT: Route 30 in Mullica Township should be separated by a divider to improve safety.

RESPONSE: To help reduce the number of accidents, the Department has designated Route 30 from mileposts 27.97 to 35.10 with a two way left turn lane in the center of the highway. The center lane will provide a separation for opposing directions of travel, and a refuge lane for vehicles turning left.

39. COMMENT: The DTS for Route 30 from milepost 32.6 to 36.3 in Mullica Township should be identical to the highway design with grass median that runs from milepost 36.3 to the Egg Harbor City border. This design is aesthetically pleasing, enhances traffic safety, and allows for occasional cross-overs for neighborhood traffic.

RESPONSE: The Department has designated Route 30 from mileposts 27.97 to 35.10 with a two-way left-turn lane in the center of the highway. A two-way left-turn lane will provide a separation for the travel lanes, and a refuge lane for vehicles turning left, enhancing traffic safety and helping to reduce the number of accidents as well as left turn access to properties along the highway, not just at intersecting streets.

40. COMMENT: Route 31 from milepost 24.2 to 42.2 in Raritan and from milepost 43.56 to 46.12 is a two lane highway that primarily operates as a land service roadway that provides full access to existing commercial uses. Access level 2 is not an appropriate designation.

RESPONSE: Please see response number 17.

41. COMMENT: Route 33 from milepost 16.42 to 24.32 in Howell is a two lane highway that primarily operates as a land service roadway that provides full access to existing commercial uses. Access level 2 is not an appropriate designation.

RESPONSE: Please see response number 17.

42. COMMENT: Due to planned development along Route 33 from mileposts 21.10 to 24.32, Manalapan Township asked this highway segment be classified as an urban route and access level 3. Also, the State, county, and local planning officials concur this area should be considered a suburbanizing area under the State Development and Redevelopment Plan.

RESPONSE: This segment of Route 33 is an existing dualized highway with left-turn slots, unsignalized intersections, and signalized jughandles within the segment. The existing traffic volumes are relatively low and the prevailing character is rural. Absent an adopted State Development and Redevelopment Plan to support this, the requested reduction of mobility is not acceptable to the Department. The Department will retain the rural classification and access level 2 to preserve the capacity and safety of Route 33 from deteriorating. Route 33 has about 60 access points along this highway segment with an average spacing of over 550 feet. Under the Access Code, more access points may be added. Nonconforming lot access is available to lot owners. The Department has reviewed housing projects that will access Route 33 in this area. The limited proposed connections to Route 33 via streets are reasonable and consistent with the law. The DTS for this segment was partly based on such planned development and considered the rural level of service standards. The Department is committed to reevaluate the highway classifications based on adoption of the State Development and Redevelopment Plan, per N.J.A.C. 16:47-8.4. The Department will also make changes to the classification based on the discussions with each county, per N.J.A.C. 16:47-8.5, and information in the 1990 Census, per N.J.A.C. 16:47-8.3.

43. COMMENT: The proposal of a 114 foot right of way for Route 35 through Brick Township will cause severe impact. The majority of Route 35 is already divided by an average 100 feet wide developed strip. If the 114 feet requirement applies to both directions, substantial impact will be created, because it will eliminate the 100 foot dividing block. Most of the property on this dividing block is improved.

RESPONSE: The 114 foot right-of-way includes both travel directions combined. The bifurcation of Route 35 provides a one block wide median, which is wider than the desirable typical section shown. The existing median may remain.

44. COMMENT: The proposed widening of Route 35 in Middletown Township will eliminate a large portion of the animal hospital's parking, causing a financial hardship.

RESPONSE: The DTS is not a highway design. During the design of highway improvements, the right-of-way can be minimized to reduce the impacts on the animal hospital.

45. COMMENT: Reconsider the proposed widening of Routes 35 and 36 in Middletown Township. The proposed plan will have a devastating effect upon businesses within the community, causing financial hardship upon residents and businesses and adversely affecting the community.

RESPONSE: The DTS is not a highway design. Traffic volumes and anticipated future growth indicate a need for widening these highways. The design of highway improvements will seek to minimize any hardship upon lot owners along Routes 35 and 36.

46. COMMENT: The access level 4 designation limits left turn lanes from the center of Route 45 and would create potential for problems with Harrison Township's present planning and the overall development of the highway. An emphasis should be placed upon reducing traffic speed which may reduce the number of accidents.

RESPONSE: The law says that State highways are a network of principal arterials and the Department must be concerned with maintaining sufficient operating speeds along State highways. The comment contravenes the purpose set forth in the Act.

47. COMMENT: Changing the right-of-way widths for Routes 45 and 77 in Harrison Township would eliminate virtually all the businesses, shops, and houses located near or at the existing right-of-way lines.

RESPONSE: The Route 77 desirable typical sections have been modified to two lanes from mileposts 8.05 to 22.55. The DTS is not a highway design. Traffic volumes and future growth indicate a need for widening Route 45. The design of highway improvements will seek to minimize any hardship upon lot owners along Route 45.

48. COMMENT: Any limitation of left turns across Route 47 within Clayton Borough would create massive traffic problems.

RESPONSE: The Access Code does not prohibit left turns on Route 47 within Clayton Borough. This highway segment is designated as a DTS 4C, 4 lanes, undivided without shoulders, with an access level 4, right-turn access and left-turn ingress via a left-turn lane. Although access level 4 requires a left-turn lane, one is not required until warranted by additional traffic. In the meantime, left turns can continue to be made as they are now.

49. COMMENT: Route 70 from milepost 4.83 to 20.10 in Burlington County and from milepost 44.82 to 48.58 in Manchester Township is a two lane highway that primarily operates as a land service roadway that provides full access to existing commercial uses. Access level 2 is not an appropriate designation.

RESPONSE: Please see response number 17.

50. COMMENT: According to tax map data, Route 70 through Brick Township already provides substantially more width than the 114 foot right-of-way indicated.

RESPONSE: The desirable typical sections set forth the desirable minimum widths for the highway. There is no problem if more width exists.

51. COMMENT: Route 72 in Barnegat from milepost 13.7 to 27.8 is a two lane highway that primarily operates as a land service roadway that provides full access to existing commercial uses. Access level 2 is not an appropriate designation.

RESPONSE: Please see response number 17.

52. COMMENT: Restricting access and widening the highways in Harrison Township will eliminate the potential for business and residential harmony, and parking, and place an overemphasis on through traffic.

RESPONSE: The purpose of the Access Code is to promote mobility on the State highway system. The access classification criteria for the State highways in Harrison Township strive to balance the competing needs for access and mobility. For example, the 2A DTS and access level 5 designation for Route 77 in Harrison reflect the relatively low traffic

volumes on the highway and the need for left and right turn access to abutting lots. Parking is not precluded by any of these designations. The four-lane access level 4 designation for Route 322 on the other hand, is appropriate for a route where its main purpose is to serve regional, through traffic.

53. COMMENT: The Department should make a decision on the bypass, Route 92.

RESPONSE: This is not within the purview of the Access Code.

54. COMMENT: There is no possibility of access or parallel roads for access to existing developed properties along Route 77 in Harrison Township.

RESPONSE: Appendix B has been modified in this reproposal to designate Route 77 as DTS 2A, 2 lanes with shoulders, and access level 5, right and left turn access to and from an access point. Access, or parallel service roads are not required with these designations.

55. COMMENT: The 68 feet proposed for Route 88 will impact a number of improvements, but the Land Use Ordinance of Brick Township has already been amended to require additional building setbacks along that corridor.

RESPONSE: The Department is pleased that the setbacks have been revised to reflect the additional right-of-way width for the desirable typical section. The widening of Route 88 will most likely take place over time. The existing improvements will remain until portions of the two-way left-turn lane are needed for the developments along Route 88.

56. COMMENT: East Windsor Township requests that Route 130 between Hickory Corner Road and Old Cranbury Road be categorized as an urban minor arterial with an access level 4 designation.

RESPONSE: The Department maintains that access level 3 and the urban principal arterial classification as proposed are appropriate for this segment of Route 130, which is intended to handle heavy volumes of traffic.

57. COMMENT: Raritan Borough agrees with the classifications of Route 202 of desirable typical section 4A access level 2 and access classification 14 with a 114 foot right-of-way with four lanes divided by median shoulders. Ingress and egress for driveways and roads will be for right turn only.

RESPONSE: The Department is pleased that there is agreement with the proposed access level and DTS for Route 202 in Raritan Borough.

58. COMMENT: Route 202 between mileposts 11.54 and 19.04 in Raritan and Readington Township should be revised to access level 3.

RESPONSE: Undeveloped, rural areas, like the one that this segment of Route 202 passes through, are where the Access Code can be most effective in maintaining mobility. A change in the access level from 2 to 3 would diminish the high degree of mobility sought along these highway segments. Accordingly, the Department is retaining access level 2 as originally proposed for Route 202 from milepost 11.54 to milepost 19.04.

59. COMMENT: The desirable typical sections should be revised to two lane roadways such as 2C or 2D for Routes 206 from the Lawrenceville historic district, mileposts 53.3, to Montgomery Township, milepost 54.5, and Route 27 from the northern border of the Kingston historic district, milepost 0.00, to the intersection with Route 206 in Princeton, milepost 3.10. Route 27 between Moore Street and Route 206 should be designated as 2B.

RESPONSE: The Department has modified the designation for Route 206. 2A is proposed for Route 206 MP 47.9 to 48.5. There are two through lanes existing. The County Route 546 intersection needs improvement, but this is likely to be done by adding other than through lanes. For Route 206 MP 48.5 to 49.8, two through lanes should be adequate and the most attainable through a historic district; 2C is proposed for Route 206 MP 49.8 to 52.9. Mobility along the State highway can best be provided by having a refuge area for left turning vehicles so they do not obstruct through traffic. This will protect the safe and efficient movement of through traffic. There is potential for additional development in this area. Some of the recent developments have added left-turn lanes to the highway, confirming this need for Route 206 MP 52.9 to 54.5; most of this section already has three lanes and the remaining areas appear to be capable of having three lanes without widening the pavement; 2C is proposed for Route 206 MP 54.5 to 57.2. Mobility along the State highway can best be provided by having a refuge area for left turning vehicles so they do not obstruct through traffic. Also there is potential for additional development in this area and some streets and businesses cause significant left turn demand. Social, environmental, and economic constraints may make this designation dif-

icult to implement, but there should be more detailed study before designating a narrower section; 2B is proposed for Route 206 MP 57.2 to 57.9. Commercial development in this section necessitates shoulders to minimize through traffic interference caused by right turning vehicles as well as a center turning lane for left turning vehicles. The Department has modified the designation for Route 27. For Route 27 MP 0.0 to 4.0, this area is fully developed and historic, environmental, and social constraints preclude widening; 2B is proposed for Route 27 MP 4.0 to 6.8; significant undeveloped areas are likely to become future traffic generators, with heavy left turn demands. Mobility along the State highway can best be provided by having a refuge area for left turning vehicles so they do not obstruct through traffic. Some of the recent developments have added left turn lanes to the highway, confirming this need and the means to protect the safe and efficient flow of through traffic; 4F is proposed for Route 27 MP 6.8 to 13.85; dense and high volume traffic generators are common in this section and there is room for even more. Recent developments have provided for five lane sections, establishing this need. The anticipated intensity of access demand indicates that shoulders may be needed to reduce interference caused by right turning vehicles.

60. COMMENT: Designate in the Access Code that Route 206 remain permanently two lanes from the north of Montgomery Township south through the Village of Lawrence.

RESPONSE: Please refer to response number 22.

61. COMMENT: A four lane Route 206 within Princeton will increase both car and truck traffic through recreational and school areas of Community Park.

RESPONSE: Please refer to response number 22.

62. COMMENT: The Route 206 right-of-way width through Harligen, Montgomery Township, should remain 72 feet wide with left turns prohibited at the Harligen Road intersection because widening the highway would cause irreparable damage to the character of the area and existing historic structures.

RESPONSE: Montgomery Township could work with the Department and develop an access management plan to design this cross-section based on site specific conditions.

63. COMMENT: Montgomery Township opposes the use of jughandles for Route 206 in their Township. The Department should maintain access level 2 for Route 206 in Montgomery Township, with provisions similar to access level 4, permitting left turns from left-turn lanes in the grass median.

RESPONSE: The Department is pleased that Montgomery Township agrees with the proposed access level for Route 206. As part of the design of highway improvements or an access management plan, the preference of the municipality could be considered and incorporated, at locations where it is possible.

64. COMMENT: Montgomery Township prefers that the Route 206, 4A desirable typical section have a 24 foot wide grass median rather than a 12 foot concrete median barrier.

RESPONSE: The DTS addresses theoretical widths and is not a highway design. As part of the design of highway improvements or an access management plan, the preference of the municipality could be accommodated.

65. COMMENT: Raritan Borough suggests changing the Route 206 desirable typical section from 6A to 4B, reducing the right-of-way width to 90 feet and to four lanes with reduced access and turning movements. Between mileposts 70.75 and 71.20 the right-of-way width should be maintained as 80 feet to avoid impacts to existing businesses.

RESPONSE: The DTS is not a highway design, but a regional planning tool that establishes maximum limits on the dimensions and configuration of a highway segment. The Department views the number of lanes as being the more important aspect of the DTS, because it has greater relationship to highway capacity than does the right-of-way width. The Department has flexibility in determining the actual right-of-way width by adjusting the shoulders, medians, sidewalk areas and auxiliary lanes. The Department is retaining the desirable typical section originally proposed for Route 206 from milepost 70.75 to milepost 71.25 to maintain consistency. Proposing fewer lanes could result in a bottleneck congestion due to the larger configurations proposed in neighboring municipalities.

66. COMMENT: Residents on Route 206 at milepost 80 between Bedminster and Peapack, north of Lamington Road are concerned that the four lane DTS will threaten bicycle and pedestrian safety, and cut off entire neighborhoods from nearby community resources.

RESPONSE: The proposed DTS for this segment of Route 206 includes shoulders and sidewalk areas. This will provide mobility for pedestrians and bicyclists, as well as motorists.

67. COMMENT: The classification of Route 206 through Andover Borough as a rural highway is contrary to the State Plan cross-acceptance process, the municipality's plans for growth within its corporate limits, and is based on census data which has little or no relationship to existing development or traffic situations. The classification should be changed to urban or defer the use of the urban-rural classification until a more reasonable basis for the classification is offered by the Department.

RESPONSE: The Department used the existing data sources to make the rural designation. This is an objective, reasonable classification for this segment of Route 206. The Department will update the urban and rural classifications and resultant access level designations when the State Plan is adopted per N.J.A.C. 16:47-8.4. The Department will also update Appendix B when the new Census data becomes available per N.J.A.C. 16:47-8.5. Further, the Department will change Appendix B in light of meetings held with each county the year following adoption of the Access Code, per N.J.A.C. 16:47-8.6. Finally, the Access Code provides a method for anyone to request a classification change for any given segment of State highway, per N.J.A.C. 16:47-5.

68. COMMENT: Limiting access along Route 322 in Harrison Township will be impossible because of the substantial number of buildings already in place along the highway.

RESPONSE: Access is not being limited on Route 322 in Harrison Township. The Department is proposing access level 4 for this segment. This allows for right-turn access and left-turn ingress via a left-turn lane.

69. COMMENT: Changing the number of lanes for Route 322 in Harrison Township from two lanes to four lanes and then back to two lanes creates nothing but bottlenecks, slow-ups and potential accidents.

RESPONSE: Appendix B has been modified to designate Route 322 as a four lane highway through Harrison Township.

70. COMMENT: The State should be responsible for the building bypasses around Mullica Hill to correct the congestion rather than relying on existing roads and right-of-way for through traffic. Route 322 has bottlenecks caused by Mullica Hill and Richwood which create traffic jams, potential dangers, and hazards. Bypasses would probably be less expensive to build than condemning building to widen highways. Not building bypasses will severely disrupt the entire community.

RESPONSE: The Act and Access Code only addresses State highways that are existing or advertised for construction. If and when bypasses are advertised, State highway segments effected by them will be reviewed and could be reclassified.

71. COMMENT: Appendices E and E1 Access Application Threshold reflect the 4th edition of the Institute of Transportation Engineer, Trip Generation Report; accordingly, these appendices should be updated to reflect the just-released 5th edition of the Institute of Transportation Engineers, Trip Generation Report.

RESPONSE: The Department recently received the 5th edition and agrees. The modified Appendices E and E1 reflect changes based on the 5th edition and other trip information provided by the wholesale club industry and accepted by the Department as reasonable.

72. COMMENT: Appendix J, to determine the significant increase in traffic, should be simplified to clarify that both the 10 percent daily increase and 100 peak hour trips increase need to be exceeded in order to require the need for a new access permit.

RESPONSE: The Department agrees and has revised Appendix J accordingly.

Summary

Under the provisions of the "State Highway Access Management Act", P.L.1989 c.32 (hereinafter, "the Act"), as incorporated in N.J.S.A. Titles 27, 39, and 40, the Department of Transportation is required to adopt a State Highway Access Management Code (hereinafter, "Access Code"). The repropoed Access Code was published on May 20, 1991, at 23 N.J.R. 1525(a), and corrections published at 23 N.J.R. 1913(a).

The Access Code is a comprehensive set of rules designed to manage vehicular access to and from State highways in accordance with the principles in N.J.S.A. 27:7-90. The Department will publish a guide to supplement the Access Code, after it is adopted.

Appendix B provides all levels of government, as well as developers and lot owners, with information on the long-range plan to accommodate growth along every State highway segment.

The Department, prior to the publication of the May 20, 1991 New Jersey Register, distributed access classification information to each municipality and county with accessible State highways. More than 100

official local responses were received. Not all were addressed prior to publishing repropoed Access Code. This repropoed Appendix B responds to local community concerns relating to access levels, classifications, and desirable typical sections that were raised prior to and during the Code's public comment period (May 20, 1991 to July 19, 1991).

Appendix B, State Highway Access Levels by Route and Milepost, contains information for all State highways based on criteria in the Act. The classification and listing of each highway segment relates to the posted speed limit, environment, function, and desired configuration. The access level, desirable typical section, and access cell number are referenced in Appendix B.

The access level indicates the turns allowed to and from each State highway.

The desirable typical section (DTS) shows the Department's long-range plan to accommodate growth along each State highway segment. It is not a design plan, which takes into account all environmental, economic, and social constraints. The DTS identifies the maximum number of through lanes and right-of-way widths for every highway segment. Lane width and right-of-way are based upon ideal conditions, which may be modified by specific conditions along any highway segment. In accordance with the proposed Access Code, access permits which necessitate highway improvements in excess of the DTS will not be issued.

The access cell is used to easily identify the access classification based on the Act. Roadway function, environment, speed limit, and DTS roadway characteristics are included in this designation.

Based on responses from the municipal and county outreach program, the Department has corrected the access level for two lane highways with the two-way left-turn center lane (DTS 2B and 2C). These DTS segments are now identified as undivided multi-lane highways and access level 4 (right-turn access to and from driveway and left-turn access via left-turn lane). Approximately 60 miles of State highways were changed due to this correction.

In response to public comments, the Department proposes to incorporate a category desirable typical section 1A (DTS 1A), which means the existing highway configuration and widths may not be changed. DTS 1A recognizes social, environmental, economic, and other constraints on highway expansion. However, the Department cannot neglect its public trust responsibility and must be prepared to upgrade facilities to current design standards when safety concerns are present.

This repropoed Appendix B also contains the desirable typical sections for the remaining Interstate highways which were not listed in Appendix B in the repropoed Access Code because they are all access level 1 highways.

Detailed responses to comments on Appendix B received during the 60-day comment period are included in this repropoal.

Department representatives will meet with representatives of each county planning board during the year following the Access Code adoption, to discuss future changes to Appendix B.

Repropoed Appendix E, Access Application Thresholds, reflects the just-released 5th edition of the Institute of Transportation Engineers' Trip Generation Report, and is in accordance with proposed N.J.A.C. 16:47-4.4(c) and (f), which state that superseding editions of the above report take precedence over the 4th edition.

Appendix E1, Access Application Thresholds Based on NJDOT Data, has been expanded to include data provided for wholesale clubs. The Department developed traffic generation standards for wholesale clubs from data provided by the industry. These proposed rates, once adopted, will be used to predict traffic generation for this type of facility.

Repropoed Appendix J, Significant Increase in Traffic, has been changed to clearly indicate that both the daily trip and peak hour trip thresholds must be exceeded before a permit expires.

The Department will coordinate the adoption of the repropoed Appendices B, E, E1, and J with the adoption of repropoed Access Code. The Department will not implement the access permit provisions of the Access Code until at least April 1992. This is to allow enough time to print the necessary forms and instructions, provide information about the Access Code to potential applicants, and hold training sessions for Department staff and the public.

Through the Access Code, the Department will establish a system of access management which will protect the functional integrity of the State highway system and the public investment in that system. However, the Department recognizes that flexibility and openness are vital to the successful implementation of the Access Code. When necessary, the

Code will be revised pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Rules on Agency Rulemaking, N.J.A.C. 1:30, and N.J.A.C. 16:47-8.

Social Impact

Reproposed Appendices B, E, E1 and J will help the State to protect the valuable capital investment in its highway system. These reproposed Appendices are part of the Access Code, which balance the public's right to safe and efficient mobility with the lot owner's right to reasonable access to the general system of streets and highways.

Reproposed Appendix B reflects community input. For areas where local officials desire no change, the current traffic congestion levels are considered tolerable by local officials along these corridors.

Reproposed Appendix B contains the Department's long-range plan to accommodate growth along the State highway system and helps to preserve these transportation corridors. The Department has modified Appendix B to respond to the local interests and comments. In many cases, the highway and right-of-way widths shown in the Access Code may not reach the suggested theoretical widths, but Appendix B is a valuable planning tool for all levels of government, as well as for lot owners along and near State highways.

Appendix B fosters a regional view. Local agencies will need to consider Appendix B during their periodic reviews of county planning documents, municipal master plans, official maps, and zoning and development ordinances.

Appendices E and E1 have been modified to reflect the most recent national standards, and the new information on wholesale clubs. Additionally, Appendix J has been revised to clearly show the essential requirements.

When transportation capacity for additional traffic does not exist and cannot be created, access applications may be denied, consistent with N.J.S.A. 27:7-90. The Access Code incorporates incentives to enhance urban infill opportunities and discourage inefficient rural development. Unplanned rural sprawl results in unnecessary capital expenditures of public and private resources.

Added traffic from proposed development or redevelopment will be evaluated based on the DTS for State highway segments.

Economic Impact

Reproposed Appendix B shows the long-range plan to accommodate growth along each State highway segment. An access applicant needs to consider whether traffic generated by his or her lot will exceed the capacity of the planned DTS. This will more effectively coordinate improvements and access approvals among applicants whose traffic will impact the same highway corridor by providing a consistent "full-build" target cross section for each highway segment.

The DTS minimizes the piecemeal access review approach that has been criticized for neglecting the cumulative traffic impacts of traffic generators.

Modifications to Appendices E and E1 change type of access application threshold levels for certain land uses, based on more recent traffic generation data. These minor changes may benefit some applicants and negatively impact other applicants. However, this information is the most unbiased, accurate, and objective data available. Proposed N.J.A.C. 16:47-4.4(f) in the reproposed Access Code allows an applicant to document other applicable traffic generation rates.

Modified Appendix J will benefit the affected lot owners by clarifying the extent to which both the daily and peak hour trip generation must increase before a new access permit is required. Modified Appendix J reduces the economic impacts on lot owners who make only minor changes on their lots. This will help encourage infill and redevelopment.

Regulatory Flexibility Analysis

The reproposed Appendices will not impose any additional reporting or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, small businesses are required to comply with the provisions of these rules. Reproposed Appendices B, E, E1 and J do not significantly affect the application and permit requirements set forth in reproposed Access Code. Reproposed Appendix J may reduce the frequency with which an applicant may be requested to file for a new application.

The Department has restricted special concessions to small businesses, since such treatment could infringe on preserving the safe and efficient mobility on State highways.

Full text of the reproposed new rules follows:

AGENCY NOTE: Appendix B at 23 N.J.R. 1600 to 1606 has been deleted and replaced by the following Appendix B.

APPENDIX B
STATE HIGHWAY ACCESS LEVELS BY ROUTE AND MILEPOST
ACCESS LEVEL (AL)

- 1 Fully controlled Access
- 2 Access along Street or Interchange Only
- 3 Right-turn Access with Provision for Left-turn Access via Jughandle
- 4 Driveway with Provision for Left-turn Access via Left-turn lane
- 5 Driveway with Provision for Left-turn Access (Limited by Spacing Requirements & Safety Considerations)
- 6 Driveway Access Limited by Edge Clearance and Safety Considerations

DESIRABLE TYPICAL SECTIONS CODES (DTS) & RIGHT OF WAY WIDTHS (R.O.W.) DESCRIPTION¹

DTS	R.O.W.	DESCRIPTION
1A		EXISTING SAME LANE, SHOULDER, AND PARKING CONDITIONS AS EXIST ²
2A	78'	2 LANES, WITH SHOULDERS OR PARKING
2B	92'	2 LANES, WITH SHOULDERS OR PARKING, WITH 14' TWO-WAY LEFT-TURN LANE
2C	68'	2 LANES, WITHOUT SHOULDERS, WITH 14' TWO-WAY LEFT-TURN LANE
2D	54'	2 LANES, WITHOUT SHOULDERS (NON-STATE HIGHWAYS ONLY)
4A	114'	4 LANES, DIVIDED, WITH SHOULDERS OR PARKING
4B	90'	4 LANES, DIVIDED, WITHOUT SHOULDERS
4C	102'	4 LANES, UNDIVIDED, WITH SHOULDERS OR PARKING
4D	78'	4 LANES, UNDIVIDED, WITHOUT SHOULDERS
4E	102'	4 LANES, UNDIVIDED, WITH SHOULDERS, OR PARKING (URBAN SITUATION)
4F	116'	4 LANES, UNDIVIDED, WITH SHOULDERS OR PARKING, WITH 14' TWO-WAY LEFT-TURN LANE
4G	92'	4 LANES, UNDIVIDED, WITHOUT SHOULDERS, WITH 14' TWO-WAY LEFT-TURN LANE
5A	131'	5 LANES, (2 LANES, 1 DIRECTION + 3 LANES, OPPOSITE DIRECTION). DIVIDED WITH SHOULDERS
6A	148'	6 LANES DIVIDED, WITH SHOULDERS OR PARKING
6B	124'	6 LANES, DIVIDED, WITHOUT SHOULDERS
6C	210'	6 LANES, DIVIDED, WITH CD ROADS
8A	172'	8 LANES, DIVIDED, WITH SHOULDERS OR PARKING
8B	148'	8 LANES, DIVIDED, WITHOUT SHOULDERS
8C	234'	8 LANES, DIVIDED, WITH CD ROADS

FOR CELL NUMBER, SEE APPENDIX A

¹These show the maximum acceptable expanded width of a State highway segment. The widths of lanes, shoulders, parking, sidewalk areas and rights-of-way shown are those derived from the standards for desirable geometric design elements. The right-of-way width needed for the construction of the highway improvement may be less than the dimensions shown when less than desirable widths are used.

²This designation means that social, environmental, or economic constraints may limit the desirability of State highway segment expansion. If compelling safety needs dictate, the Department will construct, or require a permittee to construct, highway improvements consistent with the design standards.

ROUTE	BEGIN	MILEPOST END	AL	DTS	CELL	1&9 T	2.29	4.11	3	6A	4
						3	0.00	6.00	3	8A	1
1	0.60	5.46	1	6A	0	3	6.00	10.40	1	6C	0
1	5.46	5.94	3	6A	1	3	10.40	10.84	3	4A	1
1	5.94	7.20	3	6C	1	4	0.00	0.23	3	4B	4
1	7.20	10.79	3	6A	1	4	0.23	2.20	3	4A	4
1	10.79	11.29	3	6B	1	4	2.20	10.89	3	6A	1
1	11.29	22.40	3	6A	1	5	0.00	0.39	5	2A	12
1	22.40	35.97	3	8A	1	5	0.39	0.97	4	2B	12
1&9	35.97	38.34	3	8A	1	5	0.97	1.80	5	2A	12
1&9	38.34	40.45	3	6A	1	5	1.80	2.16	4	4E	11
1&9	40.45	41.80	3	6A	4	5	2.16	3.15	6	2A	18
1&9	41.80	43.20	3	6A	1	7	0.00	0.53	4	4D	5
1&9	43.20	45.45	3	6A	4	7	0.53	1.60	3	4A	1
1&9	45.45	48.68	1	8C	0	7	1.60	3.57	4	4C	2
1&9	48.68	51.09	1	6C	0	7	3.57	4.16	4	4C	5
1&9	51.09	54.65	1	4B	0	7	4.16	5.29	4	4D	11
1&9	54.65	62.00	3	6A	4	7	5.99	9.17	4	4D	11
1&9	62.00	62.13	3	4A	10	7	9.36	10.10	4	4D	11
1&9	62.13	62.80	4	4A	10	9	3.02	6.50	4	4C	32
1&9	62.80	62.93	3	4A	4	9	6.50	9.63	4	4C	35
1&9	62.93	63.20	3	6C	1	9	9.63	11.00	4	4C	32
1&9	63.20	64.90	3	5A	1	9	11.00	13.00	6	2A	42
1 B	0.00	2.73	3	4A	1	9	13.00	15.08	6	2A	39
1&9 T	0.00	2.29	3	6A	1	9	15.08	23.50	4	4C	32

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

9	23.50	24.00	4	4C	35	20	0.00	0.70	2	6A	4
9	24.00	28.30	4	4C	32	20	0.70	3.98	3	6A	4
9	28.30	28.73	4	4C	35	21	0.00	0.91	2	6B	1
9	28.73	29.20	4	4C	5	21	0.91	4.00	4	6B	4
9	29.20	29.80	4	4C	2	21	4.00	4.10	3	6A	1
9	29.80	30.35	4	4C	32	21	4.10	12.45	1	6A	0
9	30.35	30.65	4	4C	35	22	0.30	0.62	1	6B	0
9	31.90	32.63	4	4C	2	22	0.62	1.47	3	6B	4
9	32.63	33.22	4	4C	5	22	1.47	2.00	3	6B	1
9	33.22	36.00	4	4C	2	22	2.00	4.45	3	4A	1
9	36.00	41.40	4	4C	5	22	4.45	5.12	1	6A	0
9	41.40	42.80	4	4C	2	22	19.22	28.60	2	4A	31
9	42.80	43.80	4	4C	5	22	28.60	31.50	3	4A	1
9	43.80	45.30	4	4C	2	22	31.50	37.10	3	6A	1
9	45.30	52.36	4	4C	32	22	37.10	41.59	3	4A	1
9	54.83	55.23	4	4C	32	22	41.59	60.53	3	6A	1
9	55.23	57.30	4	4C	35	22 A	2.38	3.47	4	4D	5
9	57.30	61.60	4	4C	32	22 A	3.47	4.05	4	4D	2
9	61.60	62.50	4	4C	35	23	0.00	2.06	4	4D	5
9	62.50	63.30	4	4A	34	23	2.06	3.99	4	4D	2
9	63.30	64.60	2	4A	31	23	3.99	5.05	4	4D	5
9	64.60	68.28	3	4A	34	23	5.05	6.30	1	6A	0
9	68.28	70.20	4	4F	34	23	6.30	17.00	3	6A	1
9	70.20	70.50	3	4B	34	23	17.00	27.20	2	6A	25
9	70.50	71.05	3	4A	34	23	27.20	28.78	4	4C	26
9	71.05	74.40	2	4A	31	23	28.78	35.71	4	4C	29
9	74.40	80.70	3	4A	34	23	35.71	37.18	4	4C	26
9	80.70	81.90	4	4D	35	23	37.18	41.15	4	4C	29
9	81.90	86.56	3	4A	34	23	41.15	45.20	4	4C	26
9	86.56	88.75	3	4A	1	23	45.20	45.80	4	4C	29
9	88.75	89.60	3	4A	4	23	45.80	46.65	4	4C	26
9	89.60	89.95	3	4A	4	23	46.65	52.53	4	4C	29
9	89.95	90.93	3	4A	1	24	0.00	0.40	5	4E	5
9	94.40	100.20	3	4A	1	24	0.40	1.50	5	4D	5
9	100.20	102.96	3	4A	4	24	1.50	2.80	4	4D	11
9	102.96	123.09	3	6A	1	24	2.80	4.50	5	2A	12
9	123.09	136.23	3	8A	1	24	4.50	5.90	5	2A	6
9 W	0.00	0.35	3	4B	4	24	5.90	7.45	4	4D	5
9 W	0.35	0.76	3	4A	4	24	7.45	7.63	1	4B	0
9 W	0.76	1.45	4	4E	5	24	7.63	10.86	1	6A	0
9 W	1.45	11.00	3	4A	1	26	0.00	0.70	4	4E	8
9 W	11.00	11.15	4	2A	3	26	0.70	2.10	4	4E	11
10	0.00	10.63	3	4A	1	27	0.00	1.45	5	1A	6
10	10.63	19.70	3	6A	1	27	1.45	4.00	5	1A	3
10	19.70	23.47	3	4A	1	27	4.00	6.80	4	2B	3
12	0.95	10.58	2	4A	31	27	6.80	9.50	4	4F	2
12	10.58	11.70	4	4A	34	27	9.50	10.20	4	4F	5
13	0.00	0.43	4	4D	11	27	10.20	13.85	4	4F	2
13	0.43	0.58	4	4B	10	27	13.85	15.37	4	4E	5
15	0.00	2.05	4	4C	5	27	16.55	18.23	4	4D	5
15	2.05	2.29	3	6A	1	27	18.23	23.85	4	4F	5
15	2.29	2.46	3	8B	1	27	23.85	27.18	4	4F	2
15	2.46	3.66	3	6A	1	27	27.18	35.79	4	4E	2
15	3.66	5.42	2	6A	31	28	0.00	2.22	4	4D	2
15	5.42	6.35	2	6A	31	28	2.22	3.00	4	4D	5
15	6.35	6.75	3	6A	1	28	3.00	3.70	4	2B	5
15	6.75	14.13	1	6A	0	28	3.70	5.08	4	4D	5
15	14.13	16.70	5	4E	38	28	5.08	6.80	4	4D	2
15	16.70	18.29	5	4E	41	28	6.80	12.47	4	4D	5
15	18.29	19.52	4	4E	32	28	17.15	23.00	5	1A	6
17	0.00	3.35	4	4E	5	28	23.00	26.63	4	4A	4
17	3.35	3.50	4	4E	2	29	3.20	6.20	1	4A	0
17	3.50	26.62	3	6A	1	29	6.20	6.70	3	4A	4
18	5.14	30.85	1	4A	0	29	6.70	9.55	1	4A	0
18	30.85	34.25	3	4A	1	29	9.55	13.80	5	2A	9
18	34.25	36.94	3	6A	1	29	13.80	16.72	5	2A	36
18	36.94	41.75	3	8A	1	29	16.72	18.10	6	2A	42
18	41.75	42.00	3	6A	1	29	18.10	18.60	6	4C	41
18	42.00	43.71	1	6A	1	29	18.60	19.60	6	2A	42
19	0.00	0.70	1	4A	0	29	19.60	20.30	6	4C	41
19	0.70	2.91	1	6A	0	29	20.30	23.36	6	2A	42

