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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 18, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT FEBRUARY 22, 1994

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **May 4, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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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Filing Deadlines

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- **Proposals ..... April 18**
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NEW JERSEY REGISTER

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

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RULE PROPOSALS

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Proposed Readoption with Amendments: N.J.A.C. 2:76

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.
Authority: N.J.S.A. 4:1C-5f.
Proposal Number: PRN 1994-198.

Submit comments by May 4, 1994 to:
Donald D. Applegate, Executive Director
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The readoption of N.J.A.C. 2:76 is proposed by the State Agriculture Development Committee, SADC with proposed rule amendments at N.J.A.C. 2:76-6, Acquisition of development easements. All the rules deal with implementing the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 as amended and administering funds authorized pursuant to the Farmland Preservation Bond Act of 1981, the Open Space Preservation Bond Act of 1989 and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992.

The chapter is divided into subchapters as follows:

Subchapter 1 delineates the procedures for the designation of Agricultural Development Areas.

Subchapter 2 deals with agricultural management practices.

Subchapter 3 deals with the creation of farmland preservation programs.

Subchapter 4 deals with the creation of municipally approved farmland preservation programs.

Subchapter 5 deals with soil and water conservation project cost sharing.

Subchapter 6 deals with the acquisition of development easements.

Subchapter 7 provides for the review of nonagricultural development projects in agricultural development areas.

Subchapter 8 deals with the acquisition of farmland in fee simple.

Subchapter 9 deals with the emergency acquisition of development easements on farmland.

Subchapter 10 deals with appraisal handbook standards used by independent professional appraisers when conducting appraisals on farmland for the purpose of acquiring a development easement.

Pursuant to Executive Order No. 66(1978), chapter N.J.A.C. 2:76 expires on July 31, 1994. The rules have been reviewed and have been found to be necessary, reasonable and proper for the purpose for which they were originally promulgated with the exception of N.J.A.C. 2:76-6 which is being proposed for readoption with amendments. Almost all of the rules in the chapter have been amended over the past several years to implement and to update the goals of the various programs. Therefore the rules are being proposed for readoption at this time.

The proposed amendments at N.J.A.C. 2:76-6.2, 6.3, 6.5, 6.7 and 6.11 are primarily to incorporate the requirements and procedures which must be followed when a county agriculture development board and/or county acquires a development easement and then applies to the board and State Agriculture Development Committee for a cost share grant for the purchase of said development easement authorized pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

The proposed amendment at N.J.A.C. 2:76-6.2 defines the word "landowner" to mean the record owner of the land, duly authorized contract purchaser of the land or record owner of the development easement purchased pursuant to N.J.S.A. 4:1C-34. The definition of "Municipal planning review body" was removed from the text.

The proposed amendment at N.J.A.C. 2:76-6.3(b) restates the statutory requirement found at N.J.S.A. 4:1C-34 which allows any person or organization acquiring a development easement, by purchase, gift or otherwise, to apply to sell that development easement to the board, provided that the land on which the development easement was acquired shall be subject to the conditions and provisions of the Agriculture Retention and Development Act and that the board and the SADC make a determination to purchase the development easement in the manner prescribed in N.J.S.A. 4:1C-31.

The proposed amendment at N.J.A.C. 2:76-6.3(h) requires the board to submit the application containing a development easement acquired by the board and/or county to the SADC within three consecutive application rounds. The proposed amendment at N.J.A.C. 2:76-6.3(h)1 further requires that a development easement acquired by the board and/or county shall at a minimum contain the restrictions found at N.J.A.C. 2:76-6.15(a) which were in effect at the time the development easement was acquired.

The proposed amendment at N.J.A.C. 2:76-6.5(i) is a technical correction of the word "Committee".

The proposed amendment at N.J.A.C. 2:76-6.7 clarifies that the appraisals conducted by independent appraisers may include the appraisal of development easements acquired by the board and/or county.

The proposed amendment at N.J.A.C. 2:76-6.11(d) stipulates that the SADC shall not authorize a grant for an amount greater than 80 percent of the SADC's certified fair market value of the development easement or the board and/or county's purchase price of the development easement, whichever is lower.