TRANSPORTATION

PROPOSALS

29	23.36	34.26	6	2A	39	34	0.00	0.33	3	4A	1
30	0.96	1.20	3	6A	4	34	0.33	12.60	2	4A	31
30	1.20	3.15	3	8B	1	34	12.60	20.44	4	4C	32
30	3.15	3.32	3	8B	4	34	20.44	21.20	4	4C	2
30	3.32	4.26	3	8A	1	34	21.20	22.56	4	4C	5
30	4.26	6.40	4	4E	2	34	22.56	26.79	4	4C	2
30	6.40	7.95	3	6A	4	35	0.00	0.26	4	4B	10
30	7.95	8.25	3	4A	1	35	0.26	0.58	5	2A	12
30	8.25	12.70	3	4A	1	35	0.58	1.44	4	4A	10
30	12.70	16.30	3	4A	7	35	1.44	2.07	4	6A	10
30	16.30	18.00	3	4B	34	35	2.07	2.32	4	6B	7
30	18.00	21.60	3	4A	7	35	2.32	2.48	4	8B	7
30	21.60	27.97	2	4A	31	35	2.48	3.51	1	6A	0
30	27.97	32.60	4	4G	2	35	3.51	3.65	3	6B	1
30	32.60	35.10	4	4G	32	35	3.65	3.77	3	4B	1
30	35.10	40.35	3	4A	32	35	3.77	7.29	3	4A	4
30	40.35	42.10	4	4A	34	35	7.29	9.12	4	4A	4
30	42.10	46.00	4	4G	32	35	9.12	13.00	4	4E	5
30	46.00	52.42	4	4G	2	35	13.00	14.55	4	4A	4
30	52.42	54.39	3	4A	1	35	14.55	16.04	3	4A	4
30	54.39	55.42	3	6B	1	35	16.04	20.10	4	4F	2
30	55.42	56.75	3	8B	1	35	20.10	20.56	3	4A	1
30	56.75	57.47	3	8B	4	35	20.56	21.11	3	4A	4
30	57.47	58.23	3	6C	4	35	21.11	22.30	3	6A	4
31	1.15	3.82	4	4C	5	35	22.30	24.61	4	4C	5
31	3.82	4.30	4	4C	2	35	24.61	24.94	3	4A	1
31	4.30	4.70	4	4F	2	35	24.94	29.50	3	6A	1
31	4.70	6.90	3	4A	1	35	29.50	31.20	4	4F	5
31	6.90	7.19	3	4A	1	35	31.20	33.15	4	4C	5
31	7.19	8.60	4	4C	2	35	33.15	34.37	4	4E	5
31	8.60	12.37	4	4C	26	35	34.37	35.80	3	4A	1
31	12.37	16.36	2	4A	25	35	35.80	43.91	3	6A	1
31	21.95	22.10	2	4A	25	35	43.91	44.62	3	6B	1
31	22.10	24.40	3	4A	28	35	44.62	49.52	3	6A	1
31	24.40	42.12	2	4A	25	35	50.79	51.00	1	6A	0
31	42.12	42.28	3	4A	28	35	51.00	52.32	4	4E	5
31	42.28	42.34	3	4A	1	35	52.32	53.35	4	4F	5
31	42.34	43.19	3	4A	4	35	53.35	54.87	4	4C	2
31	43.19	43.56	3	4A	1	35	54.87	58.18	4	4C	5
31	43.56	46.12	2	4A	25	36	0.00	4.00	3	6A	1
31	46.12	49.00	3	4A	28	36	4.00	5.78	4	4D	5
32	0.00	1.18	2	4A	31	36	5.78	8.31	4	4C	2
33	0.00	0.20	4	4D	5	36	8.31	9.40	4	4C	5
33	1.46	2.30	4	4D	5	36	9.40	11.60	4	4C	2
33	2.30	5.50	4	4C	5	36	11.60	11.80	4	4D	2
33	5.50	7.86	4	4C	2	36	11.80	13.00	3	5A	1
33	12.39	12.70	3	6A	1	36	13.00	19.52	3	4A	1
33	12.70	13.38	4	2B	1	36	19.52	24.18	3	6A	1
33	13.38	13.68	4	4C	2	36	24.18	24.40	3	4A	1
33	13.68	14.70	4	2C	6	37	0.00	1.53	2	4A	31
33	14.70	14.77	4	4D	2	37	1.53	2.90	3	4A	1
33	14.77	15.01	3	6B	1	37	2.90	6.02	3	6A	1
33	15.01	16.42	3	6A	1	37	6.02	6.50	3	4A	1
33	16.42	24.32	2	6A	25	37	6.50	6.75	3	8A	1
33	24.32	29.30	1	4A	0	37	6.75	11.45	3	6A	1
33	29.35	29.91	4	4E	2	37	11.45	12.39	1	6A	0
33	29.91	33.04	4	4C	32	37	12.39	13.42	3	6A	1
33	33.04	36.65	2	4A	25	38	0.00	12.00	3	6A	1
33	36.65	38.30	3	4A	1	38	12.00	15.40	3	4A	1
33	38.30	40.28	4	4C	2	38	15.40	16.80	3	4A	4
33	40.28	40.63	1	6A	0	38	16.80	18.31	4	4A	1
33	40.63	41.82	4	4C	5	38	18.31	19.23	4	4C	32
33	41.82	42.46	4	4C	11	40	1.85	5.60	2	4A	31
33 BW	0.00	0.60	5	2A	8	40	5.60	8.04	4	4C	32
33 BE	0.00	0.60	1	2D	7	40	8.04	10.00	4	4C	35
33 B	0.60	2.24	4	4C	8	40	10.00	11.02	4	4D	35
33 B	2.24	2.57	3	6A	4	40	11.02	11.25	4	4D	35
33 B	2.57	3.36	5	4D	17	40	11.25	19.50	4	4C	32
33 B	3.36	3.86	4	4E	11	40	19.50	20.33	4	4C	35
33 B	3.86	4.35	5	4C	14	40	20.33	25.73	4	4C	32
33 B	4.35	5.03	5	4C	17	40	25.73	26.48	4	4C	2

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

40	26.48	27.30	4	4C	5	46	36.05	36.58	3	4A	4
40	27.30	29.27	4	4C	2	46	36.58	37.22	3	4A	1
40	29.27	32.55	4	4C	32	46	37.22	42.00	3	4A	4
40	32.55	35.23	3	4A	1	46	42.00	42.38	3	4A	4
40	35.23	46.27	2	4A	31	46	42.38	42.50	3	6B	4
40	46.27	47.47	4	4C	35	46	42.50	43.18	3	6A	4
40	47.47	53.10	2	4A	31	46	43.18	43.82	3	6A	1
40	53.10	53.85	2	6A	31	46	43.82	56.70	3	6A	1
40	53.85	56.79	3	6A	1	46	56.70	60.10	3	6A	1
40	56.79	59.00	3	4A	1	46	60.10	61.60	3	6A	1
40	59.00	59.72	3	4A	4	46	61.60	62.26	3	6A	4
40	59.72	59.98	4	4F	5	46	62.26	66.07	3	6A	1
40	59.98	60.39	3	4A	4	46	66.07	66.52	3	6A	1
40	60.39	61.65	4	4F	2	46	66.52	68.28	3	6A	1
40	61.65	63.57	3	4A	1	46	68.28	69.00	3	8A	1
40	63.57	63.97	4	4F	5	46	69.00	69.18	3	6A	1
40	63.97	64.07	4	4C	5	46	69.18	69.38	4	4F	2
41	0.00	2.32	4	4D	8	46	69.38	70.08	4	4F	5
41	2.32	3.00	4	4C	8	46	70.08	70.40	1	4D	0
41	3.00	3.91	4	4F	8	46	70.40	70.73	3	6A	4
41	3.91	4.94	4	4C	5	46	70.73	71.55	3	8B	1
41	10.68	11.95	4	4F	5	46	71.55	72.15	3	6B	1
41	11.95	13.02	4	4F	2	47	0.67	1.16	4	4A	40
41	13.02	13.98	3	5A	1	47	1.16	3.18	4	4A	37
42	0.00	6.40	3	6A	1	47	3.18	3.73	5	4D	41
42	6.40	14.28	1	8A	0	47	3.73	3.90	4	4D	35
44	0.00	1.28	6	2A	51	47	3.90	4.32	4	4C	35
44	1.28	2.80	6	2A	39	47	4.32	6.10	4	4C	32
44	2.80	2.98	5	2A	9	47	6.10	7.00	4	4C	35
44	2.98	4.10	5	2A	12	47	7.00	17.43	4	4C	32
44	4.10	5.20	5	2A	9	47	17.43	17.63	2	4B	31
44	5.20	6.28	5	2A	12	47	17.63	25.60	4	4C	32
44	6.28	8.40	5	2A	9	47	25.60	26.62	4	4C	35
44	8.40	9.10	5	2A	12	47	26.62	33.12	4	4C	32
44	9.10	9.60	5	2A	9	47	33.12	34.12	4	4C	35
45	0.00	0.42	4	4E	5	47	34.12	34.80	4	4C	32
45	0.42	2.32	4	4E	35	47	34.80	36.08	6	2A	39
45	2.32	8.79	4	4E	32	47	36.08	38.50	5	2A	9
45	9.43	10.14	4	4D	35	47	38.50	40.80	4	2C	12
45	10.14	17.21	4	4E	32	47	40.80	42.20	4	2C	9
45	17.21	17.32	4	4E	35	47	42.20	45.88	4	4D	8
45	17.32	17.77	4	4D	35	47	45.88	46.75	4	4D	11
45	18.16	18.24	4	4E	35	47	46.75	47.60	4	4D	8
45	18.24	20.24	4	4E	32	47	47.60	52.03	4	4C	8
45	20.24	22.40	4	4E	2	47	52.03	52.36	4	4C	11
45	22.40	22.53	4	4E	5	47	52.82	56.00	4	4C	8
45	22.53	22.60	3	4A	4	47	56.00	56.78	4	4C	11
45	22.60	24.80	3	4A	1	47	56.78	58.17	4	4C	8
45	24.80	24.90	3	4A	4	47	58.17	58.29	4	4C	2
45	24.90	26.90	5	4D	5	47	58.29	59.80	4	4C	5
45	26.90	28.51	4	4D	2	47	59.80	61.96	4	4C	2
46	0.00	0.85	1	4A	0	47	61.96	62.29	4	4C	5
46	0.85	6.86	4	2A	27	47	62.66	63.15	4	4D	5
46	6.86	7.45	4	4A	25	47	63.15	64.12	4	4C	2
46	7.45	9.63	4	4C	26	47	64.12	74.00	4	4C	8
46	9.63	10.05	4	4C	29	47	74.00	74.98	4	4C	11
46	10.05	10.12	4	4C	35	48	0.00	0.61	4	4C	11
46	10.12	15.82	4	4C	32	48	0.61	1.58	4	4C	8
46	15.82	20.63	4	4C	35	48	1.58	2.10	4	4C	32
46	20.63	20.73	4	4D	2	48	2.10	4.26	6	2A	39
46	20.73	21.82	4	4D	5	49	0.00	0.70	4	4C	2
46	21.82	22.40	4	4B	34	49	0.70	3.00	4	4C	5
46	22.40	24.58	4	4A	34	49	3.00	6.29	4	4C	2
46	24.58	25.50	2	4A	31	49	6.29	8.30	4	4C	32
46	25.50	29.60	3	4A	1	49	8.30	10.10	4	4C	5
46	29.60	30.43	3	4A	4	49	10.10	11.00	4	4C	35
46	30.43	33.45	3	4A	1	49	11.00	12.30	4	4C	32
46	33.45	34.25	4	4C	2	49	12.30	12.88	4	4C	35
46	34.25	35.10	4	4C	5	49	12.88	20.94	4	4C	32
46	35.10	35.38	4	4C	2	49	20.94	21.10	4	4D	32
46	35.38	36.05	3	4A	1	49	21.10	21.62	4	4D	35

TRANSPORTATION

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49	21.62	22.10	4	4D	32	66	0.40	3.67	3	4A	7
49	22.10	23.13	4	4C	32	67	0.00	1.32	4	4E	11
49	23.13	24.50	4	4C	2	67	1.43	1.98	4	4E	11
49	24.50	26.25	4	4C	5	68	0.00	0.60	2	4A	1
49	26.25	26.50	3	4B	4	68	0.60	1.07	3	4A	1
49	26.50	26.60	4	4C	5	68	1.07	8.02	2	4A	31
49	26.60	27.20	4	4C	2	70	0.00	8.50	3	6A	1
49	27.20	28.50	4	4C	32	70	8.50	14.83	3	4A	1
49	28.50	29.00	4	4C	35	70	14.83	20.10	2	4A	31
49	29.00	30.80	4	4C	32	70	20.10	26.10	4	4C	32
49	30.80	35.03	4	4C	2	70	26.10	26.50	2	4C	31
49	35.03	36.10	4	4C	5	70	26.50	43.25	4	4C	32
49	36.10	37.37	4	4D	5	70	43.25	43.45	4	4C	35
49	37.37	38.10	4	4D	2	70	43.45	44.82	3	4A	34
49	38.10	40.80	4	4C	2	70	44.82	48.58	2	4A	31
49	40.80	53.78	4	4C	32	70	48.58	59.84	3	4A	1
50	0.00	0.24	3	4B	34	71	0.00	0.61	6	2A	18
50	0.24	6.18	4	4C	32	71	0.61	5.09	5	4D	17
50	6.18	7.03	4	4C	35	71	5.41	7.40	5	4D	17
50	7.03	18.55	4	4C	32	71	7.40	9.40	5	4E	17
50	19.18	19.67	4	4C	35	71	9.40	10.48	5	4D	17
50	19.67	20.91	4	4C	32	71	10.48	11.64	4	4A	16
50	20.91	21.20	1	4A	0	71	11.64	12.53	4	2B	17
50	21.20	23.50	4	4C	32	71	12.53	13.77	4	2C	17
50	23.50	24.20	2	4A	31	71	13.77	15.71	4	4D	11
50	24.20	25.53	4	4C	32	71	15.71	16.76	4	4C	11
50	25.53	26.08	4	4C	35	72	0.00	5.96	4	4E	32
52	0.00	2.74	4	4E	5	72	5.96	11.47	4	4C	32
53	0.00	1.55	4	2B	8	72	11.47	13.70	4	4E	32
53	1.55	2.35	4	4C	8	72	13.70	27.18	2	4A	31
53	2.35	3.32	4	4C	11	72	27.18	27.40	2	5A	31
53	3.32	4.65	4	4E	11	72	27.40	27.55	2	6A	31
54	0.00	1.11	4	4C	2	72	27.55	28.18	2	4A	31
54	1.11	8.20	4	4C	32	72	28.18	28.72	3	5A	34
54	8.20	8.46	4	4C	2	73	6.00	10.89	2	6A	31
54	8.46	9.12	3	4A	1	73	10.89	12.70	3	6A	1
54	9.12	9.98	4	4C	2	73	12.70	14.46	2	6A	31
54	9.98	11.88	4	4C	5	73	14.46	19.58	3	6A	1
55 F	20.00	20.80	3	4A	25	73	19.58	21.35	3	6A	1
55 F	20.80	60.52	1	4A	0	73	21.35	32.00	3	6A	1
56	0.00	0.17	4	4D	8	73	32.00	32.35	3	8A	1
56	0.17	2.00	5	4D	38	73	32.35	34.10	3	6A	1
56	2.00	7.50	6	2A	39	76	0.00	1.85	1	1A	0
56	7.50	7.84	3	4B	7	77	0.00	2.19	4	4D	5
56	7.84	9.23	4	4D	11	77	2.19	2.70	4	4D	2
57	0.00	0.55	4	4C	2	77	2.70	3.90	4	2A	3
57	0.55	2.20	4	4C	32	77	3.90	7.18	5	2A	33
57	2.20	2.80	4	4C	35	77	7.18	8.05	5	2A	36
57	2.80	4.38	4	4C	32	77	8.05	22.18	5	2A	33
57	4.38	5.28	4	4C	35	77	22.18	22.55	5	2A	36
57	5.28	6.40	4	4C	32	78	4.16	17.85	1	6A	0
57	6.40	7.00	4	4C	35	78	17.85	19.22	1	8A	0
57	7.00	9.10	4	4C	32	78	19.22	29.85	1	6A	0
57	9.10	9.78	4	2B	33	78	29.85	33.13	1	8A	0
57	9.78	11.60	4	2B	6	78	33.13	48.54	1	6A	0
57	11.60	11.80	4	2B	36	78	48.54	58.50	1	1A	0
57	11.80	11.90	4	2B	33	79	0.00	0.35	4	4F	11
57	11.90	14.44	4	4C	32	79	0.35	0.57	4	2B	12
57	14.44	15.23	4	2B	33	79	0.57	1.75	4	2C	18
57	15.23	18.93	4	4C	32	79	1.75	2.40	5	4D	17
57	18.93	19.55	4	4C	35	79	2.40	3.90	5	4D	38
57	19.55	20.00	4	4C	32	79	3.90	4.81	5	4C	38
57	20.00	20.45	4	4C	32	79	4.81	5.08	3	4A	37
57	20.45	20.53	4	4C	2	79	5.08	5.38	3	4A	7
57	20.53	21.10	4	4D	2	79	5.38	5.80	4	4C	11
59	0.00	0.15	4	4B	22	79	5.80	6.80	4	4C	8
63	0.00	0.06	3	4A	4	79	6.80	9.60	5	4C	38
63	0.06	3.00	4	2B	6	79	9.60	10.00	5	4C	41
63	3.00	3.11	3	4A	4	79	10.00	10.25	5	4C	38
64	0.00	0.33	3	4B	4	79	10.25	10.95	4	4C	8
66	0.00	0.40	3	4A	10	79	10.95	11.38	4	4C	11

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

79	11.38	12.13	4	4D	11	130	55.77	56.43	3	8B	4
80	0.50	42.10	1	8A	0	130	56.43	70.04	3	4A	1
80	42.10	42.90	1	8C	0	130	70.04	80.38	2	4A	31
80	42.90	43.90	1	8A	0	130	80.38	83.37	3	4A	1
80	43.90	46.13	1	1A	0	138	0.00	3.52	3	4A	1
80	46.13	62.50	1	8A	0	139	0.00	1.49	3	8B	1
80	62.50	68.30	1	1A	0	140	0.00	0.48	6	2A	18
81	0.51	1.16	3	5A	1	140	0.48	0.95	5	2A	12
82	0.00	2.65	4	4E	5	143	0.25	2.35	6	2A	45
82	2.65	3.35	4	4E	2	147	0.00	0.80	4	4D	35
82	3.35	4.25	4	4E	5	147	0.80	1.63	3	4D	32
82	4.25	4.93	4	4E	2	147	1.63	3.30	4	4D	35
83	0.00	0.24	2	4B	31	147	3.30	4.20	5	4D	41
83	0.24	3.84	2	4A	31	152	0.00	0.17	4	4D	5
87	0.00	0.57	3	8A	7	152	0.17	1.58	4	4D	2
87	0.57	0.80	3	6A	7	152	1.58	1.72	4	4D	5
87	0.80	1.72	3	4A	7	152	1.72	3.17	4	4D	2
88	0.00	0.30	4	2B	12	154	0.00	0.30	4	4C	11
88	0.30	3.57	4	2C	12	154	0.30	1.70	4	4C	8
88	3.57	5.21	4	2C	12	156	0.00	1.21	5	2A	12
88	5.21	7.42	4	2C	6	157	0.00	0.43	5	2A	6
88	7.42	8.60	4	2C	6	157	0.43	0.91	4	2A	3
88	8.60	8.96	5	4D	5	159	0.00	0.45	3	4A	1
88	8.96	9.64	4	2C	6	159	0.45	0.56	3	4A	4
88	9.64	9.84	3	4B	4	159	0.56	1.35	4	4E	11
90	2.00	3.20	3	8A	1	161	0.00	1.10	4	2B	12
91	0.00	1.30	4	4C	8	162	0.00	0.73	6	2A	39
91	1.30	2.31	4	4C	11	163	0.00	0.33	6	2A	51
93	0.00	3.41	5	2A	12	165	0.00	0.10	4	4A	40
94	0.20	0.72	4	4D	35	165	0.10	0.28	5	4D	41
94	0.72	2.63	4	4C	32	166	0.00	1.86	4	2C	6
94	2.63	3.33	4	4C	35	166	1.86	1.98	4	4D	5
94	3.33	8.75	4	4C	32	166	1.98	2.23	4	2C	6
94	8.75	9.33	4	4C	35	166	2.23	3.75	4	2C	3
94	9.33	11.82	4	4C	32	167	0.00	2.86	6	2A	51
94	11.82	12.60	4	4D	35	168	0.00	0.78	3	4A	1
94	12.60	14.80	4	4C	35	168	0.78	1.20	4	4C	2
94	14.80	21.35	4	4C	32	168	1.20	2.65	4	2C	6
94	21.35	21.55	4	4D	2	168	2.65	4.73	4	2C	3
94	21.55	22.50	4	4D	5	168	4.73	7.38	4	2C	6
94	24.88	27.63	4	4C	35	168	7.38	8.72	4	4C	5
94	27.90	32.90	4	4C	35	168	8.72	9.79	3	4A	1
94	32.90	35.15	4	4C	32	168	9.79	9.92	3	4B	4
94	35.15	45.71	4	4C	35	168	9.92	10.57	4	4C	5
95	0.12	4.42	1	6A	0	169	0.98	3.31	3	4A	4
95	72.48	76.78	1	1A	0	169	3.31	4.00	3	4A	1
109	1.37	1.95	4	4C	35	169	4.00	5.73	3	4A	4
109	1.95	2.50	4	4A	34	171	0.00	0.08	3	4A	10
109	2.50	3.06	4	4C	35	171	0.08	1.00	4	4F	23
120	0.00	0.95	3	6A	1	172	0.00	0.35	6	4E	23
120	0.95	2.65	3	6A	4	172	0.35	0.81	3	4A	10
124	7.32	9.00	4	4A	19	173	0.00	0.25	5	2A	9
124	9.00	9.40	6	4A	22	173	0.25	0.35	4	2B	9
124	9.40	10.03	3	4A	4	173	0.35	3.19	4	2B	39
124	10.03	11.70	4	4E	5	173	3.19	4.20	4	2B	45
124	11.70	12.58	3	4A	4	173	4.20	4.50	4	2B	48
124	12.58	14.84	4	4E	5	173	4.50	12.07	4	2B	45
130	0.00	0.65	4	4D	11	173	12.43	12.80	4	2B	45
130	0.65	2.25	4	4D	8	173	12.80	13.50	4	2B	48
130	2.25	4.15	4	4D	11	173	13.50	14.62	4	2B	54
130	4.15	5.28	4	4D	8	175	0.27	1.58	6	2A	21
130	5.28	8.90	6	2A	39	175	1.58	2.15	6	2A	24
130	8.90	11.70	4	4A	37	175	2.15	2.73	6	2A	21
130	11.70	14.29	1	4A	0	175	2.73	2.95	4	4A	19
130	23.53	25.43	3	4A	1	179	0.10	0.38	6	2A	42
130	25.43	29.46	3	6B	1	179	0.38	0.71	5	4D	41
130	30.45	37.10	3	6B	1	179	0.71	1.45	5	4D	38
130	37.10	45.90	3	6A	1	179	1.45	6.40	6	2A	39
130	45.90	46.65	4	8B	4	179	6.40	7.46	6	2A	42
130	46.65	55.43	3	6A	1	181	0.00	1.41	4	4C	11
130	55.43	55.77	3	6A	4	181	1.41	1.65	4	4C	8

TRANSPORTATION

PROPOSALS

181	1.65	4.39	5	4C	41	206	57.90	64.45	2	4A	25
181	4.39	5.81	4	4C	11	206	64.45	68.90	3	4A	1
181	5.81	7.43	5	4C	38	206	68.90	71.25	3	6A	1
182	0.00	0.98	4	4D	5	206	78.32	79.25	3	4A	1
183	0.00	0.20	2	4B	31	206	79.25	89.49	2	4A	31
183	0.20	0.43	3	4A	1	206	89.49	95.61	3	4A	1
183	0.43	0.58	3	4A	4	206	97.01	97.51	3	4A	1
183	0.58	2.12	4	2B	6	206	97.51	97.80	2	4A	31
184	0.00	0.32	3	6A	10	206	97.80	99.23	3	4A	1
184	0.32	1.37	3	4A	10	206	99.23	102.72	2	4A	31
185	0.00	1.42	3	4A	4	206	102.72	103.35	4	4A	34
187	0.00	0.47	4	4E	8	206	103.35	104.50	4	2C	35
195	0.00	34.17	1	4A	0	206	104.50	107.18	2	4A	31
202	0.37	19.04	2	4A	25	206	107.18	107.48	3	4A	34
202	19.04	26.25	3	4A	1	206	107.48	108.18	3	4A	1
202	26.25	29.00	4	4F	2	206	108.18	109.93	4	2B	6
202	29.00	29.55	3	4A	1	206	109.93	111.10	4	4C	35
202	29.55	29.69	3	4A	4	206	111.10	114.10	2	4A	31
202	29.69	30.02	3	4B	4	206	114.10	116.28	3	4A	34
202	30.02	31.50	3	4A	1	206	116.28	128.20	2	4A	31
202	31.50	31.80	3	4A	4	206	128.20	129.22	3	4A	34
202	31.80	32.56	4	2C	11	208	0.00	3.55	3	6A	1
202	32.56	32.77	5	2A	12	208	3.55	5.12	2	6A	1
202	32.77	32.95	6	2A	42	208	5.12	11.02	3	6A	1
202	32.95	34.10	6	2A	39	278	0.00	0.90	1	6A	0
202	34.10	36.20	5	2A	9	280	0.00	7.66	1	6A	0
202	36.20	36.40	5	2A	12	280	7.66	12.50	1	8A	0
202	36.40	37.85	4	2B	12	280	12.50	13.28	1	1A	0
202	37.85	39.06	4	4C	8	280	13.28	16.80	1	6A	0
202	39.06	39.30	5	2A	9	284	0.00	0.63	5	2A	36
202	39.30	42.31	6	2A	39	284	0.63	7.03	5	2A	33
202	42.31	42.62	5	2A	9	287	0.00	0.73	1	1A	0
202	42.62	43.90	5	2A	12	287	0.73	17.82	1	8A	0
202	43.90	45.30	5	4E	11	287	17.82	21.20	1	1A	0
202	45.30	45.70	5	4C	11	287	21.20	42.10	1	8A	0
202	45.70	46.31	4	4E	11	287	42.10	47.30	1	6A	0
202	46.31	47.00	4	4D	11	287	47.30	60.00	1	6A	0
202	50.03	50.70	3	4B	1	287	60.00	67.54	1	4A	0
202	51.43	51.87	4	4C	5	295	0.95	26.40	1	6A	0
202	62.99	65.32	3	6A	1	295	26.40	27.00	1	8A	0
202	65.32	65.58	5	2A	6	295	27.00	42.90	1	6A	0
202	72.44	72.66	4	4D	5	295	42.90	44.78	1	8A	0
206	0.00	0.10	3	4A	1	295	44.78	72.00	1	6A	0
206	0.10	2.33	4	4F	2	322	2.24	6.30	2	4A	31
206	2.33	6.27	4	4C	2	322	6.30	10.85	4	4D	39
206	6.27	9.00	4	4C	26	322	11.24	11.53	4	4D	35
206	9.00	23.30	4	4C	32	322	11.53	14.58	4	4C	32
206	23.30	23.70	4	4F	32	322	14.58	16.10	4	4C	35
206	23.70	30.36	4	4C	32	322	16.10	16.78	4	4D	2
206	30.36	31.28	2	4A	31	322	16.78	18.55	4	4D	5
206	31.28	33.40	4	4C	32	322	18.55	19.50	4	4D	2
206	33.40	34.00	2	4A	31	322	19.50	23.05	4	4C	35
206	34.00	35.50	3	4A	1	322	23.05	24.10	4	4C	2
206	35.50	35.61	3	4A	4	322	24.10	24.50	4	4C	5
206	36.27	38.49	3	4A	1	322	24.50	26.85	4	4C	2
206	38.49	38.90	3	6A	1	322	26.85	32.90	4	4C	32
206	38.90	39.00	3	6A	4	322	32.90	48.70	2	4A	31
206	39.00	40.73	3	4A	4	322	48.70	50.10	2	6A	31
206	44.50	45.00	6	4A	23	324	0.00	1.51	6	2A	51
206	45.00	47.90	4	4C	2	439	0.00	3.94	4	4E	5
206	47.90	48.50	1	2A	0	440	0.00	3.10	1	6A	0
206	48.50	49.80	5	1A	3	440	3.10	3.98	1	6C	0
206	49.80	52.90	4	2C	2	440	20.56	23.28	3	6A	1
206	52.90	54.50	4	1A	3	495	0.80	1.97	1	6A	0
206	54.50	55.80	4	2C	2	524	0.45	0.90	4	4B	13
206	55.80	57.20	4	2C	35	676	0.00	3.79	1	6A	0
206	57.20	57.90	4	2B	35						

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

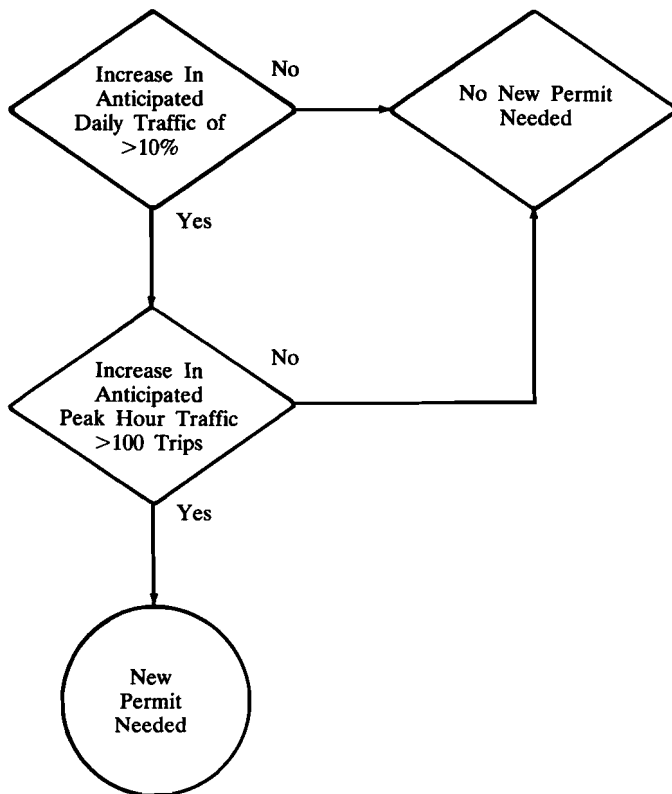
AGENCY NOTE: Appendix E at 23 N.J.R. 1634 to 1635 has been deleted and replaced by the following Appendix E.

**APPENDIX E
ACCESS APPLICATION THRESHOLDS**

CATEGORY	LAND USE CODE	USE	UNITS	THRESHOLD	
				For Major† 500 Trips per day	For Major with Planning 200 Peak Hour Trips
Residential	210	Single Fam. Det. Housing	unit	46	196
	220	Apartments	unit	82	290
	222	High Rise Apt. 3 Levels	unit	110	513
	230	Condo/Townhouses	unit	74	364
	240	Mobile Home Park	unit	93	345
	250	Retirement Community	unit	182	597
	252	Congregate Care Facility	unit	233	953
	260	Recreational Homes	unit	158	274
	270	Residential Planned Unit	unit	50	246
	310	Hotel	room	64	264
	320	Motel	room	49	271
	330	Resort Hotel	room	45	244
	Business	150	Warehousing	1,000 sf	102.5
151		Mini Warehouse	1,000 sf	195.6	362.3
110		General Light Industry	1,000 sf	71.8	185.2
120		General Heavy Industrial	1,000 sf	333.3	333.3
140		Manufacturing	1,000 sf	132.2	262.6
130		Industrial Park	1,000 sf	71.8	219.8
		Flexspace (use LUC 770) Distribution Centers	1,000 sf acre	33.2 6.1	127.2 25.8
Office	710	General Office	1,000 sf	25.6	106.1
	750	Office Park	1,000 sf	43.8	110.3
	760	Research Center	1,000 sf	41.5	156.2
	770	Business Park	1,000 sf	33.2	127.2
	714	Corporate Headquarters	1,000 sf	63.7	133.4
	720	Medical Office Bldg.	1,000 sf	18.5	44.8
Medical	630	Clinic	1,000 sf	21.0	40.2
	610	Hospital	1,000 sf	5.5	91.4
	620	Nursing home	bed bed	12 193	140 488
Schools	520	Elementary school	student	551	714
	530	High school	student	243	488
	540	Jr. or Community College	student	323	1250
	550	University	student	199	833
Shopping Center	815	Discount stores	1,000 sf	16.2	30.0
	820	Shopping Center	1,000 sf	1.0	9.6
	812	Building Materials/Lumber	1,000 sf	15.9	44.4
	850	Supermarket	1,000 sf	2.8	13.1
	851	Convenience Market	1,000 sf	0.6	3.1
	860	Wholesale Market	1,000 sf	74.3	344.8
	911	New Car Dealerships	1,000 sf	10.5	76.3
	841	Banks walk-in	1,000 sf	3.6	7.0
	912	Banks Drive-in Wholesale Clubs #	windows	2	4
Entertainment	443	Movie Theater w/o Matinee	seat screens	223 2	625 4
	444	Movie Theater w/Matinee	screens	1	2
	420	Marina	berths	156	741
	430	Golf Course	acre	66.3	312.5
	740	Civic Center	1,000 sf	20.0	70.0

AGENCY NOTE: Appendix J at 23 N.J.R. 1643 has been deleted and replaced by the following Appendix J.

**APPENDIX J
DETERMINING A SIGNIFICANT INCREASE IN TRAFFIC**



TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

General Administration

Administrative Practices

Deadlines for County and Municipal Early Retirement

Incentive Meetings and Resolutions

Proposed New Rule: N.J.A.C. 17:1-12.9

Authorized By: Margaret M. McMahon, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-95 et seq.; P.L. 1991, c.229.

Proposal Number: PRN 1991-451.

Submit comments by October 16, 1991 to:

Peter J. Gorman
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

P.L. 1991, c.229, established an early retirement incentive program for employees of counties and municipalities similar to the program established for State employees by P.L. 1991, c.137. Participation by a county or municipality in the program is voluntary, but to participate, a county or municipality must adopt a resolution to this effect and file it with the Director of the Division of Pensions by September 1, 1991. Prior to this date, each covered employer is required to meet and consult

with the representatives of the bargaining unit or units representing employees eligible for benefits under the law, and to formally consider and decide whether or not to adopt the provisions of the act. The time period in which a county or municipality must make this decision is very short. This deadline for filing resolutions is not one of the mandatory criteria for eligibility under the program, but is primarily a legislative directive concerning administration of the program. The window period in which employees must qualify and retire is from November 1, 1991 through March 1, 1992. The Director of the Division of Pensions proposes, with this new rule, to extend the deadline for filing the resolutions, and for meeting and consulting with bargaining representatives and for deciding on adoptions, to October 15, 1991.

Social Impact

This proposed new rule will give counties and municipalities more time to decide on participation in the early retirement incentive program. It will provide a better opportunity for a more informed and considered decision on this important question which will be beneficial to the taxpayers of counties and municipalities. Expanded time for consideration may also result in greater participation by local employers in the program which would provide early retirement incentive benefits for more local employees and budgetary savings for more taxpayers.

Economic Impact

This proposed new rule will not have any adverse economic impact on affected State retirement systems or counties and municipalities. It could result in greater participation in the early retirement incentive program and yield early retirement benefits for more employees and budgetary savings for more local employers.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed new rule does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Because the rules of the Division of Pensions affect only public employers and employees, this proposed new rule will not have any effect on small business.

Full text of the proposed new rule follows:

17:1-12.9 Deadline for county and municipal early retirement incentive resolutions

To provide the early retirement incentive benefits authorized under P.L. 1991, c.229, the governing body of a county or municipality shall adopt a resolution and file a certified copy of the resolution with the Director of the Division of Pensions on or before October 15, 1991. Prior to October 15, 1991, each employer covered by this law shall meet and consult with the bargaining representatives of the bargaining unit or units representing employees eligible for benefits under the law, and shall formally consider and decide whether or not to adopt the provisions of the law.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Public Workshops on Air Pollution Control

Take notice that the Department of Environmental Protection will hold workshops for the purpose of providing an opportunity for informal public participation in the development of the State Implementation Plan, including new and revised air pollution control rules, pursuant to the 1991 amendments to the federal Clean Air Act.

The public workshops will be held at the War Memorial Building at West Lafayette and John Fitch Way in Trenton, New Jersey. Registration will begin at 8:30 A.M. and workshops will commence at 9:00 A.M. The schedule for the workshops, together with a preliminary statement of the topics to be discussed, is as follows:

Date	Topic
October 8, 1991	New Jersey Implementation of the Clean Air Act amendments: emission reduction requirements mandated and discretionary measures strategy selection criteria contingency measures economic incentives
October 24, 1991	Discussion of rules under development for: emissions reporting operating permits emission offsets
November 7, 1991	Discussion of rules under development to control emissions from mobile sources, including: oxygenated fuels low emission vehicle standards the "California" car fleet vehicles enhanced inspection/maintenance
December 4, 1991	Discussion of rules under development to establish reasonably available control techniques (RACT) for sources of: volatile organic compounds (VOC) oxides of nitrogen (NO _x)

Workshop participation is open to all interested persons. Additionally, the Department may form workgroups focusing on topics identified at these workshops to allow continued discussion of the issues.

Any person who plans to participate should register in advance by calling Lisa Nollie at 609-292-5194 or Diane Yanson at 609-984-3023. A registration packet, including directions to the workshop location, an agenda, and draft documents to be discussed will be mailed out to any person who registers at least six business days in advance of the workshop.