Proposed N.J.A.C. 2:76-6.15(a)7 amends the deed restrictions placed on lands from which a development easement was acquired by the board pursuant to the Agriculture Retention and Development Act. The proposed amendment supplements the existing deed restriction which requires that no activity shall be permitted on the premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the premises. The proposed amendment at N.J.A.C. 2:76-6.15(a)7i requires the landowner to obtain within one year of the date of the Deed of Easement, a farm conservation plan approved by the local soil conservation district. Furthermore, the landowner's long term objectives shall conform with the provisions of the farm conservation plan.

Proposed amendments at N.J.A.C. 2:76-6.17 clarify the procedures for boards to allocate residual dwelling site opportunities on lands being considered for the purchase of development easements and to review requests for exercising residual dwelling site opportunities. Technical amendments proposed at N.J.A.C. 2:76-6.17(a)1ii eliminate the reference to "municipal planning review body". The use of the general reference to "municipality" was substituted.

The proposed N.J.A.C. 2:76-6.17(e)3 incorporates the provision that upon the board's receipt of an application to exercise a residual dwelling site opportunity, the board shall forward a copy of the application to the municipal governing body for advisory comments. Furthermore, the municipal governing body may submit comments, if any, to the board within 35 days of receipt of the application.

The existing N.J.A.C. 2:76-6.17(e)8 was recodified and amended and the existing N.J.A.C. 2:76-6.17(e)9 was deleted. The proposed amendment at the recodified N.J.A.C. 2:76-6.17(e)8 requires the board to condition its approval of the exercising of the residual dwelling site opportunity on the landowner or contract purchaser securing a building permit.

The proposed amendment at N.J.A.C. 2:76-6.17(e)10 further clarifies that the board's approval to exercise a residual dwelling site opportunity may be extended for additional periods for at least one year but not to exceed a total extension of two years.

Social Impact

The overall readoption of N.J.A.C. 2:76 has a positive impact on New Jersey as it implements the purposes of the Agriculture Retention and Development Act. The citizens of New Jersey benefit from the farmland preservation program through the preservation of farms and the enhancement of the agricultural industry in the state.

The proposed amendments at N.J.A.C. 2:76-6.2, 6.3, 6.5, 6.7 and 6.11 are primarily for the purpose of clarifying what is already authorized by the Agriculture Retention and Development Act, N.J.S.A. 4:1C-34. The proposed amendments will allow counties that have acquired development easements with 100 percent local funds to apply to the county

agriculture development board and the SADC to sell the development easement and to potentially receive a cost share grant from the SADC. The application must be submitted to the SADC within three consecutive application rounds.

The proposed amendments at N.J.A.C. 2:76-6.15(a) which require the landowner to secure a farm conservation plan within one year of selling a development easement reinforces the landowner's commitment that no activity shall be permitted on the farm which would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation. A farm conservation plan is developed as a cooperative effort between the landowner and the local soil conservation district.

The proposed amendments at N.J.A.C. 2:76-6.17 were introduced to clarify the local municipality's role in reviewing landowner requests to exercise a residual dwelling site opportunity. It was expressed by county agriculture development boards that the municipal planning review body may not necessarily be the appropriate body to conduct a review in all instances. The proposed amendments provide the municipal governing body the opportunity to submit comments to the board within 35 days of receipt of the application. The board retains the authority to ensure that the construction and use of the proposed residential unit is for agricultural purposes and that the residual dwelling site minimizes any adverse impact on the agricultural operation. Furthermore, the proposed amendments require the board to condition its approval to exercise the residual dwelling site opportunity on the landowner or contract purchaser securing a building permit. This will ensure that the construction of the residential unit is in compliance with all municipal ordinances.

Economic Impact

The proposed readoption will have a positive impact on the citizens of New Jersey and on the State's agriculture in that it allows for the continuation and preservation of an agricultural land base throughout the State.

The proposed amendments at N.J.A.C. 2:76-6.2, 6.3, 6.5, 6.7 and 6.11 will have a positive economic impact by allowing counties that have acquired a development easement to apply to the SADC for a cost share grant. If a cost share grant is approved by the SADC, the county's initial cost to purchase the development easement will be reduced. This would allow the county to acquire development easements on other lands. To protect the expenditure of state funds, the proposed amendment at N.J.A.C. 2:76-6.11(d) ensures that the SADC's grant does not exceed 80 percent of the SADC's certified fair market value of the development easement or the board and/or county's purchase price of the development easement, whichever is lower.

Regulatory Flexibility Analysis

The majority of the land potentially subject to the programs of the State Agriculture Development Committee is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the requirements imposed by the majority of these rules are placed on the local county agriculture boards which, as public entities, are not small businesses and many of the requirements are statutorily imposed therefore have no independent regulatory impact. In these instances therefore, a regulatory analysis need not be done. However, in the instances where requirements are imposed on the landowners, who could be construed as small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the compliance requirements are not burdensome. They include basic application processes requiring minimal documentation and the application of certain deed restrictions which are at the very heart of the preservation programs and necessary to protect the integrity of the programs.

The proposed amendment at N.J.A.C. 2:76-6.15(a)7 which requires the landowner to obtain a farm conservation plan prepared by the local soil conservation district does impose a compliance requirement. As a cooperative effort, the landowner and local soil conservation district, with technical assistance from the U.S.D.A., Soil Conservation Service develop a plan which couples the landowner's agricultural objectives with important soil and water conservation practices. There is no cost to the landowner for the development of the plan. Pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-24, a landowner that has conveyed a development easement on the land is eligible to apply to the SADC for a cost share grant to install the necessary and feasible soil and water conservation practices. The Agriculture Retention and Development Act further requires that in order for the SADC to approve a cost share grant, the project must be part of a farm conservation plan approved by the local soil conservation district.

For the above stated reasons, no varying standards or requirements are offered based on business size.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:76.

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

2:76-6.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

...

"Landowner" means the record owner of the land, duly authorized contract purchaser of the land or record owner of the development easement purchased pursuant to N.J.S.A. 4:1C-34.

...

[**"Municipal planning review body" means the appropriate governmental body having authority for reviewing and approving development proposals.]**

...

2:76-6.3 Eligible applicants

(a) Any landowner that applies to the board in compliance with N.J.A.C. 2:76-6.4 and whose land is in a farmland preservation program, a municipally approved program or qualifies for differential property tax assessment pursuant to the Farmland Assessment Act of 1964 and which is included in an agricultural development area shall be eligible to sell a development easement on that land.

(b) Any person or organization acquiring a development easement, by purchase, gift or otherwise, may apply to sell that development easement to the board pursuant to N.J.S.A. 4:1C-34.

2:76-6.5 Preliminary board review

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

(h) An application consisting of a development easement acquired by the board and/or county must be submitted to the Committee within three consecutive application rounds.

1. The development easement acquired by the board and/or county shall at a minimum contain the restrictions found at N.J.A.C. 2:76-6.15(a) which were in effect at the time the development easement was acquired.

[(h)]**(i)** In the event that the board grants preliminary approval to more than seven applications it shall forward to the [committee] **Committee** all such application(s) in excess of seven with its justifications for granting such approvals along with other information required in subsection (g) above.

2:76-6.7 Appraisals

(a) The procedure for conducting and reviewing appraisals shall be as follows:

1. (No change.)

2. The board in accordance with county procedures shall select two appraisers from the list adopted by the Committee to conduct independent appraisals **of development easements or** on lands that have received board and, where appropriate, Committee approvals;

3.-5. (No change.)

2:76-6.11 Final [committee] **Committee** review

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

(d) The Committee shall not authorize a grant for an amount greater than 80 percent of the Committee's certified fair market value of the development easement **or the board and/or county's purchase price of the development easement, whichever is lower.**

1.-3. (No change.)

(e)-(f) (No change.)

2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land: "Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1.-"6. (No change.)

"7. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion

control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the [premises] **Premises**.

i. Grantor shall obtain within one year of the date of this Deed of Easement, a farm conservation plan approved by the local soil conservation district.

ii. Grantor's long term objectives shall conform with the provisions of the farm conservation plan.

"8.-"22. (No change.)

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

2:76-6.17 Residual dwelling site opportunity

(a) Upon a landowner's request, residual dwelling site opportunities may be allocated to the premises by the board only under the following conditions:

1. The overall gross density shall not exceed one residential unit per 100 acres. The board shall decrease the allocation in consideration of the following conditions:

i. (No change.)

ii. Proposed residential [buildings] **building(s)** which have received preliminary [or] **and/or** final approval from the [municipal planning review body] **municipality but have not yet been constructed;** and

iii. (No change.)

2. (No change.)

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

(e) A request to exercise an RDSO shall be conducted in the following manner;

1.-2. (No change.)