(a)

DIVISION OF ENVIRONMENTAL QUALITY Discharges of Petroleum and Other Hazardous Substances Confidentiality

Proposed Amendments: N.J.A.C. 7:1E-1.6 and 1.9 Proposed New Rules, N.J.A.C. 7:1E-7, 8, 9 and 10

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:10-23.11 et seq., particularly 58:10-23.11; and N.J.S.A. 13:1D-1 et seq., particularly 13:1D-9d.

DEP Docket Number: 034-91-08.

Proposal Number: PRN 1991-467.

Submit written comments by October 16, 1991 to:
Samuel A. Wolfe, Esq.
New Jersey Department of Environmental Protection
and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

On August 12, 1991, the Department of Environmental Protection (the "Department") adopted new rules governing discharges of petroleum and other hazardous substances, N.J.A.C. 7:1E. Under these rules, which were published in the September 3, 1991 New Jersey Register, the owners and operators of major facilities are required to submit to the Department discharge prevention, containment and countermeasure ("DPCC") plans and discharge cleanup and removal ("DCR") plans. The rules also contain provisions concerning inspections by the Department.

In response to the Department's proposal of the new N.J.A.C. 7:1E, several persons commented that the rules should provide a means of protecting the confidentiality of trade secrets and other information

which a person subject to the rules sought to keep confidential. The Department recognizes that it may receive confidential information in implementing the rules. For example, DPCC plans and DCR plans may contain confidential information. Confidential information may also be revealed during Department inspections.

The Department agrees with the commenters' concern for the protection of the confidentiality of certain information. Therefore, the Department is proposing amendments to N.J.A.C. 7:1E-1.6 and 1.9, and new rules at N.J.A.C. 7:1E-7, 8, 9 and 10, addressing issues of confidentiality.

The Department expects that in the course of complying with the previously adopted provisions of N.J.A.C. 7:1E, persons may be required to submit or allow the Department to obtain information such persons believe is confidential before the proposed amendments and proposed new rules are adopted. Until the proposed amendments and proposed new rules are adopted, the Department intends to maintain the confidentiality of such information. However, specific circumstances, of the types described in the proposed amendments and proposed new rules at N.J.A.C. 7:1E-9, may arise which make disclosure during that interim period necessary.

The following is a summary of the confidentiality provisions of the proposed amendments and proposed new rules:

N.J.A.C. 7:1E-1.6 Definitions

The proposed amendments to N.J.A.C. 7:1E-1.6 include definitions of terms used in the substantive confidentiality provisions in N.J.A.C. 7:1E-7 through 10. Most importantly, the proposed amendments define "confidential information" as information which satisfies several specific criteria. These criteria include a requirement that the claimant show that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security. The criteria also include requirements that the claimant must have asserted a confidentiality claim with respect to the information in question; that the claimant must have taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures; that the information is not contained in materials routinely available to the general public, and has not otherwise been made available by the claimant or without the claimant's consent; and that no law, regulation or court order requires disclosure of the information.

N.J.A.C. 7:1E-1.9 Access

N.J.A.C. 7:1E-1.9, as recently adopted, contained a provision intended to govern confidentiality pending the adoption of these proposed amendments and new rules. That provision is being deleted, and replaced by these proposed amendments and new rules.

Subchapter 7. Confidentiality Claims

N.J.A.C. 7:1E-7 establishes the procedure for making a request that the Department maintain the confidentiality of particular information (a "confidentiality claim"). Any person required to submit information to the Department, or to allow the Department to obtain information (such as through an inspection) may assert a confidentiality claim.

N.J.A.C. 7:1E-7.1 requires the claimant to submit a "confidential copy" of the information, which includes all of the information asserted to be confidential and identifies that information. In addition, at the request of the Department, the claimant will be required to submit a "preliminary public copy" with all of the assertedly confidential information concealed or deleted. The Department may make the preliminary public copy available to the public.

N.J.A.C. 7:1E-7.2 requires the claimant to designate a person as the addressee of all communications from the Department. The Department believes that limiting the number of potential recipients of such communications will help to preserve the confidentiality of any information which such communications contain.

Subchapter 8. Confidentiality Determinations

N.J.A.C. 7:1E-8 establishes the procedure for the Department to determine whether assertedly confidential information is confidential.

Since there may be no immediate need for disclosure, N.J.A.C. 7:1E-8.1 requires the Department to make a confidentiality determination only before disclosing the information (whether the proposed disclosure would be in response to a request by a member of the public to inspect or copy the information, or for other reasons making disclosure necessary). However, under N.J.A.C. 7:1E-8.1, the Department may make the confidentiality determination even when there is no immediate need for disclosure.

Under N.J.A.C. 7:1E-8.2, the Department either will determine that the assertedly confidential information may be confidential, or that it clearly is or is not. If the Department determines that the information may be confidential, N.J.A.C. 7:1E-8.2, 8.3 and 8.4 provide for the claimant to submit specified additional information in support of the claim, within a specified amount of time. N.J.A.C. 7:1E-8.5 provides for the Department to make a final confidentiality determination based upon the information submitted by the claimant. Until the final confidentiality determination is made, under N.J.A.C. 7:1E-8.6 the Department will treat all information which is the subject of the confidentiality claim as confidential information.

N.J.A.C. 7:1E-8.7 provides that 14 days after the Department notifies the claimant that it has determined that information is not confidential, the Department may begin disclosing that information. N.J.A.C. 7:1E-8.8 requires the Department to prepare a public copy of the record, based upon the final confidentiality determination. The public copy has all confidential information either concealed or deleted, with an indication of where deletions have been made.

N.J.A.C. 7:1E-8.9 provides for the Department to make confidentiality determinations for a class of information sharing characteristics which would cause the Department to determine consistently that the information is or is not confidential. The Department has already determined that several types of information which will be submitted or obtained under the existing provisions of N.J.A.C. 7:1E are not confidential information; these types of information are listed in N.J.A.C. 7:1E-8.10.

Subchapter 9. Disclosure and Use of Confidential Information

N.J.A.C. 7:1E-9 specifies certain circumstances and conditions under which the Department is likely to need to disclose confidential information, and therefore allows the Department may disclose such information under those circumstances and conditions. N.J.A.C. 7:1E-9.1 allows for disclosure to other public agencies satisfying requirements concerning the other agency's authority to compel submission of the information itself, and to protect its confidentiality. N.J.A.C. 7:1E-9.2 allows for disclosure to Department contractors requiring the information for the performance of a contract, but requires that the contract contain provisions protecting the confidentiality of the information. N.J.A.C. 7:1E-9.3 allows for disclosure to alleviate an imminent and substantial danger. For disclosure in all these circumstances, the Department is required under N.J.A.C. 7:1E-9.4 to notify the claimant that the disclosure has been made.

N.J.A.C. 7:1E-9.5 allows disclosure with the claimant's consent, and provides that the consent to a particular disclosure will not operate as a waiver of the confidentiality claim unless the particular disclosure will make the information no longer confidential. N.J.A.C. 7:1E-9.6 makes it clear that the Department can incorporate confidential information into cumulations of data which are subject to disclosure as public records, but requires that the disclosure must not be in a form which would foreseeably allow the public to deduce the confidential information or the identity of the person who supplied it to the Department.

N.J.A.C. 7:1E-9.7 allows the Department to use confidential information in rulemaking, permitting and enforcement proceedings. If the information is used in an adjudicatory hearing, the Uniform Administrative Procedure Rules provide for the administrative law judge to conduct the proceeding in a manner which protects the information from disclosure to the public. In other types of proceedings, N.J.A.C. 7:1E-9.7 provides the claimant with an opportunity to oppose the use of the confidential information. The Department may use the information in the proceeding if it determines, upon consideration of the materials the claimant submits in such opposition, that the confidential information is relevant to the proceeding, that the use of the confidential information will serve the public interest, and that it materially impairs such service to limit the use of the confidential information to a manner which preserves its confidentiality.

Subchapter 10. Treatment of Confidential Information

N.J.A.C. 7:1E-10 provides for the treatment of confidential information, in a manner intended to safeguard its confidentiality. This subchapter also describes the Department's remedies for wrongful disclosure or use of confidential information by its employees, representatives, contractors and other persons.

Social Impact

The Department expects that the proposed amendments and new rules will have a positive social impact upon persons required under the

substantive provisions of N.J.A.C. 7:1E to submit confidential information or allow the Department to obtain confidential information, by providing these persons with a means of ensuring that the Department will protect the confidentiality of such information, and will not disclose it except in the particular circumstances provided in the rules.

Economic Impact

Under the proposed amendments and new rules, persons seeking to maintain the confidentiality of information will incur costs in making a confidentiality claim. Since the primary cost of establishing a confidentiality claim is the cost of submitting information which the claimant chooses to submit in support of the claim, the Department cannot estimate the extent of that cost. The cost could be limited to the cost of preparing, copying and mailing a few pages of information, or could be greatly increased if the claimant chooses to retain an attorney and other professionals to assist in making and substantiating the claim. The Department expects that the cost which the claimant chooses to incur will depend primarily upon the nature of the information the claimant desires to protect, and the value of that information to the claimant.

To avoid imposing unnecessary costs upon claimants, the proposed amendments and proposed new rules provide that the Department will delay making a confidentiality claim until (i) the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:1E-10, to inspect or copy records containing assertedly confidential information; (ii) it is preparing to take action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:1E-10; or (iii) the Department otherwise elects to make a confidentiality determination. Until the confidentiality determination is made, the Department will treat the assertedly confidential information as confidential. Therefore, it is possible that a claimant may incur no additional costs to protect the confidentiality of information after making the initial claim.

The Department expects that the proposed amendments and new rules will have a small adverse economic impact upon the Department, because the Department will be required to devote staff time to the processing of confidentiality claims. The extent of this economic impact will depend upon the volume and complexity of confidentiality claims the Department receives.

The protection of confidential information under the proposed amendments and new rules will normally result in a positive economic impact upon persons seeking confidential treatment of such information. Because disclosure of the confidential information, by definition, would damage the person's competitive position (or, in some cases, national security), the avoidance of that damage would be a positive economic impact.

The proposed amendments and new rules also allow the disclosure of confidential information in particular circumstances. The Department does not expect that the allowance of disclosures to other public agencies will have an economic impact upon confidentiality claimants, because the proposed amendments and new rules require that the other agency maintain confidentiality of the information itself unless the other agency itself would have the authority to compel production of the information and disclose it. The Department also expects no economic impact upon confidentiality claimants to result from disclosure to the Department's contractors, since the proposed amendments and new rules require the Department to take measures intended to protect the information from further disclosure by the contractor.

A negative economic impact upon confidentiality claimants may result from disclosures made to alleviate an imminent and substantial danger; however, the Department believes that value of alleviating the danger outweighs the negative economic impact, especially since the disclosure is limited to the minimum necessary in connection with the danger. Similarly, a negative economic impact may result from disclosure in rulemaking, permitting and enforcement proceedings; however, disclosure in such proceedings is allowed only if the Department determines that preserving confidentiality would materially impair the public interest. The Department cannot determine the extent of these negative economic impacts with any precision, since the extent of the impact will depend upon the nature of the confidential information and the circumstances of the disclosure.

Environmental Impact

The Department expects that the proposed amendments and new rules will have a positive environmental impact, by addressing a concern which persons subject to the substantive provisions of N.J.A.C. 7:1E could otherwise have in the course of complying with those provisions. As a

result, the Department believes that the proposed amendments and new rules will increase compliance with those substantive provisions, without compromising such provisions in any way.

Regulatory Flexibility Analysis

Though the Department expects that some small businesses will assert confidentiality claims, the Department cannot estimate how many small businesses will assert such claims. Many of the previously adopted provisions of N.J.A.C. 7:1E apply only to "major facilities," as that term is defined at N.J.A.C. 7:1E-1.6; of the 900 major facilities in New Jersey, the Department estimates that 39 percent are owned or operated by "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All of these facilities, including the ones owned or operated by small businesses, will be required to submit DPCC and DCR plans, which may contain assertedly confidential information.

Since the primary cost of establishing a confidentiality claim is the cost of submitting information which the claimant chooses to submit in support of the claim, the Department cannot estimate the extent of that cost for small businesses. The cost could be limited to the cost of copying and mailing a few pages of information, or could be greatly increased if the claimant chooses to retain an attorney and other professionals to assist in making and substantiating the claim. The Department expects that the cost which the claimant chooses to incur will depend primarily upon the nature of the information the claimant desires to protect.

The Department has proposed procedures which are intended to require claimants to incur only minimal costs in protecting the confidentiality of information, unless the claimant elects to incur greater costs. Therefore, the proposed amendments and new rules contain no provisions aimed specifically at limiting the costs imposed upon small businesses.

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

7:1E-1.6 Definitions

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

...
 "Assertedly confidential information" means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

...
 "Claimant" means any person who submits a confidentiality claim under this chapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:1E-8.9, for a class of information.

...
 "Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information which the Department determines to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:1E-7, and such confidentiality claim has not expired by its terms, been waived or withdrawn;

2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;

3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;

4. The information is not, and has not been, available or otherwise disclosed to other persons either by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding, arbitration, or other proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding);

5. The information is not contained in materials which are routinely available to the general public, including without limitation initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

6. The claimant has not waived the confidentiality claim for the information; and

7. No law, regulation (including, without limitation, N.J.A.C. 7:1E-8.10 or any other regulations of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

...
 "Contract" means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

"Contractor" means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.

...
 "Final public copy" means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be cancelled by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

...
 "Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be canceled by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

...
 "Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved and from which the information can be retrieved or copied.

...
 "Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

...
 "Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:1E-8.3.

7:1E-1.9 Access

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

[(e) All information collected by or originated by the Department in connection with the Act, this chapter or the Discharge Prevention Program shall be made available to the public in accordance with N.J.S.A. 13:1D-9d.]

SUBCHAPTER 7. CONFIDENTIALITY CLAIMS

7:1E-7.1 Procedure for making a claim

(a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:1E-7.3) a confidential copy and, upon the Department's request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:1E-7.2.

7:1E-7.2 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:1E-7, 8, 9 and 10. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:1E-7.3(a), be directed to the designee.

7:1E-7.3 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:1E-7.2, including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:1E-8.2(a)1ii;
2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:1E-8.5(a)1;
3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:1E-9.3(a);
4. Notices of disclosure under N.J.A.C. 7:1E-9.4; and
5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:1E-9.7.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following address:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027

SUBCHAPTER 8. CONFIDENTIALITY DETERMINATIONS

7:1E-8.1 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential informa-

tion pursuant to N.J.A.C. 7:1E-10, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or

2. Before taking any action which is inconsistent with requirements for treatment of confidential information set forth in N.J.A.C. 7:1E-10.

(b) The Department may, in its discretion, make a confidentiality determination at any time.

7:1E-8.2 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

(a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:

1. Notify each claimant who is known to have asserted a claim applicable to such information, and who has not previously been furnished with notice with regard to the information in question, of the following:
 - i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim;
 - ii. That the claimant is required to substantiate the claim as required by N.J.A.C. 7:1E-8.3;
 - iii. The address of the office to which the claimant's substantiation must be addressed;
 - iv. The time allowed for submission of substantiation, pursuant to N.J.A.C. 7:1E-8.4;
 - v. The method for requesting a time extension under N.J.A.C. 7:1E-8.4(c); and
 - vi. That a claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:1E-8.4 shall operate as a waiver of the claimant's claim.

2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:
 - i. The information which is the subject of the request may be confidential information;
 - ii. The Department must undertake further inquiry before granting or denying the requester's request; and
 - iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.

(b) The Department shall send the notice required by paragraphs (a)1 and 2 above by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(d) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(e) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(f) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(g) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(h) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(i) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(j) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(k) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(l) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(m) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(n) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(o) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(p) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(q) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(r) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(s) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(t) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(u) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(v) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(w) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(x) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

(y) If the Department is unable to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

5. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and

6. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.

(b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this section. If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

7:1E-8.4 Time for submission of substantiation

(a) If the Department is making a confidentiality determination in response to a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq., the claimant shall submit substantiation within 10 working days after the date of the claimant's receipt of the written notice.

(b) If the Department is making a confidentiality determination for any reason other than as provided in (a) above, the claimant shall submit substantiation within 20 working days after the claimant's receipt of the written notice.

(c) The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to (b) above if, before the expiration of the allotted time, the claimant submits a written request for the extension of such allotted time. Except in extraordinary circumstances, the Department shall not approve such an extension of the time allotted pursuant to (a) above without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A-1 et seq. is pending.

(d) If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

7:1E-8.5 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to N.J.A.C. 7:1E-8.2 and 8.3, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:

1. The Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the claimant of the written notice.

2. On or after the 14th day following receipt by the claimant of the written notice required by (a)1 above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.

(b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:1E-8.3, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:1E-10. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

7:1E-8.6 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

7:1E-8.7 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:1E-8.5(a), the Department may disclose such information to any person on the date which is 14 days after written notice of the confidentiality determination is delivered to the claimant.

7:1E-8.8 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

7:1E-8.9 Class confidentiality determinations

(a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which characteristics would cause the Department to determine consistently that such information is or is not confidential information.

(b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.

(c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

7:1E-8.10 Classes of information which are not confidential information

(a) Without limiting the ability of the Department to determine that information not listed in this section is not confidential information, the following types of information are not confidential information:

1. The name, address and business telephone number of the owner or operator of a transmission pipeline, or of the registered agent of such owner or operator;
2. The name, address and business telephone number of a facility and of its owner or operator and the registered agent of such owner or operator;
3. Schedules of integrity testing for aboveground storage tanks required to be submitted under N.J.A.C. 7:1E-2.2(a)4, and information concerning the methods of testing;
4. Test reports for aboveground storage tanks required to be submitted under N.J.A.C. 7:1E-2.2(a)5;
5. Information contained in documentation of employee training, evaluation and qualifying activities required to be maintained under N.J.A.C. 7:1E-2.12(d);
6. The storage capacity of a facility, the transfer capacity of a facility, and the types of hazardous substances present at a facility;
7. Discharge cleanup information required to be submitted under N.J.A.C. 7:1E-3.4;
8. All information required to be submitted by discharge cleanup organizations under N.J.A.C. 7:1E-4.2;
9. Outlines of housekeeping and maintenance programs required to be submitted under N.J.A.C. 7:1E-4.3(d)7;
10. Lists of standard operating procedures required to be submitted under N.J.A.C. 7:1E-4.3(d)10;
11. Summaries of action plans required to be submitted under N.J.A.C. 7:1E-4.4(a)1;
12. Information concerning procedures for mobilizing equipment in the event of a discharge;
13. Names and titles of response coordinators and other persons authorized to hire contractors and release funds for discharge response, containment, cleanup and removal;
14. Information concerning proposed methods of disposal of material gathered during cleanups;
15. Housekeeping and maintenance records required to be made available under N.J.A.C. 7:1E-4.3(f)6;
16. The locations of environmentally sensitive areas;
17. Certifications required under N.J.A.C. 7:1E-4.11, and the identity of any person signing such a certification;

18. Information which the Department is required to report under N.J.A.C. 7:1E-5.9; and

19. Information contained in an administrative order or notice of civil administrative penalty assessment under N.J.A.C. 7:1E-6.3.

SUBCHAPTER 9. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

7:1E-9.1 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to any other state agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;

2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;

3. The other agency has furnished to the Department a written opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department (or allowed the Department to obtain such information) to disclose such information to the requesting agency;

4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, unless:

i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or

ii. The claimant has consented to disclosure of the information by the requesting agency; and

5. The requesting agency agrees not to disclose the information further unless:

i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The claimant has consented to disclosure of the information by the requesting agency.

7:1E-9.2 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor, if:

1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;

2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and

3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.

7:1E-9.3 Disclosure to alleviate an imminent and substantial danger

(a) If the Department finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the Department may, in its discretion, take one or more of the following actions:

1. Reduce the time allotted for providing substantiation pursuant to N.J.A.C. 7:1E-8.4, and notify the claimant of such reduction;

2. Advance the date on which the Department may disclose information which the Department has determined is not confidential information, pursuant to N.J.A.C. 7:1E-8.5(a), and notify the claimant of such advance; or

3. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary. Any disclosure pursuant to this paragraph shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger. Any disclosure made pursuant to this paragraph shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

7:1E-9.4 Notice to claimants of disclosure of confidential information

(a) Promptly after the Department discloses confidential information pursuant to N.J.A.C. 7:1E-9.1, 9.2 or 9.3, the Department shall notify any claimant from whom the Department has obtained confidential information of the disclosure. Such notice shall be in writing, and shall contain the following information:

1. The date on which disclosure was made;

2. The name of the agency or other person to which the Department disclosed the confidential information; and

3. A description of the confidential information disclosed.

7:1E-9.5 Disclosure by consent

(a) The Department may disclose confidential information in accordance with the written consent of the claimant.

(b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

7:1E-9.6 Incorporation of confidential information into cumulations of data

Nothing in this chapter shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:1E-9.7 Disclosure of confidential information in rulemaking, permitting, and enforcement proceedings

(a) Notwithstanding any other provision of this subchapter, the Department may disclose confidential information in rulemaking, permitting and enforcement proceedings.

(b) The following procedures shall apply to the disclosure of confidential information by the Department in rulemaking, permitting and enforcement proceedings:

1. The Department may disclose confidential information in an adjudicatory hearing, subject to the protection from making the information available to the public which the administrative law judge may impose under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 including without limitation N.J.A.C. 1:1-14.1.

2. The Department may disclose confidential information in any enforcement, permitting, or rulemaking proceeding which does not involve an adjudicatory hearing, pursuant to the following procedure:

i. The Department shall inform the claimant that the Department is considering using the information in connection with the proceeding and shall afford the claimant a reasonable period for comment;

ii. The claimant shall submit comments to the Department within the time allotted pursuant to (b)2i above, concerning the proposed uses of confidential information, including comments which may support a determination that the confidential information is not relevant to the proceeding, or that the disclosure of the confidential information in the proceeding is not necessary to serve the public interest;

iii. The Department may disclose the confidential information in the proceeding if, upon consideration of comments submitted pursuant to (b)2ii above, the Department determines that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest

to limit the use of the information to a manner which preserves its confidentiality; and

iv. The Department shall give the affected person at least five days notice prior to using the information in the proceeding in a manner which may result in the information being made available to the public.

SUBCHAPTER 10. TREATMENT OF CONFIDENTIAL INFORMATION

7:1E-10.1 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, regulation or order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:1E-9.

7:1E-10.2 Safeguarding of confidential information

(a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.

(e) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

7:1E-10.3 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or non-disclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or non-disclosure duties upon the Department of any employee, contractor or agent thereof shall be of no force or effect.

7:1E-10.4 Wrongful access or disclosure; penalties

(a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting.

(c) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or

2. Pursue any other remedy available at law or equity.

(d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(e) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

(a)

DIVISION OF WATER RESOURCES Underground Storage Tank Systems Technical Requirements and Procedures Proposed Amendments: N.J.A.C. 7:14B-4.5, 9.1 and 13.20

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9 and 58:10A-1 et seq., more particularly 58:10A-23.

DEP Docket Number: 035-91-08.

Proposal Number: PRN 1991-468.

Submit written comments on or before October 16, 1991 to:

Samuel A. Wolfe, Esq.

Administrative Practice Officer

Office of Legal Affairs

N.J. Department of Environmental Protection and Energy

CN 402

Trenton, NJ 08625-0402

The agency proposal follows:

Summary

On September 3, 1986, P.L. 1986, c.102, codified at N.J.S.A. 58:10A-21 et seq. and commonly known as the New Jersey Underground Storage of Hazardous Substances (UST) Act, was signed into law. In accordance with its provisions, the New Jersey Department of Environmental Protection adopted a regulatory program for the prevention and control of unauthorized discharges of hazardous substances caused by releases from underground storage tank systems (N.J.A.C. 7:14B).

The UST rules require that facilities with existing underground storage tank systems upgrade these systems by installing spill prevention devices, overflow prevention devices, monitoring systems and corrosion protection systems by September 3, 1991.

On January 14, 1991, P.L. 1991, c.1, codified at N.J.S.A. 58:10A-21 et al., amending P.L. 1986, c.102, was signed into law. The UST Act, as amended, deletes the September 3, 1991 date and requires all facilities to be in compliance with the UST technical standards for secondary containment and monitoring systems by December 22, 1993 except that, in the case of underground storage tanks containing heating oil used for on-site consumption in non-residential buildings, compliance is required by August 6, 1994 or August 6, 1995, depending on the age of the system. The UST Act, as amended, further provides an extension of time for loans to be made from the Underground Storage Tank Improvement Fund.

N.J.A.C. 7:14B-4.5(b) is being amended to extend the deadline for upgrading existing underground storage tank systems with monitoring systems from September 3, 1991 to the dates described hereafter. The phase-in schedule for heating oil systems is based on the premise that tanks approaching or over 20 years of age have a greater potential to discharge and therefore should be addressed in a more expedient manner. Thus, tank systems storing heating oil for on-site consumptive use installed prior to August 6, 1974, must upgrade their tanks by August 6, 1994. Those tank systems storing heating oil for on-site consumptive use installed after August 6, 1974 must upgrade their tanks by August 6, 1995.

N.J.A.C. 7:14B-9.1(a) is being amended to delete the September 3, 1991 deadline for installation of release detection systems and to incorporate the same compliance dates as those established in N.J.A.C. 7:14B-4.5(b).

The amended UST Act also extends the time period during which loans may be awarded to upgrade underground storage tank systems. The new time periods correspond with the phase in schedule in N.J.A.C. 7:14B-4.5(b). Therefore, N.J.A.C. 7:14B-13.20 is being amended to allow loans for systems containing hazardous substances other than non-residential heating oil to be awarded until December 21, 1993, and loans for non-residential heating oil tanks used for on-site consumption to be awarded until August 6, 1995.

Social Impact

Inasmuch as the proposed amendments will allow the regulated community additional time to obtain contractors, apply for permits and secure the financial means to pay for the upgrades required by N.J.A.C. 7:14B, the rule change has a positive social impact.

The extension of the deadline may have a minor negative social impact. Certain facilities will wait until the deadline approaches to upgrade their tank systems. A small percentage of these facilities will develop releases in the tank systems which could have been prevented if the deadline was not extended. However, inventory control procedures already required for most tanks under N.J.A.C. 7:14B-5.4 will detect large catastrophic releases early. Smaller releases will not be detected until such time as monitoring systems are installed.

The Department believes that the proposed amendments are needed to ensure that proper procedures and standards are followed by facility owners and operators and their contractors to prevent and detect releases from underground storage tank systems.

Economic Impact

These rule amendments provide a positive economic impact on the regulated community since they allow an extended period for upgrading existing underground storage tank systems with spill and overflow protection, monitoring devices, and corrosion protection, thereby allowing additional time to amortize the costs of upgrades. They provide further economic benefit by extending the time limit for applying for a loan from the Underground Storage Tank Improvement Fund until 1995.

A negative economic impact may occur if a release from a tank system occurs during the extension period and impacts groundwater or surface water which is used by the public. Inventory control procedures already required as specified in N.J.A.C. 7:14B-5.4 will detect large releases from tank systems and force the tank owner or operator to conduct corrective action under N.J.A.C. 7:14B-8 prior to the impact on receptors such as potable water wells, surface water bodies, and other sensitive ecosystems.

The Department believes that the positive economic impact to the regulated community outweighs the small economic risk of an undetected release affecting a receptor.

Environmental Impact

While immediate environmental benefits may be obscured by the delay in upgrade requirements, long range environmental protection will be enhanced due to the availability of experienced contractors, the extended time to obtain the financial means to pay for upgrades, the enhanced ability of the Department to handle approval and permitting processes, and the further education of the regulated community on its responsibilities regarding their underground storage tank systems.

Major releases will be detected through the already adopted inventory control methods specified in N.J.A.C. 7:14B-8; minor releases will have a negative environmental impact due to the spread of contamination in the subsurface. These sites will eventually be discovered through the installation of monitoring systems or at the time of closure of the tank systems.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses. The amendments extend a deadline established in previous rules.

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

7:14B-4.5 Upgrading existing underground storage tank systems

(a) (No change.)

(b) [All existing underground storage tank systems used primarily for agricultural purposes on land that qualifies for a special tax assessment under N.J.S.A. 54:4-23.1 et seq. and installed prior to September 3, 1986 shall, by December 22, 1993, install a monitoring system in accordance with N.J.A.C. 7:14B-6, except as provided for in (g) below, install corrosion protection in accordance with N.J.A.C. 7:14B-4.1 and install spill and overflow protection in accordance with N.J.A.C. 7:14B-4.1.] **All underground storage tank systems, except as provided for in (b)1 and 2 below, shall comply with the upgrade requirements listed in (c) and (d) below by December 22, 1993:**

1. All underground storage tank systems storing heating oil used for heating non-residential buildings and installed prior to August 6, 1974, or of unknown age shall comply with the upgrade requirements listed in (c) and (d) below by August 6, 1994; and

2. All underground storage tank systems storing heating oil used for heating non-residential buildings and installed on or after August 6, 1974 shall comply with the upgrade requirements listed in (c) and (d) below by August 6, 1995.

(c) All existing metallic underground storage tank systems without corrosion protection shall retrofit cathodic protection [by September 3, 1991] in accordance with the following conditions:

1.-5. (No change.)

(d) All existing underground storage tank systems shall, except as provided for in (g) below, install a monitoring system in accordance with N.J.A.C. 7:14B-6, and spill prevention and overflow protection in accordance with N.J.A.C. 7:14B-4.1(c)[, by September 3, 1991].

(e)-(i) (No change.)

7:14B-9.1 General requirements

(a) The owner or operator of an underground storage tank system which is empty for a period of 12 months or less after [the effective date of this subchapter] **September 4, 1990** shall maintain all existing cathodic protection systems as required by N.J.A.C. 7:14B-5.2 and shall follow the procedures in American Petroleum Institute Recommended Practice 1604 "Removal and Disposal of Used Underground Petroleum Storage Tanks," incorporated herein by reference, for placing a tank system temporarily out of service. The owner or operator of such tank systems are required to comply with N.J.A.C. 7:14B-7 and 8 during the temporary closure period. The owner and operator of a temporarily closed underground storage tank system shall install spill and overflow prevention in accordance with the requirements of N.J.A.C. 7:14B-4.1(c) and release detection in accordance with the requirements of N.J.A.C. 7:14B-6 either by [September 3, 1991] **the date prescribed in N.J.A.C. 7:14B-4.5(b), (b)1 or (b)2, as applicable;** or at the time the underground storage tank system is put back into use, whichever is later. The Department shall be notified in writing on forms provided by the Department of any tank that is undergoing temporary closure.

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

7:14B-13.20 Recycling of funds

Subject to Federal and/or State law, funds from repayment of [Loans] loans issued under the authority of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21[,] et seq., and this subchapter, shall be deposited in the Underground Storage Tank Improvement Fund and shall remain available for further disbursements as new loans for **all underground storage tanks except non-residential heating oil storage tanks used for on-site consumption [to be awarded pursuant to this chapter] for further disbursement as new loans until December [31, 1991] 21, 1993. Funds for non-residential heating oil storage tanks used for on-site consumption shall be available until August 6, 1995.**

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT**Hazardous Waste Listing of Polychlorinated Biphenyls (PCBs)—Corrections****Proposed Amendments: N.J.A.C. 7:26-7.7, 8.2, 8.3, 8.4, 8.20 and 9.1**

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

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

DEP Docket Number: 033-91-08.

Proposal Number: PRN 1991-458.

Submit written comments, identified by the Docket Number above, by November 15, 1991 to:

Samuel A. Wolfe, Esq.

Administrative Practice Officer

Office of Legal Affairs

New Jersey Department of Environmental

Protection and Energy

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend N.J.A.C. 7:26 as it affects the regulation of polychlorinated biphenyls (PCBs). The amendments will make New Jersey's regulation of PCB waste consistent with those Federal regulations which implement the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976).

The amendments at N.J.A.C. 7:26-7.7(e)4, 8.4(e)3 and 9.1(c)17ii delete reference to "(1987)". It is the Department's intention to continually reference these EPA TSCA regulations in their most current form as they are amended in the future.

The amendment at N.J.A.C. 7:26-8.2(a)26iii will allow small, intact capacitors to be sent to another type of environmentally sound facility handling PCBs. The Department had not previously intended to exclude this option.

The amendment at N.J.A.C. 7:26-8.3(j) will delete this subsection. In effect, this will provide a small quantity generator (SQG) exemption for PCB wastes and will be consistent with the Department's policy toward other SQG wastes. Despite the Department's intent to allow a SQG exemption for PCB waste, generators should be aware that there is no SQG exemption under the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976). These small quantity generators are adequately addressed under TSCA and do not warrant additional State regulation.

The amendment at N.J.A.C. 7:26-8.20 will bring the Department's PCB concentration level into agreement with Federal regulations. The Department intends to regulate only those transformers regulated by the Federal TSCA program.

The amendment at N.J.A.C. 7:26-9.1(c)17 will clarify that generators, in existence at the time of promulgation of the paragraph now being amended (May 21, 1990), and storing their own PCB waste, do not have to meet the definition of "existing hazardous waste facility" at N.J.A.C. 7:26-1.4. The Department intended the language to apply to all generators already storing their own PCB waste and these would not necessarily be facilities defined at N.J.A.C. 7:26-1.4.

Social Impact

The Department believes that these amendments will have a positive social impact in that State regulations will be more consistent with their Federal counterparts and will be clearer to the regulated community. This will facilitate full compliance with hazardous waste regulations. Although Federal regulations still require manifesting, the burden on the regulated community will be decreased.

Economic Impact

The Department believes that these amendments may have two positive economic effects upon the regulated community. Those generators that qualify as small quantity generators will no longer be required to use registered hazardous waste transporters for the transport of small quantities of PBC waste. This may result in reduced expense. The State advises that those generators must still be in compliance with applicable TSCA regulations. Also, the regulated community may pursue the possibly less costly option of disposing of small, intact capacitors at TSCA chemical landfills.

Environmental Impact

The environmental impact of these amendments is limited to facilitating fuller compliance within the regulated community based upon greater clarity of the regulations and conformity with Federal regulations. The amendments impose no new requirements in the handling of hazardous waste.

Regulatory Flexibility Statement

These rule amendments do not impose any new reporting, recordkeeping or other compliance requirements on small businesses. The SQG exemption will allow many small businesses to dispense with the services of licensed hazardous waste transporters and the staff hours required to complete generator annual reports. These small businesses will be saved the cost of reporting and generator fees. All other amendments bring the rules into line with Federal requirements that are already being imposed.

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

7:26-7.7 Exemption from manifest rules

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

(e) A generator who generates PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, is exempt from the requirement at N.J.A.C. 7:26-7.4 for the PCB hazardous waste which is transported intrastate provided the following requirements are met:

1.-3. (No change.)

4. The generator complies with all relevant provisions of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), **as amended**, and Federal regulations promulgated pursuant thereto, at 40 C.F.R. pt. 761 [(1987)] **as amended**, including recordkeeping requirements. Any such records must be available for review by the Department; and

5. (No change.)

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-25. (No change.)

26. Small capacitors provided that:

i.-ii. (No change.)

iii. The capacitor is disposed of as industrial solid waste (I.D. 27) **or at a TSCA approved chemical landfill**; and

iv. (No change.)

(b) (No change.)

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

(a)-(i) (No change.)

[(j) If a generator generates a PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, all quantities of that hazardous waste are subject to regulation under N.J.A.C. 7:26-7 through 12.]

7:26-8.4 Residues of hazardous waste in empty containers

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

(e) A container or inner liner which held PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, is empty if:

1.-2. (No change.)

3. The container or inner liner has been triple rinsed in accordance with procedures described at 40 C.F.R. pt. 761 [(1987)], **as amended**, with a suitable solvent containing 50 ppm PCBs or less, the solubility of PCBs in the solvent being five percent or more by weight;

4.-5. (No change.)

(f) (No change.)

7:26-8.20 State hazardous waste from non-specific sources

(a) (No change.)

(b)

NJ Hazardous Waste Number	Hazardous Waste	Hazardous Code
Generic		
1.-2. (No change.)		
3.	X752 Drained, electrical, hydraulic or other equipment which at the time of draining contained liquids with [50] 500 ppm or more of PCBs by dry weight.	(T)

4.-5. (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.-16. (No change.)