3. Upon receipt of the application the board shall forward a copy of the application to the municipal governing body for advisory comments. The governing body may submit comments, if any, concerning the application to the board within 35 days of the receipt of the application.

Existing 3.-7. recodified as **4.-8.** (No change in text.)

[8.]**9.** Upon the board's finding that the construction and use of the proposed residential unit is for agricultural purposes and that the residual dwelling site minimizes any adverse impact on the agricultural operation, the board shall [forward the application requesting the exercise of a residual dwelling site opportunity to the municipal planning review body] **condition its approval of the exercising of the residual dwelling site opportunity on the landowner or contract purchaser securing a building permit, to ensure that the construction of the residential unit is in compliance with all municipal ordinances.**

[9. In the event the municipal planning review body determines that the proposed residual dwelling site is not permitted, and if an alternate site is proposed the application shall be returned to the board for review as outlined in (e)7 and 8 above.]

10. The board's approval to exercise a residual dwelling site opportunity shall be valid for a period of three years from the date of approval. Extensions may be granted by the board **for additional periods for at least one year but not to exceed a total extension of two years.**

(f) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Emergency Shelters for the Homeless

Proposed Readoption: N.J.A.C. 5:15

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 55:13C-5.

Proposal Number: PRN 1994-197.

Submit written comments by May 4, 1994 to:

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

The agency proposal follows:

Summary

N.J.A.C. 5:15, Emergency Shelters for the Homeless, is scheduled to expire on May 1, 1994, pursuant to Executive Order No. 66(1978).

The Department of Community Affairs has reviewed these rules and finds that they continue to be necessary and appropriate for the purpose for which they were originally adopted and is therefore proposing that they be readopted without change.

There are currently 81 emergency shelters licensed under this chapter. They have a combined capacity of 2,825 residents. This chapter does not apply to facilities that are subject to inspection and licensing by the Department of Human Services or the Department of Corrections, to facilities operated by the Division of Youth and Family Services, to facilities subject to the supervision of the Department of Health or to licensed boarding houses.

These rules are, in most cases, enforced by designated municipal officials. The Department of Community Affairs serves as the enforcing agency in those cases in which the municipality fails to appoint an official or the shelter is operated by the municipality itself.

Subchapter 1 sets forth that the public officer appointed by a municipality is responsible for the administration and enforcement of these rules and that, if there is no public officer appointed, the Bureau of Rooming and Boarding House Standards is responsible. (A public officer is designated by a municipality as the person responsible for the licensure, regulation and inspection of emergency shelters for the homeless.)

The subchapter also sets forth three classes of shelters, the contents of the application to be filed, the requirements for a hearing, how exceptions to the rules may be obtained and other general administrative matters.

Subchapter 2 sets forth definitions.

Subchapter 3 sets forth the requirements for services to be provided to residents and the admission and discharge criteria. It sets forth that facilities with children must provide sleeping areas, access to three meals a day and referral services for medical and mental health care, as well as employment counseling. The subchapter also sets forth recordkeeping and staffing requirements.

Subchapter 4 sets forth the requirements for building maintenance, furnishing, equipment and fire safety. It sets forth that existing shelters shall conform to requirements in subchapter 4 of the Uniform Fire Code (N.J.A.C. 5:18-4) for buildings in use group R-1 and that newly constructed or converted shelters shall conform to use group R-1 requirements in the State Uniform Construction Code. Also included are requirements for housekeeping and maintenance of the facilities and requirements that clean bedding and linens be provided. The rules also provide for minimum square foot requirements for dining, leisure and sleeping areas, as well as minimum bathroom facilities.

The original rules were subsequently amended to include the current definition of "hospitality room," to require an area where families may socialize in shelters with children and to provide for visitors.

Social Impact

Readoption of this chapter will ensure continuation of a program designed to ensure that emergency shelters for the homeless are maintained and operated so as to protect the health, safety and welfare of those for whom such shelters are the only housing available.

Readoption will result in a positive social impact on persons residing in emergency shelters. Since the effect of the rules is to facilitate the continued existence of shelters, they have a beneficial effect on those who have no other emergency housing alternatives and would be forced to stay in the streets or in facilities not suitable for such use, such as transportation terminals, if the shelters did not exist.