17. The owner or operator of a [hazardous waste] facility which is used for the storage of PCB hazardous waste[, as defined at N.J.A.C. 7:26-1.4,] generated by the owner or operator of the facility, provided the following conditions are met:

i. (No change.)

ii. The facility is constructed and operated in full compliance with the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant there-

to, including the requirement at 40 C.F.R. §761.65 [(1987)], as amended, to dispose of the PCB hazardous waste within one year of placing it into storage; and

iii. The owner or operator of [an existing] a facility, as defined at N.J.A.C. 7:26-1.4,] which was in operation on May 21, 1990 and generates and stores its own PCB waste files the notice of his or her intent to store PCB hazardous waste, pursuant to this paragraph, with the Department on or before August 19, 1990; or

iv.-vi. (No change.)

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

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service Examination and Purchase of Division of Motor Vehicle Records

Proposed New Rules: N.J.A.C. 13:18-11.3, 11.4 and 11.5

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-10, 39:3-28, 39:6-42 and 47:1A-1 et seq.
Proposal Number: PRN 1990-470.

Submit written comments by October 16, 1991 to:

Stratton C. Lee, Jr., Director
Division of Motor Vehicles
25 South Montgomery Street, 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles (Division) proposes new rules at N.J.A.C. 13:18-11.3, 11.4 and 11.5 concerning the examination, duplication and purchase of public records by citizens of New Jersey consistent with the New Jersey Right to Know Law, N.J.S.A. 47:1A-1 et seq. N.J.A.C. 13:18-11.3 provides that public records (that is, records which are required by law to be made, maintained, or kept on file by the Division) are available for examination by the citizens of New Jersey. Citizens may copy public records by hand or purchase copies of the records from the Division. Examination may be denied when the records relate to a pending investigation.

N.J.A.C. 13:18-11.4 sets forth the fees to be charged by the Division for copies of public records. Government agencies are exempt from paying the fees for public records.

N.J.A.C. 13:18-11.5 specifies the procedure for examining and purchasing copies of public records.

Social Impact

The proposed rules implement the public policy of this State, as expressed in the New Jersey Right to Know Law, that public records be made available to citizens for examination and duplication. The proposed new rules have no social impact upon the Division.

Economic Impact

The proposed rules establish fees for providing copies of Division public records. The fees will partially offset the administrative costs incurred by the Division in providing copies of public records. The Division does not expect to profit from the collection of the fees set forth in the proposed rules. Rather, the Division estimates that the administrative costs incurred by the Division are substantially higher than the fees set forth in the proposed rule. The economic impact on those requesting copies of public records will vary on a case-by-case basis. Government agencies are exempted from paying the prescribed fees so that there is no economic impact on municipal courts, police, prosecutors or public defenders.

Regulatory Flexibility Analysis

The proposed new rules do not impose reporting or recordkeeping requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All persons, including small

businesses, (except for government agencies) will be required to pay the fees for purchasing a public record copy established under N.J.A.C. 13:18-11.4. Because the purpose of these fees is to partially offset the Division's administrative costs incurred in providing the record copies, no lesser fees or exemptions can be provided small businesses.

Full text of the proposal follows:

13:18-11.3 Public records; examination; purchase of copies; exemption

(a) Except as otherwise provided in N.J.S.A. 47:1A-1 et seq. or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal Law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records which are required by law to be made, maintained, or kept on file by the Division of Motor Vehicles shall be considered public records. Public records shall be available for examination by the citizens of New Jersey during the regular business hours of the Division at the Trenton Regional Service Center, 120 South Stockton Street, Trenton, New Jersey or other office of the Division as determined by the Custodian of Records. Citizens of New Jersey shall have the right to copy public records by hand under reasonable supervision during regular business hours. Citizens shall have the right to purchase copies of public records by written request upon payment of the fee as set forth in N.J.A.C. 13:18-11.4.

(b) The right of examination of public records pursuant to N.J.S.A. 47:1A-3 may be denied in cases where the records being sought for examination pertain to any investigation in progress, if the inspection, copying, or publication of the records is not in the best interest of the public.

13:18-11.4 Fees; information search; exemption

(a) A citizen requesting to purchase a public record shall pay the fee established by the Division as set forth in this section.

(b) The fees are as follows:

1. A complete Driver History Abstract (other than an abstract issued to an insurance company pursuant to N.J.S.A. 39:6-42):

- i. Uncertified, \$4.00.
- ii. Certified, \$5.00.

2. A Notice of Scheduled Suspension, Order of Suspension or Notice of Restoration:

- i. Uncertified, \$4.00.
- ii. Certified, \$5.00.

3. Violation Record:

- i. Uncertified, \$4.00.
- ii. Certified, \$5.00.

4. Mail Lists:

- i. Uncertified, \$4.00.
- ii. Certified, \$5.00.

5. Registration or Driver License Application:

- i. Uncertified, \$4.00.
- ii. Certified, \$5.00.

6. Boat Registration Application:

- i. Uncertified, \$4.00.
- ii. Certified, \$5.00.

7. Final Decision of Director:

- i. Uncertified, \$4.00.
- ii. Certified, \$5.00.

8. File Search of Division Records:

- i. Uncertified, \$4.00.
- ii. Certified, \$5.00.

(c) Payment shall be made by check or money order payable to the New Jersey Division of Motor Vehicles.

(d) Government agencies are exempt from the fees set forth in this section.

(e) Notwithstanding the fees set forth in this section, the Director shall have discretion to establish fees for high volume tape to tape users depending upon the type and volume of information requested.

13:18-11.5 Procedure for record examination or request to purchase public records

A private citizen may request a copy of a public record, or make

inquiry concerning the examination of a public record, by contacting:
 Official Custodian of Records
 New Jersey Division of Motor Vehicles
 120 South Stockton Street
 Trenton, New Jersey 08666
 Attn: Manager, Bureau of Information Update and
 Retrieval
 Telephone: (609) 292-4572

(a)

BOARD OF MEDICAL EXAMINERS**Medical Standards Governing Screening and
Diagnostic Medical Testing Offices****Proposed Repeal and New Rule: N.J.A.C.13:35-2.5**

Authorized By: Board of Medical Examiners, Michael B.

Grossman, D.O., President.

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1991-453.

Submit written comments by October 16, 1991 to:

Charles A. Janousek, Executive Director
 State Board of Medical Examiners
 28 West State Street
 Trenton, New Jersey 08608

The agency proposal follows:

Summary

The proposed new rule defines the terms "screening facility" and "diagnostic center," and makes clear that all such health care practices in this State which are not under the licensure jurisdiction of the State Department of Health shall be owned and under the control, supervision and direction of licensed New Jersey physicians. The rule defines the nature of expected physician responsibility whether the facility in which the practice occurs is stationary or mobile, and requires that for screening facilities, a protocol and quality assurance program must be established. Deadlines are established for submission of written test reports, with guidance for handling when a test has been requested by an examinee who was not referred by a treating physician and for compilation of statistical reports regarding follow-up for such persons. Special requirements are established for practices at which the physician is not physically present full-time, including the extent of permissible delegation by the physician of certain responsibilities to staff and the need for written protocols and quality assurance programs to protect the public. Operating procedures, including safety precaution standards, must be checked at regular intervals, particularly with regard to radiologic procedures.

Special provisions are made for mammography screening services, to make cost-effective programs more widely available without unduly risking quality service. Requirements are established for qualifications of personnel in practices conducted from mobile facilities which do not have full-time physician presence.

Radiology diagnostic services for patients referred for suspected pathology are required to have a radiologist on premises whenever feasible.

Finally, a Board licensee is forbidden to bill a patient or examinee for a test result which is professionally incomplete or which is found to be non-diagnostic due to inadequate equipment or technique.

Social Impact

The proposed new rule is designed to respond to changes in the medical marketplace of services. There are increasing numbers of medical service practices owned by one or more physicians, where a physician is not present full-time on any single premises but rather the physician works part-time at several premises, leaving licensed or unlicensed staff to run the office in the interim; the peripatetic physician sometimes allows this situation to result in inappropriate delegation of medical duties to staff, with concurrent slippage in quality control of services.

The Board is also encountering situations where medical practice is conducted from mobile facilities sponsored (especially of radiologic services) by physicians but staffed and operated on a day-to-day basis almost entirely by non-physicians including licensed x-ray technologists and non-licensed personnel who are sometimes left to make medical

decisions properly made only by physicians. Still other situations are coming to Board attention where ordinary general business corporations are purporting to set up and offer medical services, hiring physicians to provide some of the services but having major decision- and policy-making done by non-licensed businesspersons. The Board believes such incorporations for the delivery of medical services to be improper. Such services should, with limited exceptions, be marketed through corporations complying with the Professional Service Corporations Act, N.J.S.A. 14A:17-1 et seq., which permits incorporation of an individual or group of individuals to render professional services to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.

The rule's requirement of established protocols, policies and procedures is expected to have a major beneficial impact on the quality of medical services provided. The physician is placed on specific notice that he or she is responsible for assuring, for example, that radiologic studies are properly and appropriately taken; that billing shall not be done for studies which are of non-diagnostic quality due to incompetence or equipment failure; and that testing for patients presenting with suspected pathologies is directly done or supervised by physicians, thus averting either unnecessary testing or a need for the patient to return for re-testing because no medical judgment was previously made about the extent or objective or quality of the resulting diagnostic study.

The substance of many of the rule provisions on mammography screening is derived in modified form from a rule proposed by the Federal Department of Health and Human Services to implement the Medicare Catastrophic Coverage Act of 1989. That proposal was based on extensive study and comment by recognized, responsible and knowledgeable components of the health care community as identified in the Federal Register publication at 55 FR 9740-01, including the American College of Radiology, the American Cancer Society, the National Women's Health Network, and eminent individuals in the cancer field. The Federal proposal was withdrawn prior to adoption, when the Act itself was repealed for reasons unrelated to the merit of the proposed rules. (The basic provisions of the Act were subsequently readopted as P.L. 101-239 (1989)). Other portions of the Board's rule are derived from New York State Department of Health guidelines for mammography screening services.

Economic Impact

The proposed rule applies only to plenary licensed physicians; there are at present approximately 29,700 such licensees of the Board of Medical Examiners. The Board expects there to be no economic impact on a physician who personally conducts a medical practice offering screening or diagnostic testing, as every office is expected to have protocols and basic quality assurance procedures. In offices where physicians have allowed extensive delegation of responsibility, without concomitant procedural protections for patient welfare, and medical supervision over the quality of services rendered, the rule will impose the economic cost of designing the protocols and quality assurance programs and confirming that they are being observed. This situation is most likely to occur in settings where a radiologist has left a technologist and unlicensed staff to make virtually all medical decisions in the course of both screening and diagnostic testing, and the radiologist has merely attended the office to pick up and provide a reading of the films and authorize bills. The rule would prohibit such abdication of responsibility for the entire medical process, which should begin with a medical determination of need for the specific testing procedure and assurance that all components of it have been properly carried out.

For physicians offering screening services to examinees coming without physician referral, some cost will be incurred for the required annual gathering of statistics reporting total numbers of such examinees referred for follow-up. To the extent this poses an economic burden on the testing physician, the Board deems the value of confirming follow-up for persons who are not under a physician's care but who have been found to have abnormal screening results, to far outweigh the cost.

Regulatory Flexibility Analysis

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

The number of physician licensees in this State is approximately 29,700. While this new rule would have some impact on a large majority, requirements are imposed on those involved in the control, supervision and direction of screening facilities and diagnostic centers, as defined therein.

The proposed new rule requires screening services accepting examinees without physician referral to, at the request of the Board, provide reports on the total number of examinees issued abnormality reports and advisory letters under subsection (c). The timeframe for providing test reports and requirements for their contents are established under subsection (c). Delegation of responsibility parameters and requirements for written protocols and quality assurance programs are set forth in subsection (d). Radiologic procedures are required, and mammography screening programs must establish a written protocol with specific screening criteria. Testing, supervision and non-physician equipment operator requirements are also set forth for mammography screening programs. Subsection (j) imposes certain billing restrictions.

The cost of these requirements is discussed in the Economic Impact statement above. Concerning the reporting requirements of and recordkeeping necessitated by the rule, the Board cannot at this time estimate initial costs or make an estimate of the annual cost of compliance, since certain types of records have always been required of Medical Board licensees and the more detailed reporting required by N.J.A.C. 13:35-2.5(f) only of screening services should involve only collation of existing office data. Those licensees who provide primarily diagnostic or therapeutic services will have no costs associated with preparation of test data.

The rule is designed to minimize any adverse economic impact on small businesses by having most of the responsibilities carried out by licensees within and in the course of their regular professional communications with their office staffs, and their patients, and by reporting the statistical data to the Board only if requested to do so.

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

[13:35-2.5 Standards concerning testing and diagnostic centers

(a) The performance of physical examinations accompanying diagnostic testing procedures on human beings is included within the practice of medicine. Such services are presently being offered to the public in both stationary and mobile facilities which are not in all circumstances regulated by the Department of Health. It is essential for a meaningful interpretation of test data that the underlying tests be administered competently and appropriately as determined and supervised by a licensed physician. The purpose of this regulation is to define and establish minimum medical standards of operation for those centers, clinics or facilities which provide or purport to provide activities such as physical examinations and/or laboratory testing procedures, which are presently regulated by the Medical Practice Act, N.J.S.A. 45:9-1 et seq. and the Bio-Analytical Laboratory Improvement Act, 45:9-42.1 et seq.

(b) The provisions of this regulation shall be applicable to centers, clinics or facilities which provide or offer to provide physical examinations and or testing procedures.

(c) Definitions include the following:

1. "Automated Health Testing Center" (AHTC) means a facility under the control, supervision, direction and physical presence of a licensed physician or group of licensed physicians offering services to the medical profession or to the public, which screens patients by multi-phasic methods, such screening resulting in a determination less complete than physical examination performed by a licensed physician and which does not purport to substitute for such complete physical examination. This definition is not intended to include a one-modality service, such as community chest x-ray examination, and community blood pressure examination.

2. "Diagnostic Center" or "Diagnostic Clinic" (hereafter "Center") means a facility under the control, supervision, direction and physical presence of a licensed physician, which is staffed by one or more licensed physicians and which contains the facilities necessary to render a medical service by establishing a diagnosis and which may recommend a course of treatment for the patient.

3. "Licensed physician" means a duly licensed physician of the State of New Jersey who possesses a current unrestricted license to practice medicine and surgery.

(d) The licensed physician in charge of and responsible for the supervision and direction of the AHTC or the Center shall, prior to the operation of the facility, submit for approval of the Board of Medical Examiners a copy of the licensing application previously approved by the Department of Health, proof of current licensure

of physician in charge and, if applicable, facility license pursuant to the New Jersey Clinical Laboratory Improvement Act, N.J.S.A. 45:9-42.26 et seq.

(e) The licensed physician in charge and the AHTC or Center shall have the following responsibilities:

1. Procure from the patient a designated physician or, in the absence of a designated physician, the addressee to whom all reports shall be directed. In the event that a report is sent gratuitously to a designated physician with whom no physician-patient relationship has previously been established, said physician shall incur no obligation with respect to such report. The AHTC or Center shall formally advise all patients of this at the time of testing.

2. Submit the full test report to the referring or designated physician and to the patient or designated addressee as instructed by the patient, not later than three business days from the date of receipt of such test report by the AHTC or Center.

3. Clearly identify all abnormalities for the attention of the physician.

4. Where abnormality is apparent, the notification to the patient shall be accompanied by an express recommendation that the patient contact the appropriate physician for clarification.]

13:35-2.5 Medical standards governing screening and diagnostic medical testing offices

(a) As used in this section, the following terms shall have the following meanings:

1. "Screening facility or office" means a private practice location not licensed by the State Department of Health, which practice offers services to the medical profession or to the public in the form of one or more types of medical testing. Such a practice shall be owned and under the control, supervision and direction of a physician or group of physicians licensed and currently registered in New Jersey.

2. "Screening test" means a test which results in a determination less complete than a physical examination performed by a licensed physician and does not purport to substitute for a complete examination. The definition is not intended to include a community-sponsored one-modality service such as, for example, a hypertension or glaucoma screening sponsored by a municipal or regional health department or a community screening volunteered by a non-profit professional society at no cost to examinees.

3. "Diagnostic center" means a practice not licensed by the State Department of Health, which practice offers services to the medical profession or to the public and which contains the equipment and medical staff necessary to establish a diagnosis and which may recommend a course of treatment for the examinee who elects to become a patient. Such a practice shall be owned and under the control, supervision and direction of a physician or group of physicians licensed and currently registered in New Jersey.

(b) Medical screening or medical diagnostic testing (other than clinical laboratory testing), conducted primarily for persons not receiving medical treatment from the testing entity, is nevertheless deemed to be a medical service. Such a practice shall be owned and under the responsibility of one or more physicians each of whom holds a plenary license from the State Board of Medical Examiners. All such testing, irrespective of the stationary or mobile nature of the facility, shall be performed under the authority of a designated responsible physician who shall establish a protocol and a quality assurance program for the specific type of screening or study. Results of all such procedures shall be interpreted by a physician holding a plenary license in this State, and documented in a written report which is preserved by the physician as required by N.J.A.C. 13:35-6.5.

(c) A copy of the test report shall be provided promptly, and no later than three business days from the date of receipt of the report by the testing facility, to the referring physician, if any, and upon request to the examinee or other authorized person, to the extent authorized by N.J.A.C. 13:35-6.5. In the event that a report is directed by an examinee to a designated physician who has not personally ordered the test, said physician shall incur no obligation with respect to such report and the testing facility shall formally advise all examinees of this at the time of testing. All abnormalities shall be clearly identified for the attention of a physician. For an

examinee without physician referral, an abnormal or questionable result shall be identified in the report without specific interpretation, strongly advising the examinee to seek medical consultation. The facility protocol shall make available a referral source for examinees with suspicious findings or suspected disease, which source identifies specialists pertinent to the pathology involved, such as internal medicine, gynecology, hematology, general surgery, surgical and medical oncology and radiation oncology, for follow-up when the examinee does not indicate a primary care provider as recipient of test results.

(d) Requirements for a screening or diagnostic facility not having a full-time physician presence on the premises are as follows:

1. Non-invasive screening tests or diagnostic studies may be performed in facilities at which the responsible physician is not physically present at all times of facility operation. For such testing services, the responsible physician may delegate certain tasks to another licensed health care practitioner, such as a registered professional nurse or x-ray technician, consistent with that person's scope of practice. Tasks of a non-medical nature may be delegated to non-licensed employees under the supervision of a licensed employee, where not inconsistent with applicable law or rule and with accepted standards of practice pertinent to that screening or diagnostic procedure. The physician responsible for such screening or diagnostic service shall take the necessary measures to assure compliance with the requirements of this section and accepted standards of practice. Services performed from mobile facilities parked on the premises of or providing services to a licensed health care facility must have approval from the State Department of Health.

2. There shall be a written protocol which specifies at a minimum: equipment operation, procedure manuals, eligibility criteria for persons to be accepted for examination, methods for securing informed consent, record documentation, and provision for follow-up to examinees and/or referring physicians, as applicable. There shall be procedures for authorized billing, and other factors consistent with accepted standards of practice pertinent to the screening test or diagnostic procedure.

3. There shall be a quality assurance program which requires the following:

i. At least annually, documented inspection of personnel credentials upon hire and at least annually thereafter or sooner as required by circumstances including dates of certification and license renewal; review of the procedure manuals; determination of the qualifications, identity and supervision of employees designated to perform specific functions; and assessment of accuracy in test results;

ii. At least quarterly, evaluation of personnel skills and review of test performance techniques and data recordation or more frequently as required by demonstrated staff performance; verification of billing accuracy; and observance of other factors consistent with accepted standards of practice pertinent to the screening test or diagnostic study procedure;

iii. The required quality assurance program shall include documented regular mechanical inspections as customary for that equipment, but no less frequently than four times per year, and before re-use after the reporting of a mechanical or pertinent personnel problem; and

iv. Minimum safety precaution standards shall be established, observed by all personnel and confirmed by the supervising physician.

(e) For screening services accepting examinees without physician referral, the responsible physician shall prepare and produce, at the request of the Board, a report for a specified calendar year(s) designating the total number of examinees issued abnormality reports and the advisory letter required by (c) above.

(f) For radiologic procedures, the responsible physician shall assure provision of adequate radiation shielding for patients, personnel and facilities. There shall be procedures for measurement of radiation exposure of operating personnel and for periodic inspection of the equipment by a medical physicist, with certification of inspection results kept on the premises. The responsible physician may delegate certain tasks to a New Jersey-licensed x-ray technolo-

gist within that person's scope of practice, provided that the physician has complied with (d) above.

(g) In addition to compliance with all other subsections of this rule, a mammography screening program shall establish a written protocol which shall be documented in the facility policy and procedure manual and which shall be brought to the attention of pertinent personnel.

1. The protocol shall include specific criteria for screening: for example, age, family history, personal medical history, permissible frequency of testing and other indicators. It shall provide for palpation by instructed personnel, for appropriate positioning preparatory to the test, and for the teaching of breast self-examination as part of the screening program.

2. The physician shall require a two-view procedure for testing: a cranio-caudal and medial lateral oblique view of each breast. The equipment used shall conform to FDA performance standards for diagnostic x-ray systems and shall be specifically designed for mammography only (including devices appropriately compressing and immobilizing the breast). Baseline mammography images and periodic images shall be maintained as part of the record of the examinee or referred patient and preserved for seven years from date of last entry. The physician may release the original of any image, providing that signed documentation thereof is retained in the patient's file.

3. Mammography services offered in mobile settings shall be furnished only under the supervision of a doctor of medicine or of osteopathy who is certified by the American Board of Radiology or by the American Osteopathic Board of Radiology or who possesses equivalent certification requirements as determined by the Board of Medical Examiners and who successfully completes a minimum of 20 hours of post-graduate work in mammography interpretation every 24 months after the date he or she begins reading mammographies. Documentation shall be kept on the premises.

4. The physician shall require that anyone operating mammography equipment, other than a physician, shall be currently licensed and registered by the State to perform radiologic procedures and certified in radiography by the American Registry of Radiologic Technologists or the American Registry of Clinical Radiographic Technologists, or have equivalent certification qualifications as determined by the Board of Radiation Technology or, if such evaluation is not available, then by the Board of Medical Examiners. Said person shall also have successfully completed a program of formal training in radiologic technology of not less than 24 months' duration in a school that meets Federal standards for accreditation of education programs for radiographers or that is approved by the Council on Allied Health Education and Accreditation; and shall also have completed specialized training in mammographic positioning, compression and technique factor settings in the 24 months preceding the effective date of this rule (or in the 24 months preceding the time said person begins to perform mammographies in this State). Said person shall further complete this specialized training every 24 months thereafter. Documentation shall be kept on the premises.

(h) Whenever feasible, a patient who has been referred by a physician for radiologic diagnostic services to confirm or rule out a suspected pathology shall be scheduled for clinical examination to be performed by the physician offering diagnostic radiology services. When personal examination is not practicable in the specific circumstances, the radiologist shall be notified of the patient's appearance at the radiologic facility and shall direct the licensed x-ray technologist as to procedure, method of obtaining the test data, scheduling of the physician's oral and written report, and timely notification to the patient or referring physician of results or the need to repeat the test.

(i) A patient or examinee shall not be billed for a test result which is professionally incomplete, or which is found to be non-diagnostic due to inadequate equipment or technique.

(j) This rule shall be effective upon promulgation, except that subsections (d), (e), (f) and (g) shall be operative three months after promulgation.

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Fire Safety Unit Personnel; Casino Hotels

Adopted Amendment: N.J.A.C. 5:18-3.2

Proposed: May 6, 1991 at 23 N.J.R. 1237(a).

Adopted: August 12, 1991 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: August 26, 1991 as R.1991 d.480, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198.

Effective Date: September 16, 1991.

Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The Casino Association of New Jersey supports the amendment and believes that it will permit greater flexibility with respect to the management of fire safety units in casino hotels, while insuring that the manager of the unit will have as his sole responsibility the direction of the unit and the fire command during a fire-related emergency.

RESPONSE: While the proposed amendment has been revised on adoption to make clear what is meant by appropriate staffing of the Fire Command Center, the adopted amendment still allows the management of a hotel-casino greater flexibility in assigning staff, since the supervisor of the Fire Safety Unit is not forbidden to have other duties so long as he or she is in charge during a fire-related emergency incident and the Fire Command Center is staffed by at least one trained person at all times. It should be noted that the representative of the Casino Association who submitted the comment has reviewed the revisions and finds them to be satisfactory.

COMMENT: A person employed as a casino security officer who has had responsibility for manning fire command centers expresses concern that the casino industry is supporting this change because it seeks to weaken the rules. This person believes that it is necessary to have a full-time manager in charge of the fire safety unit at all times, so that non-emergency fire safety functions are properly carried out, and particularly objects to the deletion of the requirement that the personnel assigned to the fire command center be certified, on the grounds that this change will make it possible for the casinos to assign untrained people to that job if they deem it "appropriate" to do so.

RESPONSE: The Department agrees that the term "appropriate" is not sufficiently precise and might indeed be misconstrued, as the commenter states. The language has therefore been clarified to expressly state that what is required is that there will, at all times, be a trained person in the Fire Command Center who will be in charge in the event of a fire emergency. The supervisor of the Fire Safety Unit may be one such person, but he or she obviously cannot be in the Fire Command Center 24 hours a day. The reason for the deletion of the reference to certification is that no certification program yet exists, so the reference is meaningless. At such time as a certification program is established, it is the expectation of the Department that this section would be amended to require it.

The following individuals commented on the proposal:

1. William C. Murtha, Vice President and General Counsel, Casino Association of New Jersey.
2. Anonymous individual claiming to be a casino employee.

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

5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

- 1-2. (No change.)

3. Article 3 ("General Precautions Against Fire") is amended as follows:

i.-x. (No change.)

xi. The following new sections F-319.0, F-319.1, F-319.2 and F-319.3 are added:

Section F-319.0 Casino Fire Safety Programs

F-319.1 General: Every establishment licensed as a hotel-casino by the New Jersey Casino Control Commission shall establish a Fire Safety Unit consisting of trained personnel who shall be under the direct supervision of a *[manager or equivalent]* ***supervisor***, who shall have responsibility for the operation of the Unit and the Fire Command Center and whose sole responsibility during a fire-related emergency incident shall be the direction of the unit and center. The *[manager or equivalent]* ***supervisor*** shall report directly to the Director of the Department under which the Fire Safety Unit is organized.

F-319.2 Responsibilities: The responsibilities of the Fire Safety Unit shall include the following:

(1) Ensure continual *[manning]* ***staffing*** of the Fire Command Center with *[appropriate]* ***trained*** hotel-casino personnel. ***There shall be at least one such trained person in the center at all times who shall, while on duty, be responsible for the direction of the unit and the center during a fire-related emergency*:**

(2)-(9) (No change.)

F-319.3 Fire Command Center: The Fire Command Center shall maintain a comprehensive log which shall include the following:

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

4.-34. (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Barrier-Free Subcode

Adopted Amendments: N.J.A.C. 5:23-7.3 and 7.11

Proposed: June 17, 1991 at 23 N.J.R. 1902(a).

Adopted: August 12, 1991 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: August 26, 1991 as R.1991 d.479, without change.

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

Effective Date: September 16, 1991.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received one comment on this proposal. The New Jersey Builders Association commented that the clarification of the exemption for multi-story townhouse units that are arranged for sale should be extended to multi-story townhouse units that are for rent, in order to fully comply with the Federal Fair Housing Amendments Act and the HUD regulations and guidelines implementing that law.

The Department plans to adopt both the HUD guidelines and regulations promulgated pursuant to the Federal Fair Housing Amendments Act of 1988 and the U.S. Department of Justice regulations promulgated pursuant to the Americans with Disabilities Act 1990 as the accessibility standards for buildings in New Jersey. Until those regulations are published in their final form, however, the Department will continue to enforce the Barrier-Free Subcode in conformance with N.J.S.A. 52:32-4 et seq. and N.J.S.A. 52:27D-119 et seq. In this instance, continuing the enforcement of an exemption for multi-story townhouse units that are for sale and not exempting those that are for rent is more stringent than Federal law and is in conformance with N.J.S.A. 52:32-4 et seq., which exempts one-to-four private family residences, but which does not exempt rental units. Therefore, the Department declines to make the requested change in the Barrier-Free Subcode and concludes that the more stringent requirement will be enforced until adoption of the final Federal regulations.

The Department received no comments on the proposed change to the language of N.J.A.C. 5:23-7.11(a)6.

Full text of the adoption follows.

5:23-7.3 Exemptions

(a) The following are exempt from the provisions of this subchapter:

- 1. (No change.)
- 2. Buildings or projects of Use Group R-2 or R-3 comprised of townhouse units arranged for sale shall be exempt. For the purpose of applying this exemption, a "townhouse unit" shall be defined as a single-family dwelling unit attached to at least one other such unit which has two or more stories of living space exclusive of the basement and attic and which has its primary entrance directly from exterior grade. A dwelling unit shall be deemed to be "arranged for sale" if it is located on a separate lot or is part of a condominium project for which a Master deed has been filed and which has been approved for registration as a planned real estate development by the Department at the time that the building permit is issued.

- i. (No change.)
- 3. through 7. (No change.)

5:23-7.11 Use Group R-2 and R-3

(a) Buildings of Use Group R-2 or R-3, which are not exempted by N.J.A.C. 5:23-7.3, shall be made accessible to handicapped persons as follows:

- 1. (No change.)
- 2. The route of travel to each unit in an elevator serviced building shall be accessible. The route of travel to each first or grade level unit in a non-elevator serviced building shall be accessible except as specified in N.J.A.C. 5:23-7.3(a), except:
 - i. Where an entrance and/or entrance platform serves one unit only and is at or not more than 24 inches above grade level, it may be constructed as adaptable. If it is made adaptable, it shall meet the following criteria:

(1) The door(s) shall meet the requirements of N.J.A.C. 5:23-7.40 through 7.49;

(2) If a level platform entrance is provided, it shall have minimum dimensions of five feet by five feet; and

(3) Construction documents for the unit shall also include a design for the future modification of the entrance to provide accessibility. Any level platform(s) or ramp(s) included in the design shall meet provisions of N.J.A.C. 5:23-7.24;

- 3.-5. (No change.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Dental Services Manual

Readoption: N.J.A.C. 10:56

Proposed: July 1, 1991 at 23 N.J.R. 1992(a).

Adopted: August 21, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: August 21, 1991, as R.1991 d.473, **without change.**

Authority: N.J.S.A. 30:4D-6b(4), 6g, 7, 7a, b and c; 30:4D-12; 42 C.F.R. 440.100.

Effective Date: August 21, 1991.

Expiration Date: August 21, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:56.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services Manual HCPCS Codes—Personal Care Assistant Services

Adopted Amendments: N.J.A.C. 10:66-3

Proposed: July 15, 1991 at 23 N.J.R. 2091(a).

Adopted: Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: August 26, 1991 as R.1991 d.481, **without change.**

Authority: N.J.S.A. 30:4D-6(b)(3)(17); 30:4D-7, 7a, b and c; 30:4D-12; 42 CFR 440.170(f).

Effective Date: September 16, 1991.

Expiration Date: December 15, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

OFFICE OF ADMINISTRATIVE LAW NOTE: As indicated in the New Jersey Administrative Code at N.J.A.C. 10:66-3, the HCPCS coding system is not published in the Code but may be obtained from the Administrative Practice Officer, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625.

10:66-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS Code	Description	Maximum Fee Allowance
Z1600 ZI	Individual Reimbursement Rate, P/Hour	10.23
Z1605 ZI	Group Reimbursement Rate, P/Hour	7.44
Z1610 ZI	Initial Nursing Assessment Visit, P/Visit	35.00
Z1611 ZI	Individual Reimbursement Rate, P/Half Hour	5.12
Z1612 ZI	Group Reimbursement Rate, P/Half Hour	3.72
Z1613 ZI	Nursing Reassessment Visit, P/Visit	35.00

INSURANCE

(c)

OFFICE OF THE COMMISSIONER

Organizational Rule: Public Information

Adopted Amendment: N.J.A.C. 11:1-1.1

Adopted: August 22, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: August 23, 1991 as R.1991 d.476.

Authority: N.J.S.A. 17:1C-6(d), (e), (f) and 52:14B-3(l).

Effective Date: August 23, 1991.

Expiration Date: January 31, 1996.

This organizational rule is exempt from the notice and public comment requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and is effective upon filing with the Office of Administrative Law.

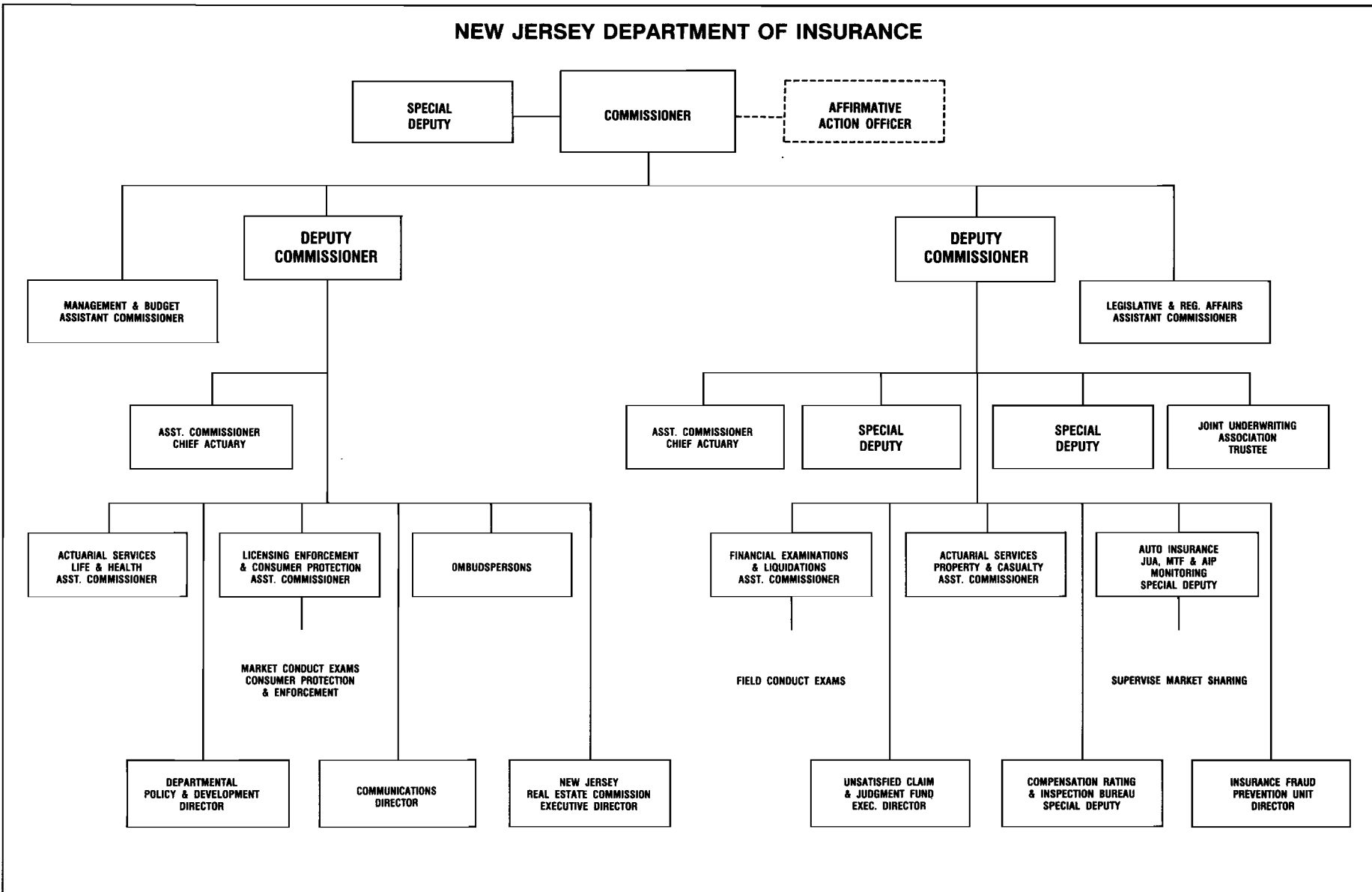
Full text of the adoption follows.

11:1-1.1 Organization of the Department

(a) The organization of the Department of Insurance appears on the following page.

Office of Administrative Law Note: A new organizational chart has been adopted superseding the chart presently appearing in the New Jersey Administrative Code at N.J.A.C. 11:1-1.1. This new chart is reproduced below; the chart being deleted is not reproduced herein, but may be found at N.J.A.C. 11:1-1.1.

NEW JERSEY DEPARTMENT OF INSURANCE



LABOR**(a)****DIVISION OF WORKPLACE STANDARDS****Notice of Administrative Correction****Voluntary Wage Deduction for Repayment of
Financial Obligations to the State of New Jersey****Adopted New Rules: N.J.A.C. 12:55-1.4**

Take notice that the Department of Labor has discovered an error in the notice of adoption for new rule N.J.A.C. 12:5-1.4, published in the August 19, 1991 New Jersey Register at 23 N.J.R. 2512(a). The heading of the notice lists N.J.S.A. 34:11-4.4b(8) as authority for the rulemaking. Pursuant to P.L. 1991, c.190, effective July 3, 1991, N.J.S.A. 34:11-4.4b(8) was recodified as N.J.S.A. 34:11-4.4b(10). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7 in order to provide the public with the correct statutory citation.

LAW AND PUBLIC SAFETY**(b)****DIVISION ON CIVIL RIGHTS****Family Leave Rules****Adopted New Rules: N.J.A.C. 13:14**

Proposed: July 1, 1991 at 23 N.J.R. 1993(a).

Adopted: August 12, 1991 by the Division on Civil Rights,
C. Gregory Stewart, Director.

Filed: August 23, 1991 as R.1991 d.475, **without change**.

Authority: N.J.S.A. 34:11B-1 et seq., specifically 34:11B-16

Effective Date: September 16, 1991.

Expiration Date: September 16, 1996.

Summary of Public Comments and Agency Responses:

The Division on Civil Rights received seven comments on the proposed new rules. These comments were submitted by the National Council of Jewish Women, Somerset Sussex Legal Services, New Jersey Catholic Conference, New Jersey Savings League, State Farm Insurance Companies, New Jersey School Boards Association and a private individual, Jo Wills.

COMMENT: One commenter was concerned that proposed rule N.J.A.C. 13:14-1.2, by conditioning eligibility on the requirement that an employee work for the same employer over a 12 month period, would permit employers to shirk their family leave responsibilities if the employer filed for bankruptcy and reorganized.

RESPONSE: The Division believes that the rules are consistent with the statute, insofar as the Act defines the term "employee" to mean "a person who is employed for at least 12 months by an employer." N.J.S.A. 34:11B-3(e). The extent to which an employer may file for bankruptcy and may or may not be considered the same employer for the purposes of the Act is a question which is beyond the scope of these rules.

COMMENT: This same commenter stated that the 30 day written notice requirement, under N.J.A.C. 13:14-1.4 and N.J.A.C. 13:14-1.5(c)1, is too burdensome for many employees and wrongfully charges the employee with the responsibility of knowing and following through with their rights. The commenter also stated that as a practical matter, most pregnant employees inform their employers of their condition and then rely on the employer's expertise to arrange the taking of the leave. In this organization's opinion, the 30 day notice requirement would also undermine the Act's mandate that the employer shall not interfere with, restrain or deny an employee's attempt to exercise his or her rights under the Act.

RESPONSE: The Division believes that the 30 day notice requirement is a reasonable exercise of its regulatory power and will result in fair notice to employers and avoid confusion over whether reasonable notice was provided by the employee. The Division does not believe that this requirement will undermine the Act's mandate that prohibits employers from interfering with, restraining or denying an employee's attempt to

exercise his or her rights to family leave. The 30 day notice requirement is not strictly applied but can be relaxed when emergent conditions require shorter notice.

COMMENT: One commenter commended the Division for clarifying whether or not certain employees who work out-of-State are covered by the rules. This commenter also stated that the definition of "serious health condition" could be construed to apply to common situations, such as when a child is home sick for a few days or a week with the flu or ear infection and requires babysitting, nonprescription medication or prescription medication, such as antibiotics. In the commenter's opinion, the Act was intended to deal with very serious family illnesses, not ordinary childhood illnesses.

RESPONSE: The definition of "serious health condition" is the same definition which appears in the Act. The extent to which a serious health condition will include childhood and other illnesses will be decided on a case-by-case basis, in accordance with the definition provided by the Legislature.

COMMENT: One commenter was concerned that the definition of "care" in N.J.A.C. 13:14-1.2 is overly broad because it includes emotional support and visitation.

RESPONSE: The issue of how the term "care" should be defined was a matter of discussion during the comment period relative to the Division's originally proposed family leave rules in 1990. During the hearings held by the Division in September 1990, several individuals testified that they believed that care could include a situation in which both parents visited their child in a hospital and provided emotional support, even when the child was receiving all physical and medical care by the hospital staff. The Division has concluded that the Family Leave Act, as remedial legislation, is deserving of liberal construction and it has interpreted this definition in accordance with the Legislature's intent.

COMMENT: This same commenter stated that the rules leave too much flexibility regarding who may be a "health care provider" for the purposes of who may define the nature of a serious health condition and for providing certification. The definition of health care provider appears in N.J.A.C. 13:14-1.2 and includes "any other person who has been authorized to provide health care by a licensed health care provider." As an example, the commenter stated that a doctor who authorizes her son, an electrician, to provide health care, may be considered a "health care provider."

The commenter suggested that the definition, by including "any person licensed under . . . the law of a foreign nation . . ." be clarified and improved to assure the professional credibility of the health care provider. In addition, the commenter stated that N.J.A.C. 13:14-1.10(b) created uncertainty by permitting the submission of a certification by "any other health care provider determined by the Director to be capable of providing adequate certification." The commenter believed that an employer will not be able to predict whether a particular unlicensed health care provider would be acceptable to the Director and recommended that the Director provide employers with a list of unlicensed individuals that would be capable of providing adequate certification.

RESPONSE: The Division believes that the definition of "health care provider" is consistent with the Legislature's intent and could include a social worker who is providing, to an individual with mental illness, counselling services under the supervision of a psychiatrist. This definition would not encompass the example provided in the commenter's comments, as noted above.

The Division believes that the definition as it relates to persons licensed in foreign jurisdictions is adequate. Further, the Division declines to provide a list of unlicensed individuals who may be capable of providing adequate certification and has concluded that the determination as to who will be acceptable to the Director will be decided on a case-by-case basis. This will avoid the issuance of a list which is either overinclusive or underinclusive.

COMMENT: This commenter also urged the Division to reconsider its proposal for determining the 100 employee threshold for employer coverage. In particular, this commenter states that the Division should count only employees who are eligible for benefits. This would only include employees who worked more than 1,000 base hours during the immediately preceding 12 months. Referring to the Division's prior response to comments on this same issue, this commenter states that its interpretation is a more logical reading of the Act and would not impose an impossible administrative burden upon the Division in determining who is eligible for the purposes of the employee count.

RESPONSE: The Division has considered these comments and declines to change its interpretation of the Act with respect to this

definition. The reasons for declining to revise the regulations in this regard were fully set forth in the July 1, 1991 reproposal and the Division incorporates this response by reference.

COMMENT: This commenter also stated that the notice requirements in N.J.A.C. 13:14-1.5(c) and (d) should require that where exigent circumstances exist, shorter notice shall be given as soon as practicable.

RESPONSE: The Division believes that the rules are adequate in permitting oral and shorter notice in emergent circumstances. The extent to which shorter notice may be permissible for exigent circumstances that are not emergent is unclear and the Division declines to amend its rules in this regard.

COMMENT: One commenter recommended that the phrase "other related entity" appearing in N.J.A.C. 13:14-1.3(a)3 be deleted. Alternatively, this commenter stated that the rules should specifically state that "[r]eligious corporations organized under Title 16 will be considered individually and not in reference to any other related entity."

RESPONSE: The Division declines to delete this phrase "other related entity" or incorporate the suggested exemption. Religious organizations are subject to the same criteria as other organizations for the purposes of the employee count in N.J.A.C. 13:14-1.3.

COMMENT: One commenter stated its concern that N.J.A.C. 13:14-1.5(d) does not specify that the burden of providing medical necessity is imposed on the employee seeking to take a family leave. In the commenter's view, many sections of the rules require employers to make subjective decisions and, for this reason, the organization believed that employers are entitled to request documentation of "medical necessity." This commenter suggested that the rules be amended to require an employee to provide the employer with a health care provider's written opinion that an intermittent leave is "medically necessary."

RESPONSE: The Division declines to amend its rules to incorporate the suggested change. Such a requirement goes beyond the provisions of the Act.

COMMENT: This commenter also stated its disagreement with the Division's interpretation that the Act permits employees to work part-time during family leave. In the commenter's view, the Legislature did not intend to protect employees who chose to leave their "regular" job under the auspices of taking family leave to pursue another alternative part-time or full-time job during the hours for which they were previously employed by the employer. This commenter requested that the rules be amended to prevent employees from working part-time when they are available to work part-time for the employer.

RESPONSE: The Division believes that its interpretation of the Act is correct with respect to the issue of part-time employment and declines to amend its rules, as suggested. In some circumstances, an employee may request a family leave from a full-time job to assure part-time employment at a job with less hours and stress in order to provide care to a family member.

COMMENT: This commenter also stated that in view of the recent decision in *New Jersey Business and Industry Association, et al. v. State of New Jersey, et al.*, Dkt. No. L-90-4271 (Law Division decided April 1, 1991), N.J.A.C. 13:14-1.3 should be amended because it could be construed to relate to employee welfare benefit plans which are governed by the Federal Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 et seq.

RESPONSE: N.J.A.C. 13:14-1.3 provides that "[w]here an employer maintains leaves of absence which provide benefits, other than health benefits, that differ depending upon the type of leave taken, such employer shall provide those benefits to an employee on family leave in the same manner as it provides benefits to employees who are granted that other leave of absence which most closely resembles family leave." This section specifically excludes health benefit plans and was proposed under the authority of N.J.S.A. 34:11B-8(b). The case of *New Jersey Business and Industry Association* only addressed N.J.S.A. 34:11B-8(a). Because the decision was limited in scope and the rules address benefits that are not regulated by ERISA, the Division declines to amend these rules.

COMMENT: The individual commenter stated that N.J.A.C. 13:14-1.6 is too restrictive, inflexible and infringes on the rights of women who would like to have family leave run concurrent with disability leave. She further stated that the inability to take family leave and disability leave concurrently would result in the loss of seniority which could adversely affect her in a lay-off situation.

RESPONSE: The Division on Civil Rights believes that the rules are consistent with the statute which states that family leave is in addition to disability leave taken pursuant to the Temporary Disability Benefits Law, P.L. 1948, c.110 (N.J.S.A. 43:21-25 et seq.).

Although an employee may lose seniority during disability leave, the statute is also explicit that "[i]f during a leave . . . the employer experiences a reduction in force or layoff and the employee would have lost their position had the employee not been on leave, as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system including a system under a collective bargaining agreement where applicable, the employee shall not be entitled to reinstatement to the former or an equivalent position." N.J.S.A. 34:11B-7. The statute also provides that an employee shall retain all rights under layoff and recall systems. *Id.*

COMMENT: One commenter supported the adoption of the rules and urged that the Division adopt them without changes.

RESPONSE: The Division has reviewed the repropounded rules in view of the comments received and determined that the rules should be adopted without change.

Full text of the adoption follows.

CHAPTER 14 RULES PERTAINING TO THE FAMILY LEAVE ACT

SUBCHAPTER 1. GENERAL PROVISIONS

13:14-1.1 Purpose

The purpose of this chapter is to implement the provisions of N.J.S.A. 34:11B-1 et seq. which provide for family leave for employees in certain cases and prohibit certain employer practices by establishing interpretations of the provisions of that statute.

13:14-1.2 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 "Family Leave Act," N.J.S.A. 34:11B-1 et seq., unless the context indicates otherwise.

"Base hours" means an employee's regular hours of work excluding overtime, for which an employee receives compensation.

"Base salary" as used in section 4h(1) of the Act means the salary paid to an employee, excluding overtime, bonuses, etc., but not excluding salary withheld for State, Federal, and local taxes, FICA, employee contributions to any pension, health and/or insurance plans or programs, etc.

"Care" means, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, assistance with essential daily living matters and personal attendant services.

"Child", for the purpose of determining whether an employee is eligible for family leave because of such employee's parental status, means a child as defined in the Act to whom such employee is a biological parent, adoptive parent, foster parent, step-parent, or legal guardian, or has a "parent-child relationship" with a child as defined by law, or has sole or joint legal or physical custody, care, guardianship or visitation with a child.

"Consecutive leave" means leave that is taken without interruption based upon an employee's regular work schedule, and does not include breaks in employment in which an employee is not regularly scheduled to work. (For example, when an employee is normally scheduled to work from September through June and is not scheduled to work during July and August, a leave taken continuously during May, June and September shall be considered a consecutive leave.)

"Disability leave" means any period of leave for which the employee is disabled (that is, unable to perform his or her work) including, but not limited to, any period of time during which an employee is collecting disability benefits.

"Disrupt unduly the operations of the employer", as used in sections 4a(3) and 5b of the Act, means an intermittent or reduced leave schedule that, if implemented, would cause the employer measurable harm, economic or otherwise, significantly greater than any measurable harm which would befall the employer if the same

employee was granted a consecutive leave. The burden of proof in these instances rests with the employer and will be determined by the Division on a case by case basis.

"Eligible employee" means any individual employed by the same employer in the State of New Jersey for 12 months or more and has worked 1,000 or more base hours during the preceding 12 month period. An employee is considered to be employed in the State of New Jersey if:

1. Such employee works in New Jersey; or
2. Such employee routinely performs some work in New Jersey and the employee's base of operations or the place from which work is directed and controlled is in New Jersey.

"Employer" means:

1. Effective May 4, 1990, an "employer" shall mean an employer as defined in the Act, which employs 100 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding calendar year.

2. Effective May 4, 1991, an "employer" shall mean an employer as defined in the Act which employs 75 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding calendar year.

3. Effective May 4, 1993, an "employer" shall mean an employer as defined in the Act which employs 50 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding the calendar year.

"Health care provider" means any person licensed under Federal, state, or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.

"Health insurance policy" means all health benefits provided by an employer to an employee. Health benefits includes the opportunity provided by an employer to participate in a group health plan.

"Intermittent leave" means a non-consecutive leave comprised of intervals each of which is at least one but less than 12 workweeks within a consecutive 12 month period.

"Reduced leave" means a non-consecutive leave of up to the equivalent of 12 workweeks which is taken in increments of not less than one workday, unless otherwise agreed to by the employee and employer, but less than one workweek at a time.

"Reduced leave schedule" means a reduced leave that is scheduled for not more than 24 consecutive weeks.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

1. Inpatient care in a hospital, hospice, or residential medical care facility; or
2. Continuing medical treatment or continuing supervision by a health care provider.

"Spouse" means a person to whom an employee is lawfully married as defined by New Jersey law.

"Substantial and grievous economic injury" as used in section 4h(2) of the Act means economic harm that will befall an employer which is of such a magnitude that it would substantially and adversely affect the employer's operations, considerably beyond the costs which are associated with replacing an employee who has requested family leave.

"Workweek" means the number of days that an employee normally works each calendar week, irrespective of the number of hours worked each day. (For purposes of a reduced leave, an employee who normally works five days each calendar week is entitled to a maximum of 60 days of family leave. An employee who normally works four days each calendar week is entitled to a maximum of 48 days of family leave).

13:14-1.3 Applicability

(a) For the purpose of counting employees, an employer, as defined in the Act and in this chapter, shall consider:

1. Employees in this State, irrespective of their eligibility for family leave;

2. Employees who work outside of the State of New Jersey; and
3. Employees of an employer's subsidiary, division or other related entity. In making the determination of whether to count the employees of an employer's subsidiary, division or other entity, the Division on Civil Rights will consider any or all of the following factors on a case by case basis:

- i. The interrelationship of the employer's operation;
- ii. The degree of centralized control of labor relations;
- iii. The existence of common management; and/or
- iv. The degree of common ownership or financial control.

(b) To determine whether a government entity is an employer for the purposes of granting family leave, the criteria established under (a) above shall apply.

13:14-1.4 Terms of leave

(a) Family leave may be taken for up to 12 weeks within any 24 month period. The calculation of the 24 month period shall commence with the commencement of the family leave. The leave may be paid, unpaid or a combination of paid and unpaid. The employee who requests the leave must provide the employer reasonable advance notice, the length of which to be determined by the type of leave requested.

(b) An employer may establish a policy which requires employees to provide such notice in writing, except that such policy must provide that, in emergent circumstances, an employee may provide the employer with oral notice when written notice is impracticable. The policy may require that an employee must provide the employer written notice after submitting oral notice. A policy requiring written notice shall not be applicable to an employee unless the employer adequately informs the employee of such a policy.

13:14-1.5 Leave entitlements

(a) An eligible employee may take 12 weeks of family leave within any 24 month period in order to provide care made necessary by reason of:

1. The birth of a child of the employee;
2. The placement for adoption of a child with an employee; or
3. The serious health condition of family member of the employee.

(b) The leave may be paid, unpaid or a combination of paid and unpaid. Should an eligible employee take less than 12 weeks of family leave for any of the above reasons, such employee shall be entitled to take additional leave for any of the above reasons provided that the total leave taken does not exceed 12 weeks in any consecutive 24 month period and the other qualifications and restrictions contained in the Act, attendant to each type of leave, are not abridged.

(c) An eligible employee is entitled to up to 12 consecutive weeks of family leave in order to care for such employee's newly born child or child placed for adoption with such employee. An employee is entitled to a family leave for the birth or adoption of a child if the employer falls within the statutory definition of employer at the time leave commences and commencement of the leave begins within one year of the birth or adoption of the child. An employee taking a family leave for either of these reasons may take such leave intermittently or on a reduced leave schedule only if agreed to by the employee and the employer.

1. An employee who takes a leave for these purposes shall provide the employer with notice no later than 30 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice.

(d) An employee whose family member (as defined by the Act) has a serious health condition is entitled to up to 12 weeks of family leave taken on a consecutive, reduced leave or when medically necessary, intermittent basis. The care that an employee provides need not be exclusive and may be given in conjunction with any other care provided. When requesting family leave on an intermittent basis or reduced leave schedule, the employee shall make a reasonable effort to schedule such leave so as not to unduly disrupt the operations of the employer.

1. An employee who takes a leave in connection with the serious health condition of a family member shall provide the employer with

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notice, no later than 15 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice.

2. For purposes of this subsection, the total time within which an intermittent leave is taken may not exceed a 12 month period, if such leave is taken in connection with a single serious health condition. Intermittent leaves taken in connection with more than one serious health condition episode must be taken within a consecutive 24 month period, or until such time as the employee's 12 week family leave entitlement is exhausted, whichever is shorter. Any remaining family leave to which the employee is entitled, subsequent to the expiration of any or all intermittent leaves, may be taken in a manner consistent with this chapter.

3. For purposes of this subsection, an employee taking a family leave on a reduced leave schedule shall not be entitled to such leave for more than a consecutive 24 week period. An eligible employee shall be entitled to only one leave on a reduced leave schedule during any consecutive 24 month period. Any remaining family leave to which the employee is entitled subsequent to the expiration of a leave taken on a reduced leave schedule may be taken on a consecutive or intermittent basis.

(e) An employee's entitlement to return to work prior to the prearranged expiration of a requested family leave shall be governed by the employer's policy with respect to other leaves of absence.

1. If an employer permits an employee to return to work prior to the prearranged expiration of other leaves, then that policy shall similarly govern an employee's entitlement to return to work prior to the prearranged expiration of the requested family leave.

2. If an employer does not permit an employee to return to work prior to the prearranged expiration of other leaves, then the employee is not entitled to return to work prior to the prearranged expiration of family leave.

3. An employer which does not have a policy of either permitting or denying an employee to return to work prior to the prearranged expiration of any other leave of absence shall permit an employee to return to work prior to the prearranged expiration of requested family leave if the early return of an employee will not cause the employer undue hardship, such as, requiring the employer to incur the expense of continuing the employment of a temporary employee who was hired to replace the employee who is taking family leave.

(f) An employer shall not require an employee to take a leave of absence beyond the period of time that an employee requests family leave.

13:14-1.6 Disability leave

Disability leave is separate from, and in addition to, any family leave provided by the Act.

13:14-1.7 Accrued paid leave

For the purpose of governing the use of accrued paid leave, employers shall treat family leave in the same matter as similar leaves of absence have been treated. If an employer has had a past practice or policy of requiring its employees to exhaust all accrued paid leave during a leave of absence, the employer may require employees to do so during a family leave. If an employer has a policy of allowing employees to take unpaid leaves without first exhausting accrued paid leave while on family leave, it shall not require employees to exhaust accrued paid leave while on family leave. In situations where an employer does not have an established policy in this regard, the employee shall be entitled to utilize any accrued paid leave as part of the family leave. If such an employee determines not to utilize accrued paid leave, the employer shall not require such employee to utilize any accrued paid leave as part of the leave. Where an employer maintains leaves of absence which provide different policies and/or practices regarding the use of accrued paid leave, the employer shall treat family leave in the same manner as that other leave of absence which most closely resembles family leave.

13:14-1.8 Other employment

An employee on family leave may not engage in other full-time employment during the term of the leave, unless such employment commenced prior to the leave and is not otherwise prohibited by law. During the term of family leave an employee may commence part-time employment which shall not exceed half the regularly

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scheduled hours worked for the employer from whom the employee requested leave. An employee may continue part-time employment which commenced prior to the employee's family leave, at the same number of hours that the employee was regularly scheduled prior to such leave. An employer may not maintain a policy or practice which prohibits part-time employment during the course of a leave.

13:14-1.9 Exemptions

(a) An employer is not required to grant a family leave to any employee who would otherwise be eligible under this Act if:

1. The employee's base salary ranks within the highest paid five percent or his or her base salary is one of the seven highest, whichever number of employees is greater (for purposes of this exception, all employees of an employer whether employed in New Jersey or not shall be included in this calculation);

2. The employer can demonstrate that the granting of the leave would cause a substantial and grievous economic injury to the employer's operations; and

3. The employer notifies the employee of its intent to deny the leave when such determination is made.

13:14-1.10 Certification by an employee

(a) An employer may require an employee who requests family leave to sign a form of certification attesting that such employee is taking family leave for the birth or adoption of a child or to care for a family member because of that family member's serious health condition, whichever is applicable. The employer may not require the employee to sign or otherwise submit a form of certification attesting to additional facts, including the employee's eligibility for family leave. Any employee who refuses to sign such certification may be denied the requested leave.

1. An employer may subject an employee to reasonable disciplinary measures, depending on the circumstances, when an employee intentionally misrepresents that such employee is taking family leave for the birth or adoption of a child or to care for a family member because of that family member's serious health condition, whichever is applicable. The form of certification established by the employer shall contain a statement warning the employee of the consequences of refusing to sign the certification or falsely certifying.

(b) An employer may require that any period of family leave be supported by certification issued by a duly licensed health care provider or any other health care provider determined by the Director to be capable of providing adequate certification.

1. Where the certification is for the serious health condition of a family member of the employee, the certification shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition and the medical facts within the provider's knowledge regarding the condition.

2. Where the certification is for the birth or placement of the child, the certification need only state the date of birth or date of placement, whichever is appropriate.

3. In any case in which the employer has reason to doubt the validity of the certification provided pursuant to (b)1 above, the employer may require, at its own expense, that an employee obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the employer. If the second opinion differs from the certification provided pursuant to (b)1 above, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the serious health condition. The opinion of the third health care provider shall be considered to be final and shall be binding on the employer and the employee.

(c) An employer shall not use the certification requirements provided in (a) and (b) above to intimidate, harass or otherwise discourage an employee from requesting or taking family leave or asserting any of the employee's rights to family leave under these regulations or the Act.

13:14-1.11 Reinstatement

(a) Upon the expiration of a family leave, an employee shall be restored to the position such employee held immediately prior to the commencement of the leave. If such position has been filled, the employer shall reinstate such employee to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment.

(b) If, during a family leave provided by the Act, the employer experiences a reduction in force or layoff and the employee would have lost the employee's position had the employee not been on leave, as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system including a system under a collective bargaining agreement where applicable, the employee shall not be entitled to reinstatement to the former or an equivalent position. The employee shall retain all rights under any applicable layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.

13:14-1.12 Multiple requests for family leave

An employer shall grant a family leave to more than one employee from the same family (for example, brother and a sister) at the same time, provided such employees are otherwise eligible for the leave.

13:14-1.13 Employers with multiple leaves of absence

Where an employer maintains leaves of absence which provide benefits, other than health benefits, that differ depending upon the type of leave taken, such employer shall provide those benefits to an employee on family leave in the same manner as it provides benefits to employees who are granted that other leave of absence which most closely resembles family leave.

13:14-1.14 Retroactivity

Any leave of absence granted to an employee prior to the effective date of the Act shall not be considered a family leave for purposes of determining an employee's entitlement to a family leave under the Act, with the following exception: any period of leave taken by an employee within one year prior to the employee's eligibility for family leave, for the purpose of providing care made necessary because of the birth or placement for adoption of a child, shall be considered as part of the employee's family leave entitlement under the Act, if such leave maintained the same benefits and preserved the same rights as are required by the Act.

13:14-1.15 Prohibition against retaliation

No employer shall discharge or in any way retaliate against or penalize any employee because such employee sought information about family leave provisions, filed a complaint alleging a violation of the Act or this chapter or exercised any right granted under the Act or this chapter.

13:14-1.16 Processing of complaints

Any complaint filed in the Division which alleges a violation of the Act or these regulations shall be processed in the same manner as a complaint filed under the terms of N.J.S.A. 10:5-1 et seq. and N.J.A.C. 13:4.

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

Common Pension Fund B

Date of Valuation

Adopted Amendment: N.J.A.C. 17:16-63.6

Proposed: July 15, 1991 at 23 N.J.R. 2103(a).

Adopted: August 26, 1991 by Roland M. Machold, Director,

Division of Investment (with approval of the State Investment Council).

Filed: August 26, 1991 as R.1991 d.478, **without change**.

Authority: N.J.S.A. 52:18A-91.

Effective Date: September 16, 1991.

Expiration Date: May 2, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:16-63.6 Date of valuation

The valuation shall be determined at the opening of business on the first business day of each month, and shall be based on market prices and accruals as of the close of the previous day.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Annual Audit and Other Reports

Adopted Amendment: N.J.A.C. 19:45-1.7

Proposed: July 1, 1991 at 23 N.J.R. 2006(a).

Adopted: August 14, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: August 14, 1991 as R.1991 d.470, **without change**.

Authority: N.J.S.A. 5:12-69a, 70I-n.

Effective Date: September 16, 1991.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division) and the Casino Association of New Jersey (CANJ).

COMMENT: The Division stated its support of the proposed amendment.

RESPONSE: The Commission agrees, as evidenced by its adoption of the proposed amendment.

COMMENT: CANJ objects to the proposed amendment to N.J.A.C. 19:45-1.7, and suggests that N.J.A.C. 19:45-1.6 instead be amended to allow the requisite financial reports and audits to follow a casino licensee's year, whether it is fiscal or calendar. CANJ comments that calendar-year reporting standards "create costly inefficiencies" by requiring preparation of a separate set of calendar-year statements and reports.

RESPONSE: The Casino Control Act authorizes the Commission to prescribe a "uniform standard of accounting methods, procedures and forms" as necessary to "assure consistency, comparability and effective disclosure of all financial information." N.J.S.A. 5:12-70(m). N.J.A.C. 19:45-1.6 was amended in 1984 based upon the Commission's judgment that uniformity, consistency and comparability of the information provided would be maximized by requiring all reporting on a calendar year basis. It was further determined that such amendment would minimize the regulatory costs associated with review functions relating to fiscal to calendar period reconciliations of revenues and expenses. The Commission has determined that N.J.A.C. 19:45-1.7 should at this time be revised to conform to the standards in N.J.A.C. 19:45-1.6.

COMMENT: CANJ suggests that both N.J.A.C. 19:45-1.6 and 1.7 be "substantially overhauled." CANJ has submitted a list of suggested amendments to these rules.

RESPONSE: CANJ's comments with regard to N.J.A.C. 19:45-1.6 and 1.7 are beyond the scope of this proposal. As stated in the Notice of Proposal, 23 N.J.R. 2006(a), this amendment to N.J.A.C. 19:45-1.7 merely conforms that rule to N.J.A.C. 19:45-1.6. The Commission will take these comments under advisement, and invites the commenter to submit a rulemaking petition pursuant to N.J.A.C. 19:40-3.6.

Full text of the adoption follows.

19:45-1.7 Annual audit and other reports

(a) (No change.)

(b) The annual financial statement shall be prepared on a comparative basis for the current and prior calendar year, and shall present financial position and results of operation in conformity with generally accepted accounting principles.

(c) (No change.)

(d) Two copies of the audited financial statements, together with the report thereon of the casino licensee's independent certified public accountant, shall be filed with the Commission and the Division not later than April 30 following the end of the calendar year.

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

(g) Two copies of the reports required by (e) above, and two copies of any other reports on internal accounting control, administrative controls, or other matters relative to the licensee's accounting or operating procedures rendered by the licensee's independent certified public accountant, shall be filed with the Commission and the Division by the licensee by April 30 following the end of the calendar year or upon receipt, whichever is earlier.

(h)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Destruction of Chips, Tokens and Plaques

Adopted Amendment: N.J.A.C. 19:46-1.6

Proposed: June 3, 1991 at 23 N.J.R. 1780(a).

Adopted: August 14, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: August 14, 1991, as R.1991 d.468, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(i), 99(a)(9).

Effective Date: September 16, 1991.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Casino licensees Adamar of New Jersey, Inc. (TropWorld) and Greate Bay Hotel and Casino, Inc. (Sands) support the proposal, and the Division of Gaming Enforcement has no objection to the proposal.

RESPONSE: Accepted.

Full text of the adoption follows.

19:46-1.6 Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, storage and destruction of chips, tokens and plaques

(a)-(f) (No change.)

(g) Prior to the destruction of gaming chips and plaques, the casino licensee shall notify the Commission and the Division, in writing, of the date and the location at which the destruction will be performed, the denomination, number and amount of value chips and plaques to be destroyed, the description and number of non-value chips to be destroyed and a detailed explanation of the method of destruction. Unless otherwise authorized by the Commission, the destruction of gaming chips and plaques shall be carried out in the presence of at least two people, one of whom shall be from the accounting or auditing department of the casino licensee and one of whom shall be from the security department of the casino licensee. The denomination, number and amount of value chips and plaques or, in the case of non-value chips, the description and number so destroyed shall be recorded in the chip inventory ledger together with the signatures of the individuals carrying out such destruction, and the date on which said destruction took place. The casino licensee shall also maintain a written log of the names and license numbers of all casino personnel involved in each such destruction, as well as the names and addresses of all non-casino personnel involved.

(h)-(i) (No change.)

(b)

CASINO CONTROL COMMISSION

Rules of the Games

A Player Wagering on More Than One Box

Adopted Amendment: N.J.A.C. 19:47-2.14.

Proposed: June 3, 1991 at 23 N.J.R. 1784(a).

Adopted: August 14, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: August 14, 1991, as R.1991 d.471, **without change.**

Authority: N.J.S.A. 5:12-63(c).

Effective Date: September 16, 1991.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Sands Hotel and Casino, TropWorld Casino and Entertainment Resort and the Division of Gaming Enforcement support the proposed amendment to N.J.A.C. 19:47-2.14.

RESPONSE: Accepted.

Full text of the adoption follows:

19:47-2.14 A player wagering on more than one box

A casino licensee may permit a player to wager on more than one box at a Blackjack table.

(c)

CASINO CONTROL COMMISSION

Casino Hotel Alcoholic Beverage Control

Conditions of Operation in Type V locations

Adopted Amendment: N.J.A.C. 19:50-3.5

Proposed: July 1, 1991 at 23 N.J.R. 2006(b).

Adopted: August 14, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: August 14, 1991, as R.1991 d.469, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(q), 103(d) and (e).

Effective Date: September 16, 1991.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: One public comment was received. By letter dated July 30, 1991, the Division of Gaming Enforcement indicated that it supported the proposed amendment.

RESPONSE: Accepted.

Full text of the adoption follows.

19:50-3.5 Conditions of operation in Type V locations

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

(c) Sale of alcoholic beverages may include the retail sale of distillers' and vintners' packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, novelty wearing apparel identified with the name or the trade name(s) of the CHAB licensee, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks, ice and non-alcoholic beverages as accessory beverages to alcoholic beverages.

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

(a)

CASINO CONTROL COMMISSION**Advertising****Readoption with Amendments: N.J.A.C. 19:51**

Proposed: July 1, 1991 at 23 N.J.R. 2007(a).

Adopted: August 14, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: August 14, 1991 as R.1991 d.467, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69, 70(o).

Effective Date: Readoption: August 14, 1991, Readoption; September 16, 1991, Amendments.

Operative Date for N.J.A.C. 19:51-1.2(c): January 16, 1992.

Expiration Date: August 14, 1996.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division); the Casino Association of New Jersey (CANJ); and TropWorld Casino and Entertainment Resort (TropWorld).

COMMENT: The Division stated its support of the proposal, commenting that the proposed amendments will clarify certain prohibited advertising practices which have resulted in the filing of administrative complaints against casino licensees over the past several years.

RESPONSE: The Commission agrees that adoption of the proposed amendments will provide a necessary clarification of N.J.A.C. 19:51 by establishing more explicit standards for the criteria governing advertising.

COMMENT: TropWorld and CANJ contend that the proposed definition of "advertisement," which includes "any notice or communication to the public of any information concerning the gaming-related business of an applicant or licensee through broadcasting, publication, or any other means of dissemination," is overly broad. Both comment that the term "advertisement" should relate to the solicitation of business, and suggest a more narrow definition limited to notices or communications intended to induce the public to purchase the gaming-related goods or services offered by a casino licensee.

RESPONSE: The language of proposed N.J.A.C. 19:51-1.1(a) is completely consistent with the generally accepted definition of "advertisement," which includes any information, announcement or notice given in a manner to attract public attention. See, e.g., Black's Law Dictionary (5th ed.); Webster's Third New International Dictionary.

COMMENT: TropWorld and CANJ object to the provision, in proposed N.J.A.C. 19:51-1.1(a), making a casino licensee or applicant responsible for all advertisements made in its behalf, regardless of whether the casino directly participated in its preparation, placement or dissemination. Both view this language as imputing strict liability, and comment that liability should be imposed only where an advertisement is placed by an authorized agent.

RESPONSE: The proposed language was not intended to impose strict liability. For purposes of clarification, the language of N.J.A.C. 19:51-1.1(a) has been modified upon adoption, and now refers to advertisements placed by a casino applicant or licensee or its agent.

COMMENT: TropWorld and CANJ suggest that N.J.A.C. 19:51-1.2(c) be amended to refer to advertising which is false, deceptive or misleading "in any material respect."

RESPONSE: N.J.S.A. 5:12-70o directs the Commission to promulgate rules which will assure that casino licensees' gaming-related advertisements "are in no way deceptive." N.J.A.C. 19:51-1.1(c) has always applied to prohibit advertising which is false, deceptive or misleading "in any manner whatsoever." The Commission's deletion of the latter phrase does not reflect any intention to narrow the scope of the current regulatory language.

COMMENT: TropWorld and CANJ suggest that the prohibition against false, deceptive or misleading advertising, in N.J.A.C. 19:51-1.2(c), should be modified to eliminate the phrase "whether by inference, omission or ambiguity." The commenters argue that such language is ambiguous, "lending itself to subjective interpretation."

RESPONSE: The Commission has decided upon adoption to delete this phrase, in response to the comment.

COMMENT: CANJ comments that the examples provided in N.J.A.C. 19:51-1.2(c)1 through 3 are subject to varying interpretations which will

"result in unintended complaints and costly litigation." TropWorld comments that a finding of false or misleading advertising "should depend on the facts and circumstances of each particular case."

RESPONSE: As the commenters concede, a finding that any particular advertisement is false, deceptive or misleading is fact-specific. Thus no regulatory provision can be so specific and comprehensive as to preclude the need for subjective interpretation; such determination is obviously the role of the contested case process. Nonetheless, the Commission does not agree that greater clarity can be attained by eliminating the proposed language and reverting to a broad, general prohibition. The examples provided in subsection (c) utilize standards similar to those promulgated by the Division of Consumer Affairs (see N.J.A.C. 13:45A-9), as a means of providing some guidance regarding the types of advertising practices which will be considered "false, deceptive or misleading." Upon adoption a technical modification has been made which merely recodifies paragraph originally proposed N.J.A.C. 19:51-1.2(c)3 to 1.2(e)6.

COMMENT: CANJ objects to proposed N.J.A.C. 19:51-1.2(c)3, which proscribes the failure to maintain any offer "for the advertised period of availability." CANJ notes that advertisements frequently include a notice that the casino may cancel the offer at any time.