Economic Impact

The Bureau of Rooming and Boarding Housing Standards administers the emergency shelter inspection and licensing program as an adjunct to its much larger rooming and boarding house program. There is no separate funding for emergency shelter inspection and licensing. Since

the number of shelters is relatively small and most facilities are licensed and inspected locally, the cost of the emergency shelters program to the State is minimal. Readoption is not expected to have any significant economic impact.

Regulatory Flexibility Analysis

Homeless shelters are not sponsored by profit-making organizations. The nonprofit sponsors of existing shelters are probably all New Jersey-based entities with fewer than 100 employees and therefore within the definition of "small businesses" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no larger entities from which to differentiate these "small businesses" and, in any event, the rules ensure a high degree of flexibility in enforcement for all sponsors by including a broad exception and waiver provision at N.J.A.C. 5:15-1.9, that allows a sponsor to obtain a waiver or modification upon a showing that strict compliance would cause undue hardship to facility residents and that their safety would not be unduly jeopardized if the request were granted. Furthermore, N.J.A.C. 5:15-1.9(b)4 provides that no plan for an alternative may be rejected unless the local officer or the Department determines that funding is available to bring the facility into compliance with the rules but the sponsor cannot or will not apply for it.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:15.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Special Education

Proposed Amendments: N.J.A.C. 6:28-2.10, 3.6 and 4.3

Authorized By: State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 101-476, 102-119 and 99-457.

Proposal Number: PRN 1994-137.

Submit written comments by May 4, 1994 to:

Elease E. Greene-Smith
Administrative Practice Officer
New Jersey Department of Education
225 East State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 6:28-2.10 and 3.6 are the result of comments received during the December 20, 1993 to January 19, 1994 public comment period for the readoption of N.J.A.C. 6:28 and comments received at the public testimony sessions before the State Board of Education on October 19, 1993 and January 19, 1994. At adoption, on February 2, 1994, the Department determined that two amendments that were necessary were of a substantive nature thus requiring republication in the New Jersey Register pursuant to N.J.A.C. 1:30-4.3 (see notice of readoption published elsewhere in this issue of the New Jersey Register).

N.J.A.C. 6:28-2.10 is being recodified to conform to the order of the Federal least restrictive environment mandates in the Individuals with Disabilities Education Act regulations (34 CFR 300.550). The amendment returns N.J.A.C. 6:28-2.10(a)3 and 4 to N.J.A.C. 6:28-2.10(a)1 and 2. The current provisions at N.J.A.C. 6:28-2.10(a)1 and 2 become N.J.A.C. 6:28-2.10(a)3 and 4.

N.J.A.C. 6:28-3.6 is being amended to incorporate information into the Individualized Education Program (IEP) that is essential to program planning for pupils with disabilities. This includes specialized materials; instructional strategies fitted to the pupil's learning style; and techniques and services designed to support the personal and social development of the pupil.

N.J.A.C. 6:28-4.3(b)8ii is being amended to limit to three the number of subjects that can be taught in replacement instruction in approved separate resource centers.

Social Impact

The proposed amendments will have a positive impact on school district operations and, therefore, the education of pupils with disabilities. In the instance of least restrictive environment, the amendment will provide clarification regarding the responsibilities of districts and rights of parents and pupils. The proposed amendment to the IEP will assure that important information is incorporated into the IEP while eliminating the need for a second meeting to develop the instructional guide. The proposed amendment regarding pull-out replacement resource center instruction will intensify the instruction provided because fewer subjects will be taught in one instructional period.

Economic Impact

State categorical aid is provided to local districts for the provision of special education programs and services. State and Federal aid figures are listed below.

A schedule of State categorical aid from fiscal year 1987 to 1993 is given below.

State Aid Appropriated

1987	1993
$250,684,000	$582,598,634

Federal aid to New Jersey from 1987 to 1993 is as follows:

1987	1993
$56,308,254	$84,878,643

It is not anticipated that the least restrictive environment amendments will have an economic impact as they are designed to provide clarification of existing Federal mandates.

No economic impact is anticipated for the amendments to the IEP.

The decrease in the number of subjects taught in pull-out replacement resource centers may have an economic impact in instances where fewer than the maximum number of four pupils can be scheduled into a given period because only three as opposed to four subjects can be taught.