RESPONSE: Clearly, the "advertised period of availability" encompasses the advertisement as a whole, including any clear statement that cancellation at any time is a possibility.

COMMENT: CANJ objects to what it views as "an attempt to expand the definition of odds beyond quantifiable numerical information," in N.J.A.C. 19:51-1.2(d)3i through iii. CANJ maintains that the use of the word "odds," the rate of payment for a winning bet, total payout and win do not constitute advertisement of odds.

RESPONSE: As indicated above, none of the proposed amendments expands the scope of chapter 51, but they merely codify the standards consistently applied by the Commission to those rules. The Commission has never interpreted the statutory prohibition against advertisement of "information about odds," at N.J.S.A. 5:12-70(o), to be limited to quantifiable numerical information. To the contrary, such as interpretation was expressly rejected in *State v. Boardwalk Regency Corp.*, Dkt. No. 83-70 (Commission Decision dated April 24, 1985). Subsequent decisions have consistently applied this broad construction of the statutory phrase "information about odds" to include, for example, comparisons such as "best odds in Atlantic City," rate of payment on a winning bet, and any indication of the overall chances of winning or losing at a particular casino or game.

As CANJ comments, advertisement of total payout is permissible, such as in advertising of slot jackpots. N.J.A.C. 19:51-1.2(d)3, as proposed and adopted (as (e)3), does not expressly or impliedly refer to total payout.

COMMENT: CANJ objects to the words "representation," "description," "use" and "statement" in N.J.A.C. 19:51-1.2(d)1 through 3, which it contends broaden the statutory prohibition against "information" about odds, the number of games or the size of the casino. CANJ also comments that N.J.A.C. 19:51-1.2(d)4 is made ambiguous by these "broadened prohibitions."

RESPONSE: The purpose of the amended readoption is to provide more explicit standards for the criteria governing advertising. The Commission does not believe that it is either necessary or useful to merely reiterate statutory language. As previously stated, the amendments do not expand the statutory criteria, but rather, clarify the construction accorded by the Commission to the statutory language. As indicated above, the prohibited "information" is not limited to numerical data, but may include representations, comparisons or descriptive language. The references to the "statement," or communication, of information, and the "use" of information, that is, to employ information for some purpose, have clear common meanings and are appropriately utilized to clarify the statutory reference to "advertisement of information."

COMMENT: CANJ suggests that the phrase "and shall not dominate or despoil the architecture or environment of Atlantic City" should be deleted from N.J.A.C. 19:51-1.2(b), and that the reference to "generally accepted standards of good taste" should be deleted from N.J.A.C. 19:51-1.2(a).

RESPONSE: N.J.A.C. 19:51-1.2(a) and (b) have been modified upon adoption to delete the language cited by the commenter. The Legislature appears to have indicated its intent that the Commission should not exercise subjective judgments with regard to matters only peripherally related to the regulation of gaming. Recent amendments have, for example, deleted N.J.S.A. 5:12-70(r), prohibiting on-site advertising "dominating or despoiling the architecture or environment of the city,"

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and 70(p), the regulation of casino entertainment "in accordance with prevailing community standards."

COMMENT: CANJ notes that N.J.A.C. 19:51-1.3(b) should be amended in accordance with the recent amendments to subsection 70(o) of the Act, to require that on-site advertising implemented after the effective date of the amended rule include the following statement: "If you or someone you know has a gambling problem and wants help, call 1-800-GAMBLER."

RESPONSE: In accordance with subsection 70(o), N.J.A.C. 19:51-1.2 now provides that all advertising which appears in print, or on a billboard or sign, including electronic signage, shall contain the requisite reference to the "1-800-GAMBLER" number. The Commission has determined that the operative date of such provision will be January 16, 1992, to allow a sufficient period of time for implementation of the change by casino licensees.

COMMENT: CANJ comments that N.J.A.C. 19:51-1.2(d)5 should be deleted, since the prohibition of obscenity "does not involve gaming-related advertisement which the Commission is required to regulate."

RESPONSE: While subsection 70(o) of the Act requires that the Commission promulgate regulations governing gaming-related advertising, subsection 69(a) authorizes the Commission, in its discretion, to promulgate such regulations, consistent with the policy and objectives of the Act, as it deems necessary or desirable for the public interest. In accordance with this statutory mandate, the Commission does not agree that it is necessary or appropriate that it repeal those regulatory provisions which prohibit obscenity or nudity in advertising within the casino hotel complex.

COMMENT: TropWorld comments that the comparison of "total payout," prohibited by N.J.A.C. 19:51-1.2(d)4, should not be construed to pertain to a particular jackpot payout. TropWorld suggests that N.J.A.C. 19:51-1.2(e)2 be modified to expressly permit "specific jackpot payouts."

RESPONSE: The term "total payout" has a commonly understood meaning, and clearly does not refer to a single jackpot payout.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:51.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

19:51-1.1 Applicability of advertising regulations

(a) Except as otherwise provided in this section, the term "advertisement" means any notice or communication ***by an applicant or licensee*** to the public of any information concerning the gaming-related business of an applicant or licensee through broadcasting, publication, or any other means of dissemination. An applicant or licensee shall ***also*** be responsible for all advertisements which are made ***[in its behalf]* *by its agents***, regardless of whether the applicant or licensee participated directly in its preparation, placement or dissemination.

(b) The following notices and communications shall not be deemed advertisements for purposes of this chapter, but shall be subject to any review and approval by the Commission otherwise required by the Act or by regulation:

1. Any signage, notice, or other information required to be provided by the Act or by regulation, including, without limitation, the following:

i. Notice regarding the rules of the games in accordance with N.J.A.C. 19:47-8.3;

ii. The posting of information about rules of the games, payoffs of winning wagers and odds, in accordance with section 100(f) of the Act;

iii. Printed gaming guides containing information about the rules of the games, payoffs of winning wagers and odds, in accordance with section 100(f) of the Act;

iv. Information imprinted upon gaming table layouts in accordance with N.J.A.C. 19:46; and

v. Information imprinted, impressed, affixed or engraved on slot machines or bill changers in accordance with N.J.A.C. 19:45 and 19:46;

2. Any signage or other directional devices contained in a casino room for the purpose of identifying the location of approved games; and

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3. The distribution of a prepared statement containing information or news of general interest to persons employed in the reporting of such information or news to the public, such as newspapers or periodicals, or radio or television stations.

Recodify existing (b)-(c) as (c)-(d) (No change in text.)

19:51-1.2 Criteria governing advertising

(a) Advertising shall conform to ***[generally accepted standards of good taste and to]*** the requirements of section 70(o) of the Act and this chapter.

(b) Any on-site advertising of a casino operation shall contain the phrase "Bet With Your Head, Not Over It*[" and shall not dominate or despoil the architecture or environment of Atlantic City]*.***

(c) All advertising which appears in print, or on a billboard or sign, including electronic signage, shall contain the phrase "If you or someone you know has a gambling problem and wants help, call 1-800-GAMBLER."*

[(c)](d)*** Advertising shall be based upon fact, and shall not be false, deceptive or misleading*[, whether by inference, omission or ambiguity]*. Without limitation as to the generality of the foregoing requirement, no advertising shall:

1. Use any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact; ***or***

2. Fail to specifically designate any material conditions or limiting factors*["; or]**.*

[3. Fail to maintain any offer for the advertised period of availability or in a quantity sufficient to meet reasonably anticipated demand.]

[(d)](e)*** The following practices shall be prohibited with respect to all advertisements:

1. Any representation or description of the size of a casino;

2. The use or statement of any information concerning the number of games available at a casino;

3. The use or statement of any information or representation about odds. For purposes of this section, the term odds shall not be limited to numerical information, and shall include, without limitation, the following:

i. Use of the word "odds";

ii. Rate of payment for a winning bet; and

iii. House advantage, hold, win or any like indication of the probability of winning or losing at a particular casino or at any authorized game;

4. The use or statement of any information, representation, or description which contrasts or compares casino licensees with regard to total payout or the information in ***[(d)1 through (d)3 above; and]* *[(e)1 through (e)3 above;***

5. Advertising within a casino hotel complex which violates the obscenity statutes of this State or which includes:

i. The portrayal or depiction of acts or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

ii. The portrayal or depiction of touching, caressing or fondling of the breasts, buttocks, anus or genitals;

iii. The portrayal or depiction of the pubic hair, vulva, genitals, anus, female nipple or female areola*["*]; **and***

6. The failure to maintain any offer for the advertised period of availability or in a quantity sufficient to meet reasonably anticipated demand.

[(e)](f)*** The use or statement of the following information shall be permissible with respect to all advertisements:

1. Descriptions of the games available at a licensed casino, or of any variation thereof which is permitted by regulation, including, but not limited to, types of wagers offered, provided, however, that no advertisement may contain information which is prohibited by (d)3 above;

2. Any special bonus payments or other approved promotional inducements;

3. The location of the casino;

4. The hours of a casino's operation; or

5. Descriptions of any amenities available at a casino.
 Recodify existing (d) as *[(f)]*(g)* (No change in text.)
 Recodify 19:51-1.4, Commission approval, as 19:51-1.3 (No change in text.)

TRANSPORTATION

(a)

FINANCE AND ADMINISTRATION OFFICE OF CIVIL RIGHTS/CONTRACT COMPLIANCE

Disadvantaged Business and Female Business Participation in State Construction Contracts as Subcontractors

Adopted New Rules: N.J.A.C. 16:4

Proposed: September 17, 1990 at 22 N.J.R. 2898(a).
 Adopted: August 16, 1991, by Robert A. Innocenzi, Deputy
 Commissioner (State Transportation Engineer), Department
 of Transportation.

Filed: August 23, 1991 as R.1991 d.477, with substantive and
 technical changes not requiring additional notice and
 comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:1B-24 et seq.

Effective Date: September 16, 1991.

Operative Date: October 29, 1991.

Expiration Date: September 16, 1996.

Summary of Public Comments and Agency Responses:

The Department received a comment from Mr. Robert A. Briant, Sr., Executive Director, Utility and Transportation Contractors Association of New Jersey, P.O. Box 815, 150 Airport Road, Lakewood, New Jersey 08701. There were no other comments received concerning this rule proposal.

COMMENT: The commenter expressed concerns with the provisions of N.J.A.C. 16:4-1.6(d) which contained language which may unjustifiably penalize contractors who endeavor to engage disadvantaged and female-owned firms but are unsuccessful because of conditions in the marketplace. The commenter was concerned that reasonable outreach efforts were not precisely defined, and that a determination that reasonable outreach efforts had not been made would be considered evidence of unlawful race or sex discrimination.

RESPONSE: The Department believes that N.J.A.C. 16:4-1.6(e) adequately defines reasonable outreach efforts, in that actions constituting such efforts are listed in the rule. The Department has amended N.J.A.C. 16:4-1.6(d) to make this requirement consistent with the provisions of the rules of the Department of Treasury regarding minority and female participation in the construction contracting process, specifically N.J.A.C. 17:14-1.9(c), which states:

"If the target levels are not satisfied by a bidder, the Department of Treasury or other State contracting agency, consistent with its statutory authority, shall review the subcontracting practices of the bidder to determine if it has engaged in unlawful race or sex discrimination in the selection of subcontractors.

1. If said review indicates that the bidder has engaged in reasonable outreach efforts and has not engaged in unlawful race or sex discrimination, the bidder will be in compliance with these rules.

2. If said review indicates that the bidder has failed to engage in reasonable outreach efforts or has engaged in unlawful race and sex discrimination, the bidder shall be deemed not responsible under these rules."

The changes made by the Department make clear that, should target levels not be satisfied by a bidder, the Department will review the subcontracting practices of that bidder. If it is determined that reasonable outreach efforts, as outlined in subsection (d), have been made, the bid will not be rejected for reasons of race or sex discrimination. As indicated in the proposal, if it is determined that the bidder has engaged in unlawful race or sex discrimination, the bid may be rejected and the bidder subject to such other penalties as are provided by law.

Summary of Agency-Initiated Changes:

The Department has made technical changes to N.J.A.C. 16:4-1.1. Definitions, for purposes of clarification.

The Department has also added a subsection (d) to N.J.A.C. 16:4-1.3, in order to make clear that those businesses already certified by the Department as a Disadvantaged Business Enterprise under the Federal requirements would also automatically qualify to participate in the Department's Disadvantaged Business Enterprise Program, for as long as the Federal certification is in effect. This provision will not enlarge the scope of the rules, but will provide a benefit to the regulated public, many of which are small businesses, in that they will not be required to prepare an additional application for certification.

Full text of the adoption follows: (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 4

DISADVANTAGED BUSINESS AND FEMALE BUSINESS PARTICIPATION IN STATE CONSTRUCTION CONTRACTS AS SUBCONTRACTORS

SUBCHAPTER 1. GENERAL PROVISIONS

16:4-1.1 Definitions

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

"Commissioner" means the Commissioner of the Department of Transportation of the State of New Jersey, acting directly or through *his or her* duly authorized representatives, *such representatives* acting within the scope of the particular duties delegated to them.

"Construction contract" means any contract funded by 100 percent State funds to which the Department of Transportation of the State of New Jersey is a party and which involves any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever to any highway, structure or facility. The term also includes the supervision, inspection and other on-site functions incidental to actual construction.

"Contractor" means the individual, partnership, firm, corporation, or any acceptable combination thereof contracting with the Department for performance of the prescribed work.

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

"Disadvantaged business" means a sole proprietorship, partnership, or corporation:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Female business" means a sole proprietorship, partnership or corporation:

1. Which is owned by women or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by women; and

2. Whose management and daily business operations are controlled by women who own it.

"Socially and economically disadvantaged individuals" means those individuals who are Black, Hispanic American, Asian American, American Indian, Alaskan Native, or Portuguese defined as follows:

1. Black American is a person having origins in any of the black racial groups of Africa.

2. Hispanic American is a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

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3. Asian American is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.

4. American Indian or Alaskan Native is a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

5. Portuguese is a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.

"Subcontractor" means an individual, partnership, firm or corporation, or any acceptable combination thereof, to which the contractor subcontracts part of the work *under* ***pursuant to*** the applicable contract specifications.

"Work" means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies and other incidentals necessary or convenient to the successful completion by the contractor of the construction described in the contract documents and the carrying out of all duties and obligations imposed by the contract documents on the contractor.

16:4-1.2 Applicability

(a) These rules apply only to Department construction contracts funded with 100 percent State funds and are not applicable to the award of Department contracts for the purchase of goods and services.

(b) Applications and questions regarding eligibility as a disadvantaged business and/or female business should be addressed to:

Office of Civil Rights/Contract Compliance
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

16:4-1.3 Standards of eligibility for disadvantaged business and female business

(a) A business may be eligible for designation as a disadvantaged business, a female business, or both.

(b) In order to be eligible as a disadvantaged business, a business must satisfy the definition of a disadvantaged business in N.J.A.C. 16:4-1.1.

(c) In order to be eligible as a female business, a business must satisfy the definition of a female business in N.J.A.C. 16:4-1.1.

(d) The certification by the Department of a business as a Disadvantaged Business Enterprise, pursuant to the requirements of 49 CFR Part 23 establishing the Disadvantaged Business Enterprise Program for Federally funded contracts, shall automatically qualify the business to participate in the Department's Disadvantaged Business Enterprise for construction contracts funded with 100 percent State funds for as long as the certification of eligibility for the Federal program is in effect.

16:4-1.4 Registration procedures for disadvantaged business and female business

(a) A business may apply to the Department at any time to be registered as a disadvantaged business or female business. Such application must be made on the application form supplied by the Department.

(b) If a business is to be considered as a disadvantaged business or female business for the purpose of meeting the target levels for a specific contract, it must have submitted an application completed in its entirety to the Department for purposes of registration no later than the day of the bid.

(c) As part of its application to the Department, a business shall document its independent status and character of its ownership and control to the satisfaction of the Department. All applications must be completed in their entirety before they will be considered by the Commissioner.

1. Failure by the applicant to supply additional information as requested by the Department within 15 days of the request shall result in the application being returned without processing to the applicant.

TRANSPORTATION

2. If an applicant knowingly supplies false or inaccurate information, the applicant shall be disqualified under these rules, and may be subject to further penalties as provided by law.

16:4-1.5 Approval or rejection as a disadvantaged business or female business

(a) When an applicant is approved by the Commissioner as a disadvantaged business or female business, the business will be notified in writing of such approval. The approval shall be effective as of the date the applicant submitted a completed application and said approval shall be valid for one year unless revoked by the Commissioner. Businesses shall be required to reapply each year for approval as disadvantaged or female businesses.

(b) When an applicant is rejected as a disadvantaged or female business, it shall be notified in writing of the reasons for that decision. The applicant may appeal in writing within 10 days of the receipt of said notice. No applicant shall be eligible to participate in the program during the pendency of its appeal and the rejected applicant may not be used by a contractor to satisfy the target during the pendency of the appeal.

(c) If an applicant appeals the rejection of its application, the Department shall schedule a meeting at which time the applicant may present additional information in support of its application. This additional information shall be reviewed by the Commissioner and the applicant shall be notified of the Commissioner's approval or rejection in writing within 10 State business days of the meeting. If the applicant is approved by the Commissioner such approval shall be effective as of the date of the receipt by the Department of the additional information which was the basis for the approval.

(d) If the Department has reason to believe that there has been a change in the ownership or control of a disadvantaged or female business which has been approved for participation in the program, the Department may request that business demonstrate its continued eligibility for participation in the program. Businesses failing to demonstrate such continued eligibility to the satisfaction of the Commissioner shall have their approval revoked, and shall be ineligible to reapply to the program for one year.

16:4-1.6 Subcontracting targets

(a) The Department shall set target levels for participation of disadvantaged businesses and female businesses as subcontractors for each construction contract.

(b) Each contractor submitting a bid for a construction contract shall include the subcontracting target information in the form and at the time required by the bid proposal.

(c) If the target levels are met by the bidder, the bidder will be presumed not to be engaging in unlawful race and sex discrimination in the selection of subcontractors and will be presumed to have engaged in reasonable outreach efforts.

(d) If the target levels are not satisfied by a bidder, the Department shall review the subcontracting practices of the bidder to determine if it has engaged in ***[reasonable outreach efforts to obtain female and disadvantaged subcontractors and if it is engaging in unlawful race or sex discrimination in the selection of subcontractors. A determination that the bidder has not made reasonable outreach efforts will be considered evidence that the bidder has engaged in unlawful race or sex discrimination.]*** ***unlawful race or sex discrimination in the selection of subcontractors and to determine if it has engaged in reasonable outreach efforts. If the review does not indicate that the bidder has engaged in unlawful race or sex discrimination and does indicate that reasonable outreach efforts have been made, the bid will not be rejected for the reason of race or sex discrimination.*** If it is determined that the bidder has engaged in unlawful race or sex discrimination, the bid may be rejected and the bidder subject to such other penalties as are provided by law, including suspension, debarment or reduced classification.

(e) A bidder which fails to meet the target levels for disadvantaged and female business shall document the reasonable outreach efforts it made to meet the targets. Reasonable outreach efforts shall include, but not be limited to:

1. Attendance at a pre-bid meeting, if any, scheduled by the Department to inform potential bidders and disadvantaged and female businesses of subcontracting opportunities under a given solicitation;

2. Solicitations of disadvantaged and female businesses as subcontractors for the project, including advertisements in general circulation media, trade association publications, and minority focus media. Such solicitations shall be made at a sufficient length of time before the date set for receipt of bids to permit a meaningful response from disadvantaged and female businesses. Contractors shall maintain records regarding each disadvantaged or female business contacted as a potential subcontractor and the reasons why that business was not used by the bidder;

3. Efforts made to identify work categories capable of being performed by disadvantaged or female businesses;

4. Efforts made to use the services of available community organizations, contractor groups and local, State, and Federal agencies that provide assistance in the recruitment and placement of minority and female businesses.

(f) In determining whether a bidder has satisfied the target levels, the award of a subcontract may count toward only one target. For example, the award of a subcontractor to a business owned by a black woman may be counted either toward the disadvantaged business target or the female business target.

16:4-1.7 Responsibility after award

(a) The contractor shall advise the Department of change regarding the work to be performed by a disadvantaged or female business which it intended to use to meet the target.

(b) If a disadvantaged or female business which was to be used by the contractor to meet the target does not perform the work, the contractor shall attempt to replace that disadvantaged or female business with another female or disadvantaged business. If the contractor fails to replace the business with a female or disadvantaged business, it shall document to the Department the reason for such a failure and the Department shall review the contractor's subcontracting practices to determine if it is engaging in unlawful race or sex discrimination.

(c) If a contractor is found to have engaged in unlawful race or sex discrimination, it may be subject to all penalties provided by law. Additionally, the contractor may be subject to suspension, debarment, termination, or reduced classification.

16:4-1.8 Severability

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

16:4-1.9 Review

The operation of the construction subcontract target level program contained in this subchapter and the need for its continuation shall be reviewed by the Commissioner every two years.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT
 Hazardous Waste Criteria, Identification, and Listing
 Adopted Amendment: N.J.A.C. 7:26-8.15

Proposed: April 15, 1991 at 23 N.J.R. 1114(a).

Adopted: August 16, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: August 16, 1991 as R.1991 d.472, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with the proposed amendment to N.J.A.C. 7:26-8.16 not adopted.

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

DEP Docket Number: 012-91-03.

Effective Date: September 16, 1991.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The Department proposed amendments to the lists of hazardous wastes at N.J.A.C. 7:26-8.15 ("P" and "U" lists) and 8.16 ("C" list) on April 15, 1990. The comment period closed May 15, 1991. No comments were received. The Department is adopting the amendments at N.J.A.C. 7:26-8.15 with only technical corrections for typographical errors and chemical name clarifications. The proposed amendments at N.J.A.C. 7:26-8.16 require substantial revision and will be re-proposed at a later date.

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

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

(a) The following discarded commercial chemical products, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous wastes if and when they are a solid waste as defined at N.J.A.C. 7:26-1.4;

1.-4. (No change.)

5. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1 through 4 above, are identified as acute hazardous waste (H). These wastes and their corresponding Hazardous Waste Numbers and Chemical Abstracts Surveying (CAS) Registry Numbers are:

Hazardous Waste Number	Substance	Chemical Abstracts Number
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, *[N-(aminothioxomethyl)]* *N-aminothioxomethyl)*	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid, fluoro-, sodium salt	62-74-8
P001	3-(alpha-Acetylbenzyl)-4-hydroxycoumarin and salts when present at concentrations greater than 0.3%	81-81-2*
P002	1-Acetyl-2-thiourea	591-08-2
P003	*[crolein]* *Acrolein*	107-02-8
P070	Aldicarb	116-06-3
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(Aminomethyl)-3-isoxazolol	2763-96-4
P008	4-Aminopyridine	504-24-5
P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6
P099	Argentate(1-), bis(cyano-C-), potassium	506-61-6
P010	Arsenic acid *[H ₃ As ₄]* *H ₃ AsO ₄ *	7778-39-4
P012	Arsenic oxide As ₂ O ₃	1327-53-3
P011	Arsenic oxide As ₂ O ₅	1303-28-2
P011	Arsenic pentoxide	1303-28-2
P012	Arsenic trioxide	1327-53-3
P038	Arsine, diethyl-	692-42-2
P036	Arsonous dichloride, phenyl-	696-28-6
P054	Aziridine	151-56-4
P067	Aziridine, 2-methyl-	75-55-8
P013	Barium cyanide	542-62-1
P024	Benzenamine, 4-chloro-	106-47-8
P077	Benzenamine, 4-nitro-	100-01-6
P028	Benzene, (chloromethyl)-	100-44-7
P042	1,2-Benzendiol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-	51-43-4
P046	Benzenethanamine, alpha,alpha-dimethyl-	122-09-8
P014	Benzenethiol	108-98-5
P001	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%	81-81-2*

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P028	Benzyl chloride	100-44-7	P031	Ethanedinitrile	460-19-5
P015	Beryllium	7440-41-7	P066	Ethanimidothioic acid, N- [[[(methylamino)carbonyl]oxy]-, methyl ester	16752-77-5
P017	Bromoacetone	598-31-2	P101	Ethyl cyanide	107-12-0
P018	Brucine	357-57-3	P054	Ethyleneimine	151-56-4
P045	2-Butanone, *[3-3-dimethyl-1-(methylthio)-, 0-[methylamino]carbonyl]oxime]* *3,3- dimethyl-1-(methylthio)-0- [methylamino]carbonyl] oxime*	39196-18-4	P097	Famphur	52-85-7
P021	Calcium cyanide	592-01-8	P056	Fluorine	7782-41-4
P021	Calcium cyanide Ca(CN) ₂	592-01-8	P057	Fluoroacetamide	640-19-7
P022	Carbon *[Disulfide]* *disulfide*	75-15-0	P058	Fluoroacetic acid, sodium salt	62-74-8
P095	Carbonic dichloride	75-44-5	P065	Fulminic acid, mercury(2+) salt (R,T)	628-86-4
P023	Chloroacetaldehyde	107-20-0	P059	Heptachlor	76-44-8
P024	p-Chloroaniline	106-47-8	P062	Hexaethyl tetraphosphate	757-58-4
P026	1-(o-Chlorophenyl)thiourea	5344-82-1	P116	Hydrazinecarbothioamide	79-19-6
P027	3-Chloropropionitrile	542-76-7	P068	Hydrazine, methyl-	60-34-4
P029	Copper cyanide	544-92-3	P063	*[Hydrocyanic]* *Hydrocyanic* acid	74-90-8
P029	Copper cyanide Cu(CN) ₂ *	544-92-3	P063	Hydrogen cyanide	74-90-8
P030	Cyanides (soluble cyanide salts), not otherwise specified	—	P096	Hydrogen phosphide	7803-51-2
P031	Cyanogen	460-19-5	P060	Isodrin	465-73-6
P033	Cyanogen chloride	506-77-4	P007	3(2H)-Isoxazolone, 5-(aminomethyl)-	2763-96-4
P033	Cyanogen chloride (CN)C1	506-77-4	P092	Mercury, (acetato-0)phenyl-	62-38-4
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	P065	Mercury*[,]* fulminate (R,T)	628-86-4
P016	Dichloromethyl ether	542-88-1	P082	Methanamine, N-methyl-N-*[nitro-]* *nitroso*	62-75-9
P036	Dichlorophenylarsine	696-28-6	P064	Methane, isocyanato-	624-83-9
P037	Dieldrin	60-57-1	P016	Methane, oxybis[chloro-	542-88-1
P038	Diethylarsine	692-42-2	P112	Methane, tetranitro-(R)	509-14-8
P041	Diethyl-p-nitrophenyl phosphate	311-45-5	P118	Methanethiol, trichloro-	75-70-7
P040	0,0-Diethyl 0-pyrazinyl phosphorothioate	297-97-2	P050	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6, 9,9a-hexahydro-, 3-oxide	115-29-7
P043	Diisopropylfluorophosphate (DFP)	55-91-4	P059	4,7-Methano-1H-indene, 1,4,5,6,7,8,8- heptachloro-3a,4,7,7a-tetrahydro-	76-44-8
P004	*[1,4,5,8-Dimethanonaphthalene]* *1,4,5,8- Dimethanonaphthalene,* 1,2,3,4,10,10- hexachloro-1,4,4a,5,8,8a,-hexahydro-, *[(1alpha, 4alpha, 4beta, 5alpha, 8alpha, 8beta)]* *(1alpha,4alpha,4beta,5alpha,8alpha, 8beta)*	309-00-2	P066	Methyl	16752-77-5
P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10- hexachloro-1,4,4a,5,8,8a-hexahydro*[-, (1alpha, 4alpha, 4beta, 5beta, 8beta, 8beta)]* *(1alpha,4alpha,4beta,5beta,8beta,8beta)-*	465-73-6	P068	Methyl hydrazine	60-34-4
P037	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-, (1alpha,2beta,2alpha,3beta,6beta,6alpha, 7beta,7alpha)-	60-57-1	P064	Methyl isocyanate	624-83-9
P051	*[2,7:3,6-Dimethanonaphth [2,3-b]oxirene,]* *2,7:3,6-Dimethanonaphth [2,3-b]oxirene,* 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-,*[(1alpha,2beta,2alpha,3alpha, 6alpha,6beta,7beta,7alpha)-]* *(1alpha, 2beta,2alpha,3alpha,6alpha,6beta,7beta, 7alpha)-,* and metabolites	72-20-8*	P069	2-Methylactonitrile	75-86-5
P044	Dimethoate	60-51-5	P071	Methyl parathion	298-00-0
P046	*[alpha, alpha]* *alpha, alpha*- Dimethylphenethylamine	122-09-8	P072	alpha-Naphthylthiourea	86-88-4
P047	4,6-Dinitro-o-cresol, and salts	534-52-1*	P073	Nickel carbonyl	13463-39-3
P048	2,4-Dinitrophenol	51-28-5	P073	Nickel carbonyl Ni(CO) ₄ *[(T-4)-]* *(T4)-*	13463-39-3
P020	Dinoseb	88-85-7	P074	Nickel cyanide	557-19-7
P085	Diphosphoramidate, octamethyl-	152-16-9	P074	Nickel cyanide Ni(CN) ₂	557-19-7
P111	Diphosphoric acid*[e]*, tetraethyl ester	107-49-3	P075	Nicotine and salts	54-11-5*
P039	Disulfoton	298-04-4	P076	Nitric oxide	10102-43-9
P049	Dithiobiuret	541-53-7	P077	p-Nitroaniline	100-01-6
P050	Endosulfan	115-29-7	P078	Nitrogen dioxide	10102-44-0
P088	Endothall	145-73-3	P076	Nitrogen oxide NO	10102-43-9
P051	Endrin	72-20-8	P078	Nitrogen oxide NO ₂	10102-44-0
P051	Endrin, and metabolites	72-20-8*	P081	Nitroglycerine (R)	55-63-0
P042	Epinephrine	51-43-4	P082	N-Nitrosodimethylamine	62-75-9
			P084	N-Nitrosomethylvinylamine	4549-40-0
			P085	Octamethylpyrophosphoramidate	152-16-9
			P087	Osmium oxide *[OsO ₄ ,(T-4)-]*	20816-12-0
			P087	Osmium tetroxide	20816-12-0
			P088	7-Oxabicyclo*[[2,2,1]]* *2.2.1*heptane-2,3- dicarboxylic acid	145-73-3
			P089	Parathion	56-38-2
			P034	Phenol, 2-cyclohexyl-4,6-dinitro-	131-89-5
			P048	Phenol, 2,4-dinitro-	51-28-5
			P047	Phenol, 2-methyl-4,6-dinitro-, and salts	534-52-1*
			P020	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88-85-7
			P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	131-74-8
			P092	Phenylmercury acetate	62-38-4
			P093	Phenylthiourea	103-85-5
			P094	Phorate	298-02-2
			P095	Phosgene	75-44-5
			P096	Phosphine	7803-51-2
			P041	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5
			P039	Phosphorodithioic acid, *[0-0-diethyl]* *0,0- diethyl* *[S-[2(ethylthio)ethyl]* *S-[2- (ethylthio)ethyl]*ester	298-04-4

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P094	Phosphorodithioic acid, 0,0-diethyl *[S-[(ethythio)methyl]]* *S-[(ethylthio)methyl]* ester	298-02-2
P044	Phosphorodithioic acid, *[0,0-diethyl]* *0,0-dimethyl*S-[2-[(methylamino)]-2-oxoethyl] ester	60-51-5
P043	Phosphorofluoridic acid, bis(1-methylethyl) ester	55-91-4
P089	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	56-38-2
P040	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	297-97-2
P097	Phosphorothioic acid, 0-[4-[(dimethylamino)sulfonyl]phenyl] 0,0-dimethyl ester	52-85-7
P071	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0
P110	Plumbane, *[tetraethyl]* *tetraethyl-*	78-00-2
P098	Potassium cyanide	151-50-8
P098	Potassium cyanide K(CN)	151-50-8
P099	Potassium silver cyanide	506-61-6
P070	Propanal, 2-methyl-2-*[(methythio)]-* *methylthio)*0-[(methylamino)carbonyl]oxime	116-06-3
P101	Propanenitrile	107-12-0
P027	Propanenitrile, 3-chloro*.*	542-76-7
P069	Propanenitrile, 2-hydroxy-2-methyl*.*	75-86-5
P081	1,2,3,-Propanetriol, trinitrate (R)	55-63-0
P017	2-Propanone, 1-bromo-	598-31-2
P102	Propargyl *[alcohol]* *alcohol*	107-19-7
P003	2-Propenal	107-02-8
P005	2-Propen-1-ol	107-18-6
P067	1,2-Propylenimine	75-55-8
P102	2-Propyn-1-ol	107-19-7
P008	4-Pyridinamine	504-24-5
P075	Pyridine, *[3-(1-methyl-2-pyrrolidinyl)-,(S),]* *3-(1-methyl-2-pyrrolidinyl)-,(S),* and salts	54-11-5*
P114	Selenious acid, dithallium(1 +) salt	12039-52-0
P103	Selenourea	630-10-4
P104	Silver cyanide	506-64-9
P104	Silver cyanide Ag(CN)	506-64-9
P105	Sodium azide	26628-22-8
P106	Sodium cyanide	143-33-9
P106	Sodium cyanide Na(CN)	143-33-9
P107	Strontium sulfide SrS	1314-96-1
P108	Strychnidin-10-one, and salts	57-24-9*
P018	Strychnidin-10-one, 2,3-dimethoxy	357-57-3
P106	Strychnine, and salts	57-24-9*
P115	Sulfuric acid, dithallium(1 +) salt	7446-18-6
P109	Tetraethyldithiopyrophosphate	3689-24-5
P110	Tetraethyl lead	78-00-2
P111	Tetraethyl pyrophosphate	107-49-3
P112	Tetranitromethane (R)	509-14-8
P062	Tetraphosphoric acid, hexaethyl ester	757-58-4
P113	Thallic oxide	1314-32-5
P113	Thallium oxide Tl ₂ O ₃	1314-32-5
P114	Thallium(I) selenite	12039-52-0
P115	Thallium(I) sulfate	7446-18-6
P109	Thiodiphosphoric acid, tetraethyl ester	3689-24-5
P045	Thiofanox	39196-18-4
P049	Thioimidodicarbonic diamide *[(H ₂ N) C(S)] NH*	541-53-7
P014	Thiophenol	108-98-5
P116	Thiosemicarbazide	79-19-6
P026	Thiourea, (2-chlorophenyl)-	5344-82-1
P072	Thiourea, 1-naphthalenyl-	86-88-4
P093	Thiourea, phenyl-	103-85-5
P123	*[Toxaphane]* *Toxaphene*	8001-35-2
P118	Trichloromethanethiol	75-70-7
P119	Vanadic acid, ammonium salt	7803-55-6
P120	Vanadium oxide V ₂ O ₅	1314-62-1

P120	Vanadium pentoxide	1314-62-1
P084	Vinylamine, N-methyl-N-nitroso-	4549-40-0
P001	Warfarin and salts, when present at concentrations greater than 0.3%	81-81-2*
P121	Zinc cyanide	557-21-1
P121	Zinc cyanide Zn(CN) ₂	557-21-1
P122	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10% *[(R,T),]* * (R,T)*	1314-84-7

*CAS Number is given for the parent compound only.

6. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1, 2 and 4 above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding Hazardous Waste Numbers and Chemical Abstract Service (CAS) Registry Numbers are:

Hazardous Waste Number	Substance	Chemical Abstracts Number
U001	Acetaldehyde (I)	75-07-0
U034	Acetaldehyde, trichloro-	75-87-6
U187	Acetamide, N-(4-ethoxyphenyl)-	62-44-2
U005	Acetamide, N-9H-fluoren-2-yl-	53-96-3
U240	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters	94-75-7*
U112	Acetic acid ethyl ester (I)	141-78-6
U144	Acetic acid, lead(2 +) salt	301-04-2
U214	Acetic acid, thallium(1 +) salt	563-68-8
See F027	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5
U002	Acetone (I)	67-64-1
U003	Acetonitrile (I,T)	75-05-8
U248	3-(alpha-Acetylbenzyl)-4-[hydroxycoumarin]* *hydroxycoumarin* and salts, when present at concentrations of 0.3 percent or less	81-81-2*
U004	Acetophenone	98-86-2
U005	2-Acetylaminofluorene	53-96-3
U006	Acetyl chloride (C,R,T)	75-36-5
U007	Acrylamide	79-06-1
U008	Acrylic acid (I)	79-10-7
U009	Acrylonitrile	107-13-1
U011	Amitrole	61-82-5
U012	Aniline (I,T)	62-53-3
U136	Arsinic acid, dimethyl-	75-60-5
U014	Auramine	492-80-8
U015	Azaserine	115-02-6
U010	Azirino[2',3':3,4]*[pyrrolo [1,2-a]indole-4,7-dione,]* *pyrrolo[1,2-a]indole-4,7-dione,* 6-amino-8-[[aminocarbonyl]oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-[methyl-]* *methyl,* *[1aS-(1aalpha, 8beta,8aalpaha, 8balpaha)]-* *(1aS-(1aalpha,8beta,8aalpaha,8balpaha))*	50-07-7
U157	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56-49-5
U016	Benz[c]acridine	225-51-4
U017	Benzal chloride	98-87-3
U192	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5
U018	Benz[a]anthracene	56-55-3
U094	Benz[a]anthracene *[7,12-dimethyl-]* * *, 7,12-dimethyl-*	57-97-6
U012	Benzenamine (I,T)	62-53-3
U014	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-]	492-80-8
U049	Benzenamine, 4-chloro-2-methyl-, hydrochloride	3165-93-3
U093	Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7
U328	Benzenamine, 2-methyl-	95-53-4
U353	Benzenamine, 4-methyl-	106-49-0
U158	Benzenamine,*[4,4'-methylenebis(2-chloro-)]* *4,4'-methylenebis,2-chloro-*	101-14-4

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U222	Benzenamine, 2-methyl-, hydrochloride	636-21-5
U181	Benzenamine, 2-methyl-5-nitro	99-55-8
U019	Benzene (I,T)	71-43-2
U038	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6
U030	Benzene, 1-bromo-4-phenoxy-	101-55-3
U035	Benzenobutanoic acid, 4-[bis(2-chloroethyl)amino]-	305-03-3
U037	Benzene, chloro-	108-90-7
U221	Benzenediamine, ar-methyl-	25376-45-8
U028	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7
U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2
U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2
U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3
U107	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0
U070	Benzene, 1,2-dichloro-	95-50-1
U071	Benzene, 1,3-dichloro-	541-73-1
U072	Benzene, 1,4-dichloro-	106-46-7
U060	Benzene, 1,1'-(2,2-dichloroethylidene) bis(4-chloro-	72-54-8
U017	Benzene, (dichloromethyl)-	98-87-3
U223	Benzene, *[1,3-diisocyanatomethyl-(R,T)]* *1,3-diisocyanatomethyl- (R,T)*	26471-62-5
U239	Benzene, *[dimethyl-(I,T)]* *dimethyl- (I,T)*	1330-20-7
U201	1,3-Benzenediol	108-46-3
U127	Benzene, hexachloro-	118-74-1
U056	Benzene, *[hexahydro-(I)]* *hexahydro- (I)*	110-82-7
U220	Benzene, methyl-	108-88-3
U105	Benzene, 1-methyl-2,4-dinitro	121-14-2
U106	Benzene, 2-methyl-1,3-dinitro	606-20-2
U055	Benzene, *[1-methylethyl- (I)]* *1-methylethyl- (I)*	98-82-9
U169	Benzene, nitro	98-95-3
U183	Benzene, pentachloro-	608-93-5
U185	Benzene, pentachloronitro-	82-68-8
U020	*[Benzenosulfonic]* *Benzenesulfonic* acid chloride (C,R)	98-09-9
U020	Benzenesulfonyl chloride (C,R)	98-09-9
U207	Benzene, 1,2,4,5-tetrachloro-	95-94-3
U061	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50-29-3
U247	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-[methoxy]* *methoxy*	72-43-5
U023	Benzene, (trichloromethyl)- (C,R,T)	98-07-7
U234	Benzene, 1,3,5-trinitro* *	99-35-4
U021	Benzidine	92-87-5
U202	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts	81-07-2*
U203	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7
U141	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1
U090	1,3-Benzodioxole, 5-propyl-	94-58-6
U064	Benzo[rs]pentaphene	189-55-9
U248	*[2H-1]* *2H-1 1*-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-[phenylbutyl]* *phenylbutyl*) - , & salts, when present at concentrations of 0.3% or less	81-81-2*
U022	Benzo[a]pyrene	50-32-8
U197	p-Benzoquinone	106-51-4
U023	Benzo[trichloride (C,R,T)	98-07-7
U085	*[2,2]* *2,2*-Bioxirane	1464-53-5
U021	[1,1'-Biphenyl]-4,4'-diamine	92-87-5
U073	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	91-94-1
U091	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-	119-90-4
U095	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	119-93-7
U225	Bromoform	75-25-2
U030	4-Bromophenyl phenyl ether	101-55-3
U128	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3
U172	1-Butanamine, N-butyl-N-nitroso-	924-16-3
U031	1-Butanol (I)	71-36-3
U159	2-Butanone (I,T)	78-93-3

ENVIRONMENTAL PROTECTION

U160	2-Butanone, peroxide (R,T)	1338-23-4
U053	2-Butenal	4170-30-3
U074	2-Butene, 1,4-dichloro- (I,T)	764-41-0
U143	2-Butenoic acid *[2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-1 alpha (Z),7(2S*, 3R*), 7 aalpha)]-]*	303-34-4
U031	n-Butyl alcohol (I)	71-36-3
U136	Cacodylic acid	75-60-5
U032	Calcium chromate	13765-19-0
U238	Carbamic acid, ethyl ester	51-79-6
U178	Carbamic acid, methylnitroso-, ethyl ester	615-53-2
U097	Carbamic chloride, dimethyl-	79-44-7
U114	Carbamodithioic acid, 1,2-ethanediybis-, salts & esters	111-54-6*
U062	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303-16-4
U215	Carbonic acid, dithallium(1 +) salt	6533-73-9
U033	Carbonic difluoride (R,T)	353-50-4
U156	Carbonochloridic acid, methyl ester (I,T)	79-22-1
U033	Carbon oxyfluoride (R,T)	353-50-4
U211	Carbon tetrachloride	56-23-5
U034	Chloral	75-87-6
U035	Chlorambucil	305-03-3
U036	Chlordane, alpha & gamma isomers	57-74-9
U026	Chlornaphazin	494-03-1
U037	Chlorobenzene	108-90-7
U038	Chlorobenzilate	510-15-6
U039	p-Chloro-m-cresol	59-50-7
U042	2-Chloroethyl vinyl ether	110-75-8
U044	Chloroform	67-66-3
U046	Chloromethyl methyl ether	107-30-2
U047	beta-Chloronaphthalene	91-58-7
U048	o-Chlorophenol	95-57-8
U049	4-Chloro-o-toluidine, hydrochloride	3165-93-3
U032	Chromic acid H ₂ CrO ₄ , calcium salt	13765-19-0
U050	Chrysene	218-01-9
U051	Creosote	—
U052	Cresol (Cresylic acid)	1319-77-3
U053	Crotonaldehyde	4170-30-3
U055	Cumene (I)	98-82-8
U246	Cyanogen bromide (CN)Br	506-68-3
U197	2,5-Cyclohexadiene-1,4-dione	106-51-4
U056	Cyclohexane (I)	110-82-7
U129	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	58-89-9
U057	Cyclohexanone (I)	108-94-1
U130	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4
U058	Cyclophosphamide	50-18-0
U240	2,4-D, salts & esters	94-75-7*
U059	Daunomycin	20830-81-3
U060	DDD	72-54-8
U061	DDT	50-29-3
U062	Diallate	2303-16-4
U063	Dibenz[a,h]anthracene	53-70-3
U064	Dibenzo[a,i]pyrene	189-55-9
U066	1,2-Dibromo-3-chloropropane	96-12-8
U069	Dibutyl phthalate	84-74-2
U070	o-Dichlorobenzene	95-50-1
U071	m-Dichlorobenzene	541-73-1
U072	p-Dichlorobenzene	106-46-7
U073	3,3'-Dichlorobenzidine	91-94-1
U074	1,4-Dichloro-2-butene (I,T)	764-41-0
U075	Dichlorodifluoromethane	75-71-8
U078	1,1-Dichloroethylene	75-35-4
U079	1,2-Dichloroethylene	156-60-5
U025	Dichloroethyl ether	111-44-4
U027	Dichloroisopropyl ether	108-60-1
U024	Dichloromethoxy ethane	111-91-1
U081	2,4-Dichlorophenol	120-83-2

ENVIRONMENTAL PROTECTION

ADOPTIONS

U082	2,6-Dichlorophenol	87-65-0	U120	Fluoranthene	206-44-0
U084	1,3-Dichloropropene	542-75-6	U122	Formaldehyde	50-00-0
U085	1,2:3,4-Diepoxybutane (I,T)	1464-53-5	U123	Formic acid (C,T)	64-18-6
U108	1,4-Diethyleneoxide	123-91-1	U124	Furan (I)	110-00-9
U028	Diethylhexyl phthalate	117-81-7	U125	2-Furancarboxaldehyde (I)	98-01-1
U086	N,N'-Diethylhydrazine	1615-80-1	U147	2,5-Furandione	108-31-6
U087	O,O-Diethyl S-methyl dithiophosphate	3288-58-2	U213	Furan, tetrahydro-(I)	109-99-9
U088	Diethyl phthalate	84-66-2	U125	Furfural (I)	98-01-1
U089	Diethylstilbesterol	56-53-1	U124	Furfuran (I)	110-00-9
U090	Dihydrosafrole	94-58-6	U206	Glucopyranose, 2-deoxy-2-*(3-methyl-3-nitrosoureido)-D-]***(3-methyl-3-nitrosoureido)-D-*	18883-66-4
U091	3,3'-Dimethoxybenzidine	119-90-4			
U092	Dimethylamine (I)	124-40-3			
U093	p-Dimethylaminoazobenzene	60-11-7	U206	D-Glucose, *[2-deoxy-2][(methylnitrosoamino)-]** *2-deoxy-2-[[[(methylnitrosoamino)-*carbonyl]amino]-	18883-66-4
U094	7,12-Dimethylbenz[a]anthracene	57-97-6			
U095	3,3'-Dimethylbenzidine	119-93-7			
U096	alpha,alpha-Dimethylbenzylhydroperoxide (R)	80-15-9	U126	Glycidylaldehyde	765-34-4
U097	Dimethylcarbamoyl chloride	79-44-7	U163	Guanidine, N-methyl-N'-nitro-N-nitroso-	70-25-7
U098	1,1-Dimethylhydrazine	57-14-7	U127	Hexachlorobenzene	118-74-1
U099	1,2-Dimethylhydrazine	540-73-8	U128	Hexachlorobutadiene	87-68-3
U101	2,4-Dimethylphenol	105-67-9	U130	Hexachlorocyclopentadiene	77-47-4
U102	Dimethyl phthalate	131-11-3	U131	Hexachloroethane	67-72-1
U103	Dimethyl sulfate	77-78-1	U132	Hexachlorophene	70-30-4
U105	2,4-Dinitrotoluene	121-14-2	U243	Hexachloropropene	1888-71-7
U106	2,6-Dinitrotoluene	606-20-2	U133	Hydrazine (R,T)	302-01-2
U107	Di-n-octyl phthalate	117-84-0	U086	Hydrazine, 1,2-diethyl-	1615-80-1
U108	1,4-Dioxane	123-91-1	U098	Hydrazine, 1,1-dimethyl-	57-14-7
U109	1,2-Diphenylhydrazine	122-66-7	U099	Hydrazine, 1,2-dimethyl-	540-73-8
U110	Dipropylamine (I)	142-84-7	U109	Hydrazine, 1,2-diphenyl-	122-66-7
U111	Di-n-propylnitrosamine	621-64-7	U134	Hydrofluoric acid (C,T)	7664-39-3
U041	Epichlorohydrin	106-89-8	U134	Hydrogen fluoride (C,T)	7664-39-3
U001	Ethanal (I)	75-07-0	U135	Hydrogen sulfide	7783-06-4
U174	Ethylamine, N-ethyl-N-nitroso-	55-18-5	U135	Hydrogen sulfide H ₂ S	7783-06-4
U155	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5	U096	Hydroperoxide, *[1-methyl-1-phenylethyl-(R)]** *1-methyl-1-phenylethyl- (R)**	80-15-9
U067	Ethane, 1,2-dibromo-	106-93-4	U116	2-Imidazolidinethione	96-45-7
U076	Ethane, 1,1-dichloro-	75-34-3	U137	Indeno(1,2,3-cd)pyrene	193-39-5
U077	Ethane, 1,2-dichloro-	107-06-2	U190	1,3-Isobenzofurandione	85-44-9
U131	Ethane, hexachloro-	67-72-1	U140	Isobutyl alcohol (I,T)	78-83-1
U024	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	111-91-1	U141	Isosafrole	120-58-1
U117	Ethane, 1,1'-oxybis-(I)	60-29-7	U142	Kepona	143-50-0
U025	Ethane, 1,1'-oxybis[2-chloro-	111-44-4	U143	Lasiocarpine	303-34-4
U184	Ethane, pentachloro-	76-01-7	U144	Lead acetate	301-04-2
U208	Ethane, 1,1,1,2-tetrachloro-	630-20-6	U146	Lead, bis(acetato-O)tetrahydroxytri-	1335-32-6
U209	Ethane, 1,1,2,2-tetrachloro-	79-34-5	U145	Lead phosphate	7446-27-7
U218	Ethanethioamide	62-55-5	U146	Lead subacetate	1335-32-6
U226	Ethane, 1,1,1-trichloro-	71-55-6	U129	Lindane	58-89-9
U227	Ethane, 1,1,2-trichloro-	79-00-5	U163	MNNG	70-25-7
U359	Ethanol, 2-ethoxy-	110-80-5	U147	Maleic anhydride	108-31-6
U173	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7	U148	Maleic hydrazide	123-33-1
U004	Ethanone, 1-phenyl-	98-86-2	U149	Malononitrile	109-77-3
U043	Ethene, chloro-	75-01-4	U150	Melphalan	148-82-3
U042	Ethene, (2-chloroethoxy)-	110-75-8	U151	Mercury	7439-97-6
U078	Ethene, 1,1-dichloro-	75-35-4	U152	Methacrylonitrile (I,T)	126-98-7
U079	Ethene, 1,2-dichloro-, (E)-	156-60-5	U092	Methanamine, *[N-methyl-(I)]** *N-methyl-(I)**	124-40-3
U210	Ethene, tetrachloro-	127-18-4	U029	Methane, bromo-	74-83-9
U228	Ethene, trichloro-	79-01-6	U045	Methane, *[chloro-(I,T)]** *chloro- (I,T)**	74-87-3
U112	Ethyl acetate (I)	141-78-6	U046	Methane, chloromethoxy-	107-30-2
U113	Ethyl acrylate (I)	140-88-5	U068	Methane, dibromo-	74-95-3
U238	Ethyl carbamate (urethane)	51-79-6	U080	Methane, dichloro-	75-09-2
U117	Ethyl ether (I)	60-29-7	U075	Methane, dichlorodifluoro-	75-71-8
U114	Ethylenebisdithiocarbamic acid, salts and esters	111-54-6*	U138	Methane, iodo-	74-88-4
U067	Ethylene dibromide	106-93-4	U119	Methanesulfonic acid, ethyl ester	62-50-0
U077	Ethylene dichloride	107-06-2	U211	Methane, tetrachloro-	56-23-5
U359	Ethylene glycol monoethyl ether	110-80-5	U153	Methanethiol (I,T)	74-93-1
U115	Ethylene oxide (I,T)	75-21-8	U225	Methane, tribromo-	75-25-2
U116	Ethylenethiourea	96-45-7	U044	Methane, trichloro-	67-66-3
U076	Ethylidene dichloride	75-34-3	U121	Methane, trichlorofluoro-	75-69-4
U118	Ethyl methacrylate	97-63-2	U036	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-[hexahydro]** *hexahydro-*	57-74-9
U119	Ethyl methanesulfonate	62-50-0			

ADOPTIONS

U154	Methanol (I)	67-56-1
U155	Methapyrilene	91-80-5
U142	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-	143-50-0
U247	Methoxychlor	72-43-5
U154	Methyl alcohol (I)	67-56-1
U029	Methyl bromide	74-83-9
U186	1-Methylbutadiene (I)	504-60-9
U045	Methyl chloride (I,T)	74-87-3
U156	Methyl chlorocarbonate (I,T)	79-22-1
U226	Methyl chloroform	71-55-6
U157	3-Methylolanthrene	56-49-5
U158	4,4'-Methylenebis(2-chloroaniline)*	101-14-4
U068	Methylene bromide	74-95-3
U080	Methylene chloride	75-09-2
U159	Methyl ethyl ketone (MEK) (I,T)	78-93-3
U160	Methyl ethyl ketone peroxide (R,T)	1338-23-4
U138	Methyl iodide	74-88-4
U161	Methyl isobutyl ketone (I)	108-10-1
U162	Methyl methacrylate (I,T)	80-62-6
U161	4-Methyl-2-pentanone (I)	108-10-1
U164	Methylthiouracil	56-04-2
U010	Mitomycin C	50-07-7
U059	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxohexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	20830-81-3
U167	1-Naphthalenamine	134-32-7
U168	2-Naphthalenamine	91-59-8
U026	Naphthalenamine, *[N,N'-bis(2-chloroethyl)]* *N,N-bis(2-chloroethyl)-*	494-03-1
U165	Naphthalene	91-20-3
U047	Naphthalene, 2-chloro-	91-58-7
U166	1,4-Naphthalenedione	130-15-4
U236	2,7-Naphthalenedisulfonic acid, *[3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy)-tetrasodium]* *3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-,tetrasodium* salt	72-57-1
U166	1,4-Naphthoquinone	130-15-4
U167	alpha-Naphthylamine	134-32-7
U168	beta-Naphthylamine	91-59-8
U217	Nitric acid, thallium*[(1+) salt]**(1+) salt*	10102-45-1
U169	Nitrobenzene (I,T)	98-95-3
U170	p-Nitrophenol	100-02-7
U171	2-Nitropropane (I,T)	79-46-9
U172	N-Nitrosodi-n-butylamine	924-16-3
U173	N-Nitrosodiethanolamine	1116-54-7
U174	N-Nitrosodiethylamine	55-18-5
U176	N-Nitroso-N-ethylurea	759-73-9
U177	N-Nitroso-N-methylurea	684-93-5
U178	N-Nitroso-N-methylurethane	615-53-2
U179	N-Nitrosopiperidine	100-75-4
U180	N-Nitrosopyrrolidine	930-55-2
U181	5-Nitro-o-toluidine	99-55-8
U193	1,2-Oxathiolane, 2,2-dioxide	1120-71-4
U058	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-,2-oxide	50-18-0
U115	Oxirane (I,T)	75-21-8
U126	Oxiranecarboxaldehyde	765-34-4
U041	Oxirane, (chloromethyl)	106-89-8
U182	Paraldehyde	123-63-7
U183	Pentachlorobenzene	608-93-5
U184	Pentachloroethane	76-01-7
U185	Pentachloronitrobenzene (PCNB)	82-68-8
See	Pentachlorophenol	87-86-5
F027		
U161	2-Pentanone, 4-methyl-	108-10-1

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U186	1,3-Pentadiene (I)	504-60-9
U187	Phenacetin	62-44-2
U188	Phenol	108-95-2
U048	Phenol, 2-chloro-	95-57-8
U039	Phenol, 4-chloro-3-methyl-	59-50-7
U081	Phenol, 2,4-dichloro-	120-83-2
U082	Phenol, 2,6-dichloro-	87-65-0
U089	Phenol, *[4,4'-(1,2-ethenediyl)bis-, (E)-]* *4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-*	56-53-1
U101	Phenol, 2,4-dimethyl-	105-67-9
U052	Phenol, methyl-	1319-77-3
U132	Phenol, *[2,2'-methylenebis(3,4,6-trichloro-)]* *2,2'-methylenebis(3,4,6-trichloro)-*	70-30-4
U170	Phenol, 4-nitro-	100-02-7
See	Phenol, pentachloro-	87-86-5
F027		
See	Phenol, 2,3,4,6-tetrachloro-	58-90-2
F027		
See	Phenol, 2,4,5-trichloro-	95-95-4
F027		
See	Phenol, 2,4,6-trichloro-	88-06-2
F027		
U150	L-Phenylalanine, *[4-[bis(2-chloroethyl)amino]-]* *4-[bis(2-chloroethyl)amino]-*	148-82-3
U145	Phosphoric acid, lead(2+) salt (2:3)	7446-27-7
U087	*[Phosphorodithioic]* *Phosphorodithioic* acid, 0,0-diethyl S-methyl ester	3288-58-2
U189	Phosphorus sulfide (R)	1314-80-3
U190	Phthalic anhydride	85-44-9
U191	2-Picoline	109-06-8
U179	Piperidine, 1-nitroso-	100-75-4
U192	Pronamide	23950-58-5
U194	1-Propanamine (I,T)	107-10-8
U111	1-Propanamine, N-nitroso-N-propyl-	621-64-7
U110	1-Propanamine, N-propyl- (I)	142-84-7
U066	Propane, 1,2-dibromo-3-chloro	96-12-8
U083	Propane, 1,2-dichloro-	78-87-5
U149	Propanedinitrile	109-77-3
U171	Propane, 2-nitro- (I,T)	79-46-9
U027	Propane, *[2,2-oxybis[2-chloro-]]* *2,2'-oxybis[2-chloro-]*	108-60-1
U193	1,3 Propane sulfone	1120-71-4
See		
F027	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1
U235	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7
U140	1-Propanol, 2-methyl- (I,T)	78-83-1
U002	2-Propanone (I)	67-64-1
U007	2-Propenamide	79-06-1
U084	1-Propene, 1,3-dichloro-	542-75-6
U243	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7
U009	2-Propenenitrile	107-13-1
U152	2-Propenenitrile, 2-methyl- (I,T)	126-98-7
U008	2-Propenoic acid (I)	79-10-7
U113	2-Propenoic acid, ethyl ester (I)	140-88-5
U118	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2
U162	2-Propenoic acid, 2-methyl, methyl ester (I,T)	80-62-6
See		
F027	Propionic acid 2-(2,4,5-trichlorophenoxy) (Silvex)	93-72-1
U194	n-Propylamine (I,T)	107-10-8
U083	Propylene dichloride	78-87-5
U148	3,6-Pyridazinedione, 1,2-dihydro-	123-33-1
U196	Pyridine	110-86-1
U191	Pyridine, 2-methyl-	109-06-8
U237	2,4-(1H,3H)-Pyrimidinedione, *[S-[bis(2-chloroethyl)amino]-]* *5-[bis(2-chloroethyl)amino]-*	66-75-1
U164	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56-04-2

ENVIRONMENTAL PROTECTION

ADOPTIONS

U180	Pyrrolidine, 1-nitroso-	930-55-2
U200	Reserpine	50-55-5
U201	Resorcinol	108-46-3
U202	Saccharin, & salts	81-07-2*
U203	Safrole	94-59-7
U204	Selenious acid	7783-00-8
U204	Selenium dioxide	7783-00-8
U205	Selenium sulfide	7488-56-4
U205	Selenium sulfide SeS ₂ , (R,T)	7488-56-4
U015	L-Serine, diazoacetate (ester)	115-02-6
See		
F027	Silvex (2,4,5-TP)	93-72-1
U206	Streptozotocin	18883-66-4
U103	Sulfuric acid, dimethyl ester	77-78-1
U189	Sulfur phosphide (R)	1314-80-3
See		
F027	2,4,5-T	93-76-5
U207	1,2,4,5-Tetrachlorobenzene	95-94-3
U208	1,1,1,2-Tetrachloroethane	630-20-6
U209	1,1,2,2-Tetrachloroethane	79-34-5
U210	Tetrachloroethylene	127-18-4
F027	2,3,4,6-Tetrachlorophenol	58-90-2
U213	Tetrahydrofuran (I)	109-99-9
U214	Thallium(I) acetate	563-68-8
U215	Thallium(I) carbonate	6533-73-9
U216	Thallium(I) chloride	7791-12-0
U216	Thallium chloride T1C1	7791-12-0
U217	Thallium(I) nitrate	10102-45-1
U218	Thioacetamide	62-55-5
U153	Thiomethanol (I,T)	74-93-1
U244	Thioperoxydicarbonic diamide [(H ₂ n)C(S)] ₂ S ₂ , tetramethyl-	137-26-8
U219	Thiourea	62-56-6
U244	Thiram	137-26-8
U220	Toluene	108-88-3
U221	Toluenediamine	25376-45-8
U223	Toluene diisocyanate (R,T)	26471-62-5
U328	*[o-Toluidinne]* *o-Toluidine*	95-53-4
U353	p-Toluidine	106-49-0
U222	o-Toluidine hydrochloride	636-21-5
U011	1H-1,2,4-Triazol-3-amine	61-82-5
U227	1,1,2-Trichloroethane	79-00-5
U228	Trichloroethylene	79-01-6
U121	Trichloromonofluoromethane	75-69-4
See		
F027	2,4,5-Trichlorophenol	95-95-4
See		
F027	2,4,6-Trichlorophenol	88-06-2
See		
F027	2,4,5-Trichlorophenoxyacetic acid (2,4,5-T)	93-76-5
See		
F027	2,4,5-Trichlorophenoxypropionic acid, salts and esters (Silvex)	93-72-1*
U234	1,3,5-Trinitrobenzene (R,T)	99-35-4
U182	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7
U235	Tris(2,3-dibromopropyl) phosphate	126-72-7

U236	Trypan blue	72-57-1
U237	Uracil mustard	66-75-1
U176	Urea, N-ethyl-N-nitroso-	759-73-9
U177	Urea, N-methyl-N-nitroso-	684-93-5
U043	Vinyl chloride	75-01-4
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	81-81-2*
U239	*[Xylene(I)]* *Xylene (I)*	1330-20-7
U200	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, *[[3beta, 16beta, 17alpha, 18beta,20alpha)-]* *3beta,16beta,17alpha, 18beta,20alpha)-*	50-55-5
U249	Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10% or less	1314-84-7

*CAS Number is given for the parent compound only.

7. (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

**Notice of Administrative Correction
Determining if a Solid Waste is Hazardous
Characteristics of Toxicity**

Adopted Amendment: N.J.A.C. 7:26-8.12

Take notice that the Department of Environmental Protection and Energy has discovered an error in the adopted text of N.J.A.C. 7:26-8.12 Table I, Maximum Concentration of Contaminants for Characteristic of Toxicity. The correct contaminant for EPA hazardous waste number D017 is 2,4,5-TP (Silvex), rather than the proposed and adopted 2,4,5-TP (Silver). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:26-8.12 Characteristics of toxicity
(a)-(b) (No change.)

Table I
Maximum Concentration of Contaminants
for Characteristic of Toxicity

EPA Hazardous Waste Number	Contaminant	Chemical Abstract Service (CAS) Number	Maximum Concentration (milligrams per liter)
...			
D017	*[2,4,5-TP (Silver)]* *2,4,5-TP (Silvex)*	93-72-1	1.0
...			

and *(No change.)

EMERGENCY ADOPTION

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need Moratorium

Adopted Emergency and Concurrent Proposed New Rule: N.J.A.C. 8:33-5.1

Emergency New Rule Adopted and Concurrent Proposed New

Rule Authorized: August 19, 1991 by Frances J. Dunston, M.D., Commissioner, Department of Health.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): August 21, 1991.

Emergency New Rule Filed: August 22, 1991 as R.1991 d.474.

Authority: N.J.S.A. 26:2H-1, 26:2H-5, 26:2H-8 and 26:2H-9.

Concurrent Proposal Number: PRN 1991-474.

Emergency New Rule Effective Date: August 22, 1991.

Emergency New Rule Expiration Date: October 21, 1991.

Submit comments by October 16, 1991 to:

John Scioli

Director

Health Policy, Planning & Certificate of Need

New Jersey Department of Health

CN 360

Trenton, N.J. 08625

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency new rule are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted rule will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency period expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary

The New Jersey State Department of Health, pursuant to N.J.S.A. 26:2H-1, 26:2H-5, 26:2H-8 and 26:2H-9 proposes to impose a moratorium on both the acceptance of applications for certificates of need and the processing of all certificate of need applications currently in some stage in the review process.

The moratorium will serve to prohibit the acceptance of an application for a certificate of need by any statutorily authorized reviewing body and will serve to halt the reviewing process for those applications already submitted and accepted. The moratorium will be lifted for each health care service or health care facility at the time that the portion of the State Health Plan governing that particular health care service or health care facility is adopted.

Social Impact

The imposition of a moratorium will have a beneficial social impact on the public in that it will ensure that no health care facility will be constructed or expanded, and no health care service instituted that is inconsistent with the health care needs identified in the State Health Plan, required to be developed by the Health Care Cost Reduction Act, P.L.1991, c.187. The public will also benefit from the orderly transition to the new State Health Plan made possible by the moratorium, and the avoidance of potentially unnecessary increases in health care costs.

Economic Impact

The Department foresees two types of economic impact from the imposition of this short-term moratorium on the filing of new applications and the processing of pending ones until the new State Health Plan is promulgated. The rule will apply to applicants for certificates of need. There are currently 36 certificate of need applications pending before the Commissioner and, absent the moratorium, the Department would anticipate that an additional 150 applications would have been filed before the expiration of the moratorium.

To the extent that these applications concern the construction of a new, or expansion of an existing, health care facility, the applicant may experience some economic loss due to delayed approval. However, because the moratorium will ensure construction and expansion of only those facilities that are truly needed and, hence, that will be optimally utilized, it ultimately will have a positive economic impact on both the applicant and the health care consumer. Also, in the short run, applicants will save the costs associated with the filing of their applications and the Department will save the administrative costs that would otherwise be necessary to hire additional staff to review the applications.

Regulatory Flexibility Analysis

The proposed moratorium affects only those persons and entities that choose to apply for certificates of need. Some of these entities may be considered small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule imposes no reporting, recordkeeping, or other compliance requirements on small businesses and no professional services are required by the rule. There are no "compliance costs" associated with the rule.

The rule does not appear to be overly burdensome to small businesses. Because all applicants will be reviewed under criteria established in the new State Health Plan, differential requirements based on business size would not be appropriate.

Full text of the proposal follows:

SUBCHAPTER 5. CERTIFICATE OF NEED MORATORIUM

8:33-5.1 Moratorium

(a) The Commissioner of Health places a moratorium on the acceptance by the Department of Health or any other reviewing body of all applications for a certificate of need and on the processing of certificate of need applications already received by the Department. The moratorium is effective August 22, 1991 and will continue indefinitely.

(b) The purpose of the moratorium is to permit the development of the State Health Plan required by the Health Care Cost Reduction Act, P.L.1991, c.187, by enabling Department staff to concentrate their efforts on the formulation of the new Plan and review system and to avoid the possibility of the Department taking any action which may be inconsistent with the requirements to be imposed by the Plan.

(c) The moratorium shall be lifted for each health care service or health care facility at the time that the portion of the State Health Plan governing that particular health care service or health care facility is formally adopted pursuant to the Health Care Cost Reduction Act, P.L.1991 c.187, and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(d) The establishment of the State Health Plan will be accomplished in two phases. Phase I entails the presentation to the State Health Planning Board, in January 1992, the State Health Plan for the following services:

January 1992:

- Hospital Medical/Surgical Services
- Primary and Ambulatory Care
- Chronic Diseases and Long-Term Care
- Maternal and Child Health
- Cardiovascular Diseases
- Addictions
- High Technology Services

Phase II entails the presentation to the State Health Planning Board in July 1992, the State Health Plan for the following services:

July 1992:

- Mental Health
- Injuries and Trauma
- Sexually Transmitted Diseases (STD)/HIV/AIDS
- Cancer
- Occupational/Environmental Health
- Chronic Diseases and Home Health Care/ESRD

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session October 16, 1991

Take notice that the following agenda items are scheduled for Notice of Proposal in the October 7, 1991 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, October 16, 1991 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, October 11, 1991.

Rule Proposal: N.J.A.C. 6:8, Thorough and Efficient System of Free Public Schools Code Amendments (Interim Code-Sunset)

N.J.A.C. 6:20-2, 3 and 5, Business Services Code Amendments

Please Note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the August 7, 1991 monthly public meeting.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment, if approved, would also amend the Hardyston Township Wastewater Management Plan (WMP). The WMP would be amended to increase the sewer service area of the Sussex County Municipal Utilities Authority Upper Wallkill Valley Water Pollution Control Plant (UWVWPCP) to include the Wallkill Valley Regional High School in Hardyston Township, Sussex County. A wastewater flow allocation of 25,000 gallons per day will be transferred from Franklin Borough to the Wallkill Valley Regional High School to provide for this. The school's existing on-site groundwater disposal system will be abandoned once the school is tied in to the UWVWPCP.

This notice is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Sussex County Planning Department, 55-57 High Street, Newton, New Jersey 07860; and the New Jersey Department of Environmental Protection (NJDEP), Office of Regulatory Policy, Bureau of Water Quality Planning, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Bureau of Water Quality Planning at (609) 633-7026 or the Sussex County Planning Department at (201) 579-0500.

Interested persons may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Planning Department address cited above, with a copy sent to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 working days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP

during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

Any interested persons may request in writing that a nonadversarial public hearing be held on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 10 working days of the date of this public notice to Ms. Halliday at the Sussex County Planning Department address cited above, with a copy sent to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended until 15 days after the close of the public hearing.

(c)

PINELANDS COMMISSION

Notice of Extension for Review of Petition for Rulemaking

Pinelands Land Capability Map

N.J.A.C. 7:50-5.3(a) 24

Petitioners: P. West, Jr., et al.

Authority: N.J.S.A. 13:18A-65.

Take notice that on August 9, 1991, P. West, Jr., et al. filed a request for the Pinelands Commission to delay its action on a pending petition for rulemaking.

A petition for rulemaking was filed with the Pinelands Commission on May 15, 1991. A notice of the petition was published in the July 1, 1991 New Jersey Register at 23 N.J.R. 2062(d). The Pinelands Commission was originally scheduled to receive a report on the petition from the Commission's Executive Director and decide whether the petition warranted a formal rulemaking proposal at its meeting of September 6, 1991. In recognition of Manchester Township's recently expressed intention to work toward possible conformance of its Pinelands National Reserve Areas with the Pinelands Comprehensive Management Plan, the petitioners requested that the petition process be held in abeyance for a period of nine months. However, the Commission's Executive Director determined that an extension of this length was unnecessary and that 90 days would be sufficient for the petitioners' purposes. Therefore, the Commission will not be asked to take action on the petition until its meeting of December 6, 1991.

HEALTH

(d)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Receipt of Petition for Rulemaking SHARE Hospital Reimbursement: N.J.A.C. 8:31A

Petitioner: Ivan J. Puchatz, Esq., representing the New Jersey Hospital Association.

Take notice that on August 2, 1991, the Department of Health received a petition from Ivan J. Puchatz, Esq., representing the New Jersey Hospital Association, requesting that the Department amend its SHARE hospital rate-setting regulations, N.J.A.C. 8:31A, to eliminate the minimum base period challenge and to rebase the SHARE system.

(e)

DIVISION OF AIDS PREVENTION AND CONTROL

Notice of Extension of Comment Period Acquired Immunodeficiency Syndrome

Proposed Readoption with Amendments: N.J.A.C. 8:61

Take notice that the Department of Health has extended to October 3, 1991 the comment period for the proposed re-adoption of N.J.A.C.

PUBLIC NOTICES

8:61 and the proposed amendments to that chapter, published August 5, 1991 at 23 N.J.R. 2245(b).

Comments may be submitted by October 3, 1991 to:
Ronald Altman, M.D. Medical Director
Division of AIDS Prevention and Control
New Jersey Department of Health
CN 363
Trenton, N.J. 08625

(a)

DIVISION OF AIDS PREVENTION AND CONTROL

**Notice of Extension of Comment Period
Acquired Immunodeficiency Syndrome
Eligibility Criteria to Participate in Drug Program**

**Proposed Amendments: N.J.A.C. 8:61-2.1, 2.2, 2.3
and 2.6**

Proposed New Rule: N.J.A.C. 8:61-2.6

Take notice that the Department of Health has extended to October 3, 1991 the comment period for the proposed amendments to N.J.A.C. 8:61 published August 5, 1991 at 23 N.J.R. 2247(a).

Comments may be submitted by October 3, 1991 to:
Steven R. Young, Director
Care and Treatment
Division of AIDS Prevention and Control
New Jersey Department of Health
CN 363
Trenton, N.J. 08625

INSURANCE

(b)

THE COMMISSIONER

**Notice of Cancellation and Nonrenewal of Fire and
Casualty Coverage**

Public Notice

Take notice that Samuel F. Fortunato, Commissioner of Insurance, pursuant to the provisions of N.J.S.A. 17:29C-3, has recertified to the Legislature the need for continuation of the notice of cancellation and nonrenewal requirement applicable to fire and casualty insurance policies, excluding accident and health policies for the fiscal year commencing July 1, 1991. The notice of cancellation and nonrenewal requirement is set forth at N.J.A.C. 11:1-5.2, which rule continues in full force and effect.

This notice is published as a matter of public information.

(c)

THE COMMISSIONER

**Listing of New Jersey Municipalities that have
Adopted Ordinances Pursuant to P.L. 1978, c.184,
as Amended by P.L. 1979, c.369**

Take notice that Samuel F. Fortunato, Commissioner of Insurance, in accordance with the provisions of N.J.S.A. 17:36-9, announces the publication of New Jersey municipalities that have adopted ordinances pursuant to the aforementioned statute. Those municipalities, if any, which have adopted said ordinances since the previous date of publication shall be designated by asterisk.

**LIST OF MUNICIPALITIES REQUIRING PAYMENT OF LIENS
BY COMPANIES WRITING FIRE INSURANCE**

The following is a list of municipalities that have passed an ordinance requiring companies writing fire insurance on risks located in that municipality to pay unpaid liens out of any claimed payments in excess of \$2,500.

- Aberdeen, Township of 07747 (Monmouth County)
- Absecon, City of 08201 (Atlantic County)
- Alloway, Township of 08079 (Salem County)
- Asbury Park, City of 07712 (Monmouth County)
- Atlantic City, City of 08401 (Atlantic County)
- Barrington, Borough of 08007 (Camden County)
- Bayonne, City of 07002 (Hudson County)
- Belmar, Borough of 07719 (Monmouth County)
- Berkeley, Township of 08721 (Ocean County)
- Berlin, Borough of 08009 (Camden County)
- Berlin, Township of 08091 (Camden County)
- Bloomfield, Town of 07003 (Essex County)
- Brick, Township of 08723 (Ocean County)
- Bridgeton, City of 08302 (Cumberland County)
- Brigantine, City of 08203 (Atlantic County)
- Buena, Borough of 08341 (Atlantic County)
- Burlington, City of 08016 (Burlington County)
- Butler, Borough of 07405 (Morris County)
- Byram, Township of 07860 (Sussex County)
- Camden, City of 08101 (Camden County)
- Cape May, City of 08204 (Cape May County)
- Carneys Point, Township of 08069 (Salem County)
- Cedar Grove, Township of 07009 (Essex County)
- Chatham, Township of 07928 (Morris County)
- Cinnaminson, Township of 08077 (Burlington County)
- Clinton, Township of 08801 (Hunterdon County)
- Delran, Township of 08075 (Burlington County)
- Dover, Town of 07801 (Morris County)
- Dover, Township of 08753 (Ocean County)
- East Orange, City of 07019 (Essex County)
- Eatontown, Borough of 07724 (Monmouth County)
- Edgewater Park, Township of 08010 (Burlington County)
- Egg Harbor, Township of 08221 (Atlantic County)
- Egg Harbor, City of 08215 (Atlantic County)
- Elizabeth, City of 07201 (Union County)
- Ewing, Township of 08618 (Mercer County)
- Fairfield, Township of 07006 (Essex County)
- Fair View, Borough of 07022 (Bergen County)
- Fanwood, Borough of 07023 (Union County)
- Farmingdale, Borough of 07727 (Union County)
- Florham Park, Borough of 07932 (Morris County)
- Fort Lee, Borough of 07024 (Bergen County)
- Franklin, Township of 07826 (Somerset County)
- Fredon, Township of 07860 (Sussex County)
- Gloucester, City of 08030 (Camen County)
- Green, Township of 07821 (Sussex County)
- Hackensack, City of 07602 (Bergen County)
- Hamilton, Township of 08330 (Atlantic County)
- Hammonton, Town of 08037 (Atlantic County)
- Hanover Township of 07981 (Morris County)
- Hightstown, Borough of 08520 (Mercer County)
- Hillside, Township of 07205 (Union County)
- Hoboken, City of 07030 (Hudson County)
- Holmdel, Township of 07733 (Monmouth County)
- Hopewell, Township of 08302 (Cumberland County)
- Howell, Township of 07731 (Monmouth County)
- Irvington, Town of 07111 (Essex County)
- Irvington, Township of 07111 (Essex County)
- Jackson, Township of 08527 (Ocean County)
- Jamesburg, Borough of 08831 (Middlesex County)
- Jefferson, Township of 07981 (Morris County)
- Jersey City, City of 07302 (Hudson County)
- Keansburg, Township of 07734 (Monmouth County)
- Kearny, Town of 07032 (Hudson County)
- Keypoint, Borough of 07735 (Monmouth County)
- Kinnelon, Borough of 07405 (Morris County)
- Lacey, Township of 08731 (Ocean County)
- Lavallette, Borough of 08735 (Ocean County)
- Lawrence, Township of 08648 (Mercer County)
- Little Silver, Borough of 07739 (Monmouth County)
- Logan, Township of 08096 (Gloucester County)*
- Long Branch, City of 07740 (Monmouth County)

INSURANCE

Date Filed with the Department of Insurance

- September 8, 1980
- July 5, 1983
- December 20, 1984
- May 25, 1979
- March 19, 1979
- September 17, 1982
- March 12, 1979
- March 5, 1982
- May 2, 1979
- October 18, 1979
- March 20, 1980
- March 26, 1979
- May 2, 1980
- April 30, 1979
- October 14, 1982
- November 1, 1982
- December 9, 1986
- November 14, 1980
- October 9, 1980
- May 4, 1979
- May 22, 1979
- July 2, 1979
- August 10, 1979
- June 4, 1986
- August 30, 1979
- December 10, 1981
- August 30, 1979
- April 16, 1980
- September 26, 1979
- February 20, 1979
- March 23, 1979
- July 24, 1979
- September 24, 1979
- May 21, 1981
- April 30, 1979
- November 10, 1981
- August 21, 1980
- September 5, 1979
- June 29, 1979
- May 18, 1981
- April 25, 1979
- August 27, 1979
- June 20, 1980
- October 28, 1980
- January 24, 1989
- July 20, 1982
- April 22, 1980
- November 18, 1982
- August 3, 1979
- January 7, 1986
- September 3, 1980
- June 4, 1979
- October 15, 1979
- October 20, 1987
- September 26, 1979
- March 23, 1979
- March 20, 1979
- July 1, 1985
- March 7, 1979
- March 2, 1983
- April 19, 1983
- February 23, 1979
- April 5, 1984
- August 26, 1980
- August 15, 1979
- June 4, 1986
- August 18, 1981
- December 11, 1979
- April 24, 1979
- April 5, 1984
- January 2, 1990
- December 4, 1987

Loptacong, Township of 08865 (Warren County)	August 30, 1979	Verona, Borough of, Township of 07044 (Essex County)	February 23, 1984
Lower, Township of 08024 (Cape May County)	June 5, 1979	Victory Gardens, Borough of 07801 (Morris County)	August 15, 1979
Manchester, Township of 08733 (Ocean County)	September 21, 1982	Vineland, City of 08360 (Cumberland County)	July 6, 1979
Mannington, Township of 08079 (Salem County)	May 17, 1979	Washington, Borough of 07882 (Warren County)	June 24, 1986
Maple Shade, Township of 08052 (Burlington County)	July 18, 1980	Washington, Township of 08214 (Burlington County)	March 12, 1979
Maplewood, Township of 07040 (Essex County)	April 4, 1979	Washington, Township of 07853 (Morris County)	May 30, 1979
Matawan, Borough of 07747 (Monmouth County)	June 19, 1981	Waterford, Township of 08004 (Camden County)	July 9, 1984
Maurice River, Township of 08332 (Cumberland County)	September 26, 1980	Wayne, Township of 07470 (Passaic County)	October 6, 1986
Mendham, Township of 07949 (Morris County)	January 16, 1985	Weehawken, Township of 07087 (Hudson County)	August 14, 1986
Millburn, Township of 07041 (Essex County)	May 19, 1981	Wenonah, Borough of 08090 (Gloucester County)	July 1, 1985
Millville, City of 08332 (Cumberland County)	April 10, 1979	West Deptford, Township of 08086 (Gloucester County)	November 14, 1988
Millstone, Township of 07726 (Monmouth County)	January 14, 1988	Westhampton, Township of 08060 (Burlington County)	June 4, 1979
Montclair, Town of 07042 (Essex County)	April 5, 1979	West New York, Town of 07093 (Hudson County)	March 12, 1979
Mount Holly, Township of 08060 (Burlington County)	January 29, 1980	Westville, Borough of 08093 (Gloucester County)	March 18, 1988
Mount Laurel, Township of 08054 (Burlington County)	May 27, 1980	West Orange, Town of 07052 (Essex County)	February 26, 1979
Neptune, Township of 07753 (Monmouth County)	January 4, 1982	Wildwood, City of 08260 (Cape May County)	December 5, 1984
Neptune City, Borough of 07712 (Monmouth County)	December 2, 1982	Willingboro, Township of 08046 (Burlington County)	April 17, 1986
Newark, City of 07102 (Essex County)	March 16, 1979	Winslow, Township of 08037 (Camden County)	November 13, 1980
New Brunswick, City of 08903 (Middlesex County)	January 30, 1986	Woodbury, City of 08086 (Gloucester County)	January 7, 1986
North Plainfield, Borough of 07060 (Somerset County)	July 1, 1985	Woodlynne, Borough of 08107 (Camden County)	June 7, 1982
North Wildwood, City of 08260 (Cape May County)	August 24, 1979	Woodridge, Borough of 07075 (Bergen County)	July 9, 1984
Ocean, Township of 07755 (Monmouth County)	November 27, 1979	Woodstown, Borough of 08079 (Salem County)	September 8, 1983
Ocean, Township of 08758 (Ocean County)	May 29, 1985		
Orange, City of 07050 (Essex County)	July 2, 1979		
Passaic, City of 07055 (Passaic County)	September 4, 1980		
Paterson, City of 07050 (Passaic County)	February 16, 1979		
Paulsboro, Borough of 08066 (Gloucester County)	May 7, 1981		
Penns Grove, Borough of 08069 (Salem County)	July 9, 1979		
Phillipsburg, Town of 08865 (Warren County)	July 13, 1979		
Pine Hill, Borough of 08021 (Camden County)	March 2, 1982		
Piscataway, Township of 08854 (Middlesex County)	March 20, 1981		
Plainfield, City of 07061 (Union County)	April 5, 1979		
Pleasantville, City of 08232 (Atlantic County)	December 27, 1979		
Pohatcong, Township of 08865 (Warren County)	July 20, 1979		
Princeton, Borough of 08540 (Mercer County)	July 16, 1980		
Princeton, Township of 08540 (Mercer County)	September 25, 1980		
Rahway, City of 07065 (Union County)	December 18, 1979		
Randolph, Township of 07801 (Morris County)	May 10, 1979		
Readington, Township of 08889 (Hunterdon County)	June 23, 1980		
Red Bank, Borough of 07701 (Monmouth County)	September 9, 1980		
Riverside, Township of 08075 (Burlington County)	May 10, 1979		
Roselle, Borough of 07203 (Union County)	August 8, 1979		
Roselle Park, Borough of 07204 (Union County)	March 5, 1981		
Runnemede, Borough of 08078 (Camden County)	May 6, 1982		
Salem, City of 08079 (Salem County)	June 20, 1979		
Sayreville, Borough of 08872 (Middlesex County)	September 19, 1979		
Scotch Plains, Township of 07076 (Union County)	August 22, 1979		
Sea Bright, Borough of 07760 (Monmouth County)	April 10, 1979		
Sea Girt, Borough of 07762 (Monmouth County)*	March 12, 1991		
Seaside Heights, Borough of 08751 (Ocean County)*	June 21, 1991		
Secaucus, Town of 07094 (Hudson County)	March 5, 1980		
Somerdale, Borough of 08083 (Camden County)	July 28, 1982		
Somerville, Borough of 08876 (Somerset County)	March 23, 1979		
South Amboy, City of 08879 (Middlesex County)	July 12, 1984		
South Harrison, Township of 08039 (Gloucester County)	December 29, 1988		
South Orange Village, Township of 07079 (Essex County)	August 19, 1980		
South Plainfield, Borough of 07080 (Middlesex County)	September 26, 1980		
South River, Borough of 08882 (Middlesex County)	March 16, 1979		
Spotswood, Borough of 08884 (Middlesex County)	June 19, 1981		
Stafford, Township of 08050 (Ocean County)	May 2, 1985		
Sussex, Borough of 07461 (Sussex County)	October 24, 1979		
Tenafly, Borough of 07670 (Bergen County)	June 17, 1980		
Tinton Falls, Township of 07724 (Monmouth County)	June 20, 1980		
Trenton, City of 08608 (Mercer County)	June 12, 1980		
Tuckerton, Borough of 08087 (Ocean County)	February 2, 1989		
Union City, City of 07087 (Hudson County)	April 23, 1979		
Upper Deerfield, Township of 08302 (Cumberland County)	May 19, 1989		
Upper Pittsgrove, Township of 08318 (Salem County)	October 15, 1979		
Ventnor City, City of 08401 (Atlantic County)	March 30, 1982		

STATE

(a)

NEW JERSEY STATE COUNCIL ON THE ARTS

**Notice of Grant Availability
Cultural Centers Bond Issue Program Round III—
1991**

Take notice that the New Jersey State Council on the Arts, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, hereby announces the availability of the following grant program funds.

Name of Program: Cultural Centers Bond Issue Program, Round III—1991.

Purpose: To provide financial assistance through competitive matching grants to eligible organizations proposing to implement capital projects to construct, expand or improve New Jersey-based cultural centers that present and/or will present arts programs of sufficient State or regional significance.

Eligible Applicants: Must be New Jersey incorporated, non-profit organizations that are tax exempt according to Internal Revenue Code, section 501(C)(3), or be units of government. The applicant must possess the authority to develop the existing cultural center or the proposed new center. Eligible applicants must be governed by a board or other official body empowered to take actions as set forth in an official constitution or statute and published by-laws, must be able to demonstrate the ability to match the grant request in the manner required, and must not have been awarded the full amount of funds requested in any previous round of the Cultural Centers Bond Issue Program.

Ineligible Applicants: Those that are unincorporated, incorporated in another state or incorporated as profit-making entities, religious organizations, schools, or fraternal organizations; organizations that are not expressly authorized by the property owner(s) to engage in the capital project, organizations that do not have a completed capital master plan at the time of application, or organizations that have been awarded the full amount of funds requested in a previous round of the Cultural Centers Bond Issue Program.

Eligible Projects: Must be capital projects pertaining exclusively to the construction, acquisition, physical development or improvement of existing or new cultural centers. Projects may propose restoration, new construction, expansion, renovation or adaptive re-use of existing structures. Projects must be governed by a professionally-developed and completed capital master plan.

Ineligible Project: Those that are not capital projects, or are capital projects related to non-arts facilities, spaces or property, capital projects for which professionally-developed capital master plans have not been completed or capital projects that will cost less than \$100,000. Retirement of a mortgage or debt on a completed capital project are not eligible projects.

Grant Site: \$50,000 minimum \$6,000,000 maximum

Amount of Available Funding for the Program: \$14,449,885.

Match: The applicant must demonstrate the ability to match any grant requested according to the following formula: For each \$1.00 of private-sector cash that the applicant has received or proves that it will generate for the project, the applicant may request \$1.00 of Bond Funds. For each \$1.00 of public, non-State of New Jersey cash that the applicant has received or proves that it will generate for the project, the applicant may request \$0.50 of Bond Funds. **In-kind contributions, including the donation of property, MAY NOT BE CONSIDERED PART OF THE MATCH.**

Deadline by which applications must be submitted: The completed application and all required support materials and copies must be postmarked or received in the NJSCA office by 5 P.M., Monday, November 25, 1991.

Decisions: All complete applications by eligible applicants for eligible projects will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria of evaluation. All recommendations of the NJSCA will be announced and immediately forwarded to the Legislature for its approval and appropriation of funds. All applicants will be notified in writing of the NJSCA's recommendations. Award is not final until the Legislature has approved and a contract has been formed.

To receive a set of guidelines and application forms call (609) 292-6130 or write the New Jersey State Council on the Arts at 4 North Broad Street, CN 306, Trenton, New Jersey 08625.

Applicants are strongly encouraged to attend a grants workshop to be announced later and to contact the NJSCA to make arrangements for a meeting with NJSCA staff to discuss the prospective application. This program is highly competitive, and prospective applicants must closely examine their eligibility and readiness to meet all the requirements of the program.

**COMMERCE AND
ECONOMIC DEVELOPMENT**

(a)

URBAN ENTERPRISE ZONE AUTHORITY
Notice of Public Hearing and Reopening of Comment Period
Discretionary Extension of 50 Percent Sales Tax Exemption to Urban Enterprise Zone Municipalities
Proposed Amendment: N.J.A.C. 12A:121-1.2
Proposed New Rules: N.J.A.C. 12A:121-2

Take notice that the Urban Enterprise Zone Authority has reopened the comment period for the above proposed amendments and new rules regarding the discretionary extension of the 50 percent sales tax exemp-

tion to Urban Enterprise Zone municipalities, published in the New Jersey Register on June 17, 1991 at 23 N.J.R. 1893(b).

Submit comments by October 16, 1991 to:
S. Charles Garofalo, Administrator
New Jersey Urban Enterprise Zone Program
Department of Commerce and Economic Development
20 West State St., CN 821
Trenton, N.J. 08625

TRANSPORTATION

(b)

DIVISION OF HIGHWAY TRAFFIC SAFETY
Notice of Grant Availability to State and Local Governments for Projects Implementing Highway Traffic Safety Programs

Take notice that the State and Community Highway Safety Grant Project was established under the Federal Highway Safety Act of 1966, 23 U.S.C. 402. The Act requires each state to have a highway safety program approved by the Secretary of Transportation designed to reduce deaths, injuries and property damage resulting from traffic accidents.

The Governor is responsible for the administration of the State's Highway Safety Program through the New Jersey Division of Highway Traffic Safety in accordance with N.J.S.A. 52:17B. The Division of Highway Traffic Safety prepares a Highway Safety Plan, which identifies the State's traffic safety problems and describes the programs and projects to address those problems, and coordinates the funding for local and State projects. Activities under the 402 program area are centered predominantly on efforts to control the drinking driver, increase traffic law enforcement, improve the quality of emergency medical services through additional training of State and local personnel, and improve the collection and analysis of traffic accident data.

Approximately \$3,000,000 will be available on a Statewide basis to units of government to address the Federal priority areas, which are: Alcohol and Other Drug Countermeasures, Police Traffic Safety Services, Occupant Protection, Emergency Medical Services, Traffic Records, Motorcycle Safety, and Roadway Safety.

Federal law requires that 40 percent of the funds be expended through grants to local governments. This notice solicits applications from government units that are interested in developing and implementing projects under this program.

A copy of the Highway Safety Plan and the Application for Highway Safety Project Grants are available by writing to: New Jersey Division of Highway Traffic Safety, CN-048, Trenton, New Jersey 08625 or telephone (609) 588-3750.

Grant applications will be accepted throughout the 1991-92 Federal Fiscal Year. The Division contemplates that application decisions will be rendered within 30 days of receipt.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 5, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JULY 15, 1991

NEXT UPDATE: SUPPLEMENT AUGUST 19, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 2861 and 3072	September 17, 1990	23 N.J.R. 925 and 1048	April 1, 1991
22 N.J.R. 3073 and 3182	October 1, 1990	23 N.J.R. 1049 and 1226	April 15, 1991
22 N.J.R. 3183 and 3274	October 15, 1990	23 N.J.R. 1227 and 1482	May 6, 1991
22 N.J.R. 3275 and 3420	November 5, 1990	23 N.J.R. 1483 and 1722	May 20, 1991
22 N.J.R. 3421 and 3606	November 19, 1990	23 N.J.R. 1723 and 1854	June 3, 1991
22 N.J.R. 3607 and 3666	December 3, 1990	23 N.J.R. 1855 and 1980	June 17, 1991
22 N.J.R. 3667 and 3896	December 17, 1990	23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 1 and 144	January 7, 1991	23 N.J.R. 2079 and 2204	July 15, 1991
23 N.J.R. 145 and 248	January 22, 1991	23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 249 and 332	February 4, 1991	23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 333 and 636	February 19, 1991	23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
1:1-3.3	Return of contested cases: failure of party to appear at hearing	23 N.J.R. 1728(a)	
1:5	Council on Affordable Housing hearings	23 N.J.R. 2082(a)	
1:5	Council on Affordable Housing hearings: extension of comment period	23 N.J.R. 2497(a)	
1:10B	Medical Assistance and Health Services hearings	23 N.J.R. 2083(b)	
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 2208(a)	
1:14-14.1, 14.4	Board of Public Utility hearings: prefiled testimony; interlocutory review	23 N.J.R. 2083(c)	

Most recent update to Title 1: TRANSMITTAL 1991-4 (supplement July 15, 1991)

AGRICULTURE—TITLE 2

2:9-1	Avian influenza: indemnification of poultry losses	23 N.J.R. 1485(a)	R.1991 d.430	23 N.J.R. 2498(a)
2:18	Nursery inspection fees	23 N.J.R. 1230(b)	R.1991 d.407	23 N.J.R. 2328(a)
2:21-7	Fees for seed testing	23 N.J.R. 1231(a)	R.1991 d.400	23 N.J.R. 2330(a)
2:51	Milk prices to dairy farmers	23 N.J.R. 1966(b)	R.1991 d.448	23 N.J.R. 2498(b)
2:69-1.11	Commercial values of primary plant nutrients	23 N.J.R. 1728(b)	R.1991 d.431	23 N.J.R. 2499(a)
2:73-2	Seal of Quality for Eggs program	23 N.J.R. 1729(a)	R.1991 d.432	23 N.J.R. 2500(a)

Most recent update to Title 2: TRANSMITTAL 1991-5 (supplement July 15, 1991)

BANKING—TITLE 3

3:1-2.17	Closing of branch offices	23 N.J.R. 801(a)	R.1991 d.392	23 N.J.R. 2305(a)
3:1-2.17	Closing of branch offices	23 N.J.R. 2208(b)		
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)		
3:1-19	Consumer checking accounts: preproposed new rules	23 N.J.R. 2617(a)		
3:3-2.1	Department records designated nonpublic	23 N.J.R. 1858(a)		
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2209(a)		
3:16-2.1	Pawnbroker service charges	23 N.J.R. 1729(b)	R.1991 d.426	23 N.J.R. 2500(b)
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)	Expired	
3:18-10.3	Licensure of secondary mortgage lenders	23 N.J.R. 2210(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2209(a)		
3:29-1.1-1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	23 N.J.R. 1485(b)	R.1991 d.418	23 N.J.R. 2306(a)
3:38-1.2, 1.4, 1.9, 2.1	Mortgage banker and broker net worth standards	23 N.J.R. 2450(a)		
3:38-1.3	Licensure of mortgage lenders	23 N.J.R. 2210(a)		

Most recent update to Title 3: TRANSMITTAL 1991-6 (supplement July 15, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

4A:4-2.11	Enforcement of residency requirements	23 N.J.R. 1984(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
4A:5-2.1, 2.2	Veterans and disabled veterans preference: administrative correction			23 N.J.R. 2500(c)

Most recent update to Title 4A: TRANSMITTAL 1991-1 (supplement May 20, 1991)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:14-1.1-1.6, 2.1, 2.2, 2.3, 3.1-3.12, 3A, 4.10, App. A-D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-2.4A, 2.4B, 2.4C, 2.4D, 2.7, 2.8	Uniform Fire Code: life hazard uses and permit fees	23 N.J.R. 2234(a)		
5:18-2.8	Uniform Fire Code life hazard uses and permit fees: administrative correction and extension of comment period	23 N.J.R. 2453(a)		
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)		
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)	R.1991 d.480	23 N.J.R. 2861(a)
5:18A-2.6	Fire Code enforcement: life hazard uses and permit fees	23 N.J.R. 2234(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:20-1	Meetings of governing board of a condominium association	23 N.J.R. 1901(a)	R.1991 d.455	23 N.J.R. 2633(a)
5:23-2.8, 2.17A, 2.24, 2.32	Uniform Construction Code: approval of completed work	23 N.J.R. 2236(a)		
5:23-2.38	Barrier Free Recreational Standards: appeals regarding facility noncompliance	23 N.J.R. 1730(a)	R.1991 d.428	23 N.J.R. 2500(d)
5:23-3.14, 3.18, 3.20, 10.3	Uniform Construction Code: 1991 subcode references; Energy and Radon Hazard subcodes	23 N.J.R. 1487(a)	R.1991 d.429	23 N.J.R. 2501(a)
5:23-3.15, 3.21	Uniform Construction Code: plumbing; one and two family dwelling subcodes	23 N.J.R. 2619(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-7.3, 7.11	Barrier Free Subcode: exemptions and Use Group R-2 and R-3	23 N.J.R. 1902(a)	R.1991 d.479	23 N.J.R. 2861(b)
5:23-7.6A	Barrier-Free Subcode enforcement	23 N.J.R. 2620(a)		
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)	R.1991 d.408	23 N.J.R. 2306(b)
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 6.1, 6.2, 6.3, 14.4	Council on Affordable Housing: credits for rehabilitation and new construction; rental housing	23 N.J.R. 1488(a)	R.1991 d.412	23 N.J.R. 2307(a)
5:92-1.6	Council on Affordable Housing: extension of certification period/judgment of repose	23 N.J.R. 2084(b)		
Most recent update to Title 5: TRANSMITTAL 1991-7 (supplement July 15, 1991)				
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		
Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)				
EDUCATION—TITLE 6				
6:8-1.1, 6.1, 6.2, 6.3	Preventive and remedial programs in reading, writing and mathematics	23 N.J.R. 2085(a)		
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-2.12, 2.13, 2.14, 2A.10, 2A.11, 2A.12, 4.1, 5.3, 5.6, 8.3	Financial management in local districts	23 N.J.R. 1733(a)	R.1991 d.459	23 N.J.R. 2634(a)
6:21-7, 19	Pupil transportation aid	23 N.J.R. 1737(a)	R.1991 d.460	23 N.J.R. 2636(a)
6:22-1.2-1.7, 2, 3, 4, 5.4, 5.5, 6, 7, 8	School Facility Planning Service	23 N.J.R. 1238(a)	R.1991 d.443	23 N.J.R. 2502(a)
6:30-4.4, 4.5	Reporting of enrollments in adult high schools	23 N.J.R. 1243(a)	R.1991 d.401	23 N.J.R. 2330(b)
6:39-1.3, 1.4	Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests	23 N.J.R. 1244(a)	R.1991 d.402	23 N.J.R. 2331(a)
6:41	Repeal Advisory Council	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:43-1.1, 1.2, 3.3, 7.1, 8.1	Vocational and technical education: programs and standards	23 N.J.R. 1246(a)	R.1991 d.404	23 N.J.R. 2331(c)
6:46-1.1, 2	Local area vocational school districts	23 N.J.R. 1247(a)	R.1991 d.405	23 N.J.R. 2332(a)
6:47	Repeal Management Services	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
6:48	Repeal Professional Services	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:49	Repeal Occupational Research Development	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:50	Repeal Urban Education and Manpower Training	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
6:51	Vocational and technical education: administration and organization	23 N.J.R. 1250(a)	R.1991 d.406	23 N.J.R. 2333(a)
6:52	Repeal Residential Schools	23 N.J.R. 1244(b)	R.1991 d.403	23 N.J.R. 2331(b)
Most recent update to Title 6: TRANSMITTAL 1991-6 (supplement July 15, 1991)				
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)	R.1991 d.465	23 N.J.R. 2656(a)
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:2-11.3-11.9, 11.12-11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)	R.1991 d.446	23 N.J.R. 2507(b)
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Stormwater management: Water Pollution Control Act compliance	23 N.J.R. 1926(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1.8	NJPDES fee schedule: administrative correction	_____	_____	23 N.J.R. 2346(a)
7:14A-1.9, 2.5, 3.10, 8.13	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14A-2.1	NJPDES and DTW co-permittee requirements: notice of rule invalidation	_____	_____	23 N.J.R. 2346(b)
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:15-4.1	DTW and NJPDES co-permittee requirements: notice of rule invalidation	_____	_____	23 N.J.R. 2346(b)
7:18	Certification of laboratories analyzing drinking water and wastewater	23 N.J.R. 1109(a)	R.1991 d.385	23 N.J.R. 2346(c)
7:18-6.6	Clean Water Enforcement Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)	R.1991 d.378	23 N.J.R. 2366(a)
7:25-5	1991-92 Game Code	23 N.J.R. 1494(a)	R.1991 d.416	23 N.J.R. 2347(a)
7:25-6	1992-93 Fish Code	23 N.J.R. 2115(a)		
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.12, 18.13	Weakfish management program	23 N.J.R. 1989(b)		
7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)		

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7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-8.1	Mixtures of solid and listed hazardous wastes	23 N.J.R. 1113(b)	R.1991 d.420	23 N.J.R. 2360(a)
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity Characteristic	23 N.J.R. 151(a)	R.1991 d.421	23 N.J.R. 2360(b)
7:26-8.2, 8.8, 8.12	Hazardous waste management: reopening of comment period regarding Toxicity Characteristic of waste	23 N.J.R. 1401(a)		
7:26-8.12	Hazardous waste management: administrative correction	_____	_____	23 N.J.R. 2880(a)
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)	R.1991 d.422	23 N.J.R. 2361(a)
7:26-8.14	Hazardous waste management: reopening of comment period regarding listing of methyl bromide production wastes	23 N.J.R. 1401(b)		
7:26-8.15, 8.16	Hazardous waste criteria, identification, and listing	23 N.J.R. 1114(a)	R.1991 d.472	23 N.J.R. 2874(a)
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3-17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)	R.1991 d.462	23 N.J.R. 2778(a)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4-3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic compounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)	R.1991 d.417	23 N.J.R. 2362(a)
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)	R.1991 d.463	23 N.J.R. 2780(a)
7:50-2.11, 4.61-4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		
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8:18-1.2, 1.4, 1.5, 1.7, 1.10, 1.11, 1.13-1.17	Catastrophic Illness in Children Relief Fund Program	23 N.J.R. 2564(a)		
8:20-1.2	Birth Defects Registry: reporting requirements	23 N.J.R. 820(a)	R.1991 d.414	23 N.J.R. 2335(a)
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:22-1	Campground sanitation	23 N.J.R. 1252(b)	R.1991 d.409	23 N.J.R. 2336(a)
8:24-2.1	Retail food establishments: administrative correction	_____	_____	23 N.J.R. 2337(a)
8:24-13.9, 13.11	Sanitation in community residences and bed and breakfast establishments	23 N.J.R. 2088(a)		
8:31A-1.1, 2.6, 7.4, 7.5, App. A, D	SHARE Manual: patient day add-on; EDR and OPPM cost centers	23 N.J.R. 2242(a)		
8:31C-1.21, App. A	Residential alcoholism treatment facilities: patient day add-on	23 N.J.R. 2243(a)		
8:33-5.1	Certificate of Need moratorium	Emergency (expires 10-21-91)	R.1991 d.474	23 N.J.R. 2881(a)

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8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:40	Licensure of invalid coach and ambulance services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 2245(a)		
8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.16, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.33, 7.34, 7.37, 7.40, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.4-18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17, 30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6, 35.2	Hospital licensing standards	23 N.J.R. 2590(a)		
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)	R.1991 d.450	23 N.J.R. 2526(a)
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)	R.1991 d.451	23 N.J.R. 2527(a)
8:57-2.2, 2.4, 2.6, 2.7	Reporting of HIV infection with identifiers	23 N.J.R. 2089(a)		
8:61	AIDS prevention and control	23 N.J.R. 2245(b)		
8:61-2.1, 2.2, 2.3, 2.6	Participation in AIDS Drug Distribution Program	23 N.J.R. 2247(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 23 N.J.R. 206(b))	22 N.J.R. 3191(a)		
8:71	Interchangeable drug products (see 23 N.J.R. 1670(a), 2136(a))	23 N.J.R. 178(a)	R.1991 d.464	23 N.J.R. 2783(a)
8:71	Interchangeable drug products: administrative correction	_____	_____	23 N.J.R. 2338(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)		
8:71	Interchangeable drug products	23 N.J.R. 2610(a)		

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9:4	County community colleges	23 N.J.R. 2467(a)		
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9:7-4.2	Garden State Scholarships: academic requirements	23 N.J.R. 2211(a)		
9:9-7	New Jersey College Loans to Assist State Students (NJCLASS) Program	23 N.J.R. 1257(a)	R.1991 d.396	23 N.J.R. 2338(b)
9:9-7.7	New Jersey College Loans to Assist State Students (NJCLASS) Program: repayment of loan	23 N.J.R. 2212(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		

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10:36	Patient supervision at State psychiatric hospitals	23 N.J.R. 1652(a)	R.1991 d.453	23 N.J.R. 2637(a)
10:42	Use of mechanical restraints and safeguarding equipment on developmentally disabled individuals	23 N.J.R. 1653(a)	R.1991 d.437	23 N.J.R. 2538(a)
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-5.6	PAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56	Dental Services Manual	23 N.J.R. 1992(a)	R.1991 d.473	23 N.J.R. 2862(a)
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 3	Independent Clinic Services: partial care	23 N.J.R. 2213(a)		
10:66-3	Medicaid program: personal care assistant services at independent clinics	23 N.J.R. 2091(a)	R.1991 d.481	23 N.J.R. 2862(b)
10:68	Manual of Chiropractic Services	23 N.J.R. 1327(a)	R.1991 d.377	23 N.J.R. 2309(a)
10:69-5.1	HAAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:69A-1.2, 5.3, 5.6, 6.2, 6.10	PAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)	R.1991 d.454	23 N.J.R. 2637(b)
10:69B-4.2	Lifeline Credit Program: income eligibility limits	23 N.J.R. 2623(a)		
10:72-1.1, 4.1	Medicaid eligibility: pregnant women and children	Emergency (expires 9-27-91)	R.1991 d.445	23 N.J.R. 2543(a)
10:72-2.5, 3.4	Extended Medicaid eligibility for newborns	23 N.J.R. 1889(a)		
10:81-8.22, 8.23	Extended Medicaid eligibility for newborns	23 N.J.R. 1657(a)	R.1991 d.438	23 N.J.R. 2542(a)
10:81-14.12, 14.18	Public Assistance Manual: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2214(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-2.8, 4.4, 5.3	Assistance Standards Handbook: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2217(a)		
10:82-3.1	Assistance Standards Handbook: bank account resources	23 N.J.R. 2625(a)		
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 2220(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)		
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
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10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
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10A:2-5	Reporting loss of funds	23 N.J.R. 1510(a)	R.1991 d.373	23 N.J.R. 2310(a)
10A:2-8	Inmate financial aid upon release from correctional facility	23 N.J.R. 1511(a)	R.1991 d.372	23 N.J.R. 2310(b)

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10A:10-3	Interstate Corrections Compact	23 N.J.R. 2221(a)		
10A:16-12	Inmates at risk of suicide	23 N.J.R. 1756(a)	R.1991 d.439	23 N.J.R. 2510(a)
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		
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11:1-6	New Jersey Property-Liability Insurance Guaranty Association: assessment premium surcharge	23 N.J.R. 823(b)	R.1991 d.461	23 N.J.R. 2638(a)
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11:12	Legal services insurance	23 N.J.R. 2304(a)		
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12:55-1.4	Voluntary wage deductions for repayment of debts to State	23 N.J.R. 1660(a)	R.1991 d.447	23 N.J.R. 2512(a)
12:55-1.4	Voluntary wage deductions for repayment of debts to State: administrative correction	_____	_____	23 N.J.R. 2864(a)
12:90-4.13, 6.5, 7.2, 7.16, 7.19	Boilers, pressure vessels, and refrigeration: administrative corrections concerning inspection and license fees	_____	_____	23 N.J.R. 2512(b)
12:235	Workers' Compensation system	23 N.J.R. 1759(a)	R.1991 d.466	23 N.J.R. 2642(a)
12:235-1.6	Workers' Compensation: 1992 maximum rates	23 N.J.R. 2612(a)		

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12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	23 N.J.R. 828(a)	R.1991 d.393	23 N.J.R. 2313(a)
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12A:31-2	Development Authority: loan guarantee program	23 N.J.R. 830(a)	R.1991 d.394	23 N.J.R. 2314(a)
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13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)		
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