Regulatory Flexibility Analysis

These proposed amendments apply to public school districts and to approved private schools for the handicapped and clinics and agencies which could be small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any costs incurred in compliance with the requirements of these amendments, that is information on the IEP and decrease in the number of subjects taught in pull-out replacement resource center classes, would be reimbursed to the schools by inclusion in their tuition which is paid through State and local district funds. In these instances, the Department is unable to change these requirements based on business size because these agencies serve pupils with educational disabilities from public schools with both Federal and State standards that are similar to public schools. The Department is unable to make the requirements different for that reason and further, believes that the rules are necessary and not so burdensome as to require differing standards.

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

6:28-2.10 Least restrictive environment

(a) Each public agency of education shall ensure that:

[1. A full continuum of alternative placements according to N.J.A.C. 6:28-4.2 is available to meet the needs of pupils with educational disabilities for special education and/or related services;

2. Pupils with educational disabilities are placed in appropriate programs in the least restrictive environment;]

[3.]**1.** To the maximum extent appropriate, a pupil with an educational disability is educated with children who are not educationally disabled;

[4.]**2.** Special classes, separate schooling or other removal of a pupil with an educational disability from the pupil's regular class occurs only when the nature or severity of the educational disability is such that education in the pupil's regular class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;

3. A full continuum of alternative placements according to N.J.A.C. 6:28-4.2 is available to meet the needs of pupils with educational disabilities for special education and/or related services;

4. Pupils with educational disabilities are placed in appropriate programs in the least restrictive environment;

5.-8. (No change.)

6:28-3.6 Individualized education program

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

(d) With the exception of an individualized education program for a pupil classified as eligible for speech-language services, the individualized education program shall include, but not be limited to:

1.-4. (No change.)

5. A description of the pupil's educational program which includes:

i.-xiii. (No change.)

xiv. Any exemptions from local disciplinary policies and/or procedures [and];

xv. Any specialized equipment[.] **or materials;**

xvi. Instructional strategies fitted to the pupil's learning style; and

xvii. Techniques and activities designed to support the personal and social development of the pupil.

(e)-(j) (No change.)

6:28-4.3 Program criteria: supplementary instruction, speech-language services and resource center programs

(a) (No change.)

(b) Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1.-7. (No change.)

8. Group size for classified pupils who receive replacement instruction in an approved separate resource center shall be as follows:

i. (No change.)

ii. For multiple (**not more than three**) content areas—four pupils.

9.-13. (No change.)

(a)

STATE BOARD OF EDUCATION

Evaluation

Proposed Readoption with Amendments: N.J.A.C. 6:39

Authorized By: State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:4-15, 18A:4-24 and 18A:7A-1 et seq.

Proposal Number: PRN 1994-202.

Submit written comments by May 4, 1994 to:

Elease E. Greene-Smith
Administrative Practice Officer
New Jersey Department of Education
225 East State Street
CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66(1978), the rules of N.J.A.C. 6:39 will expire on August 14, 1994. As required by the Executive Order, the Department of Education has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Department of Education proposes to readopt the rules governing statewide assessment with amendments at this time. The proposed readoption continues to require the State Board of Education, after consultation with the Commissioner, to establish uniform statewide levels of pupil proficiency in reading, writing, and mathematics skills on the statewide assessment instruments and for assessments in those grades required for district certification.

The Department of Education intends to study the policies related to assessment contained within N.J.A.C. 6:39, in particular, the requirement that the Department of Education establish equivalent standards of pupil proficiency in grades not required district certification (N.J.A.C. 6:39-1.2(a)) and the timelines and requirements related to the assessment of the core course proficiencies (N.J.A.C. 6:39-1.3(a)). Related sections of the administrative code on monitoring and assessment will also be reviewed, in particular, N.J.A.C. 6:8-4.6 (Pupil performance: skills and competencies, especially the requirements for a fourth-grade state-developed test and the inclusion of science and social studies assessments at grades eight and eleven). Additional changes to N.J.A.C. 6:39 and possibly other code related to assessment will be proposed by the State Board of Education later this year.

A review of the proposed readoption with amendments follows:

N.J.A.C. 6:39-1.1 sets forth the Commissioner's authority to conduct assessments of pupil achievement in the New Jersey public school system. It also sets forth that the results of pupil achievement assessments will be reported to the State Board. No change is proposed in this section.

N.J.A.C. 6:39-1.2 establishes the proficiency areas in which uniform Statewide levels of pupil proficiency must be tested: reading, mathematics, and writing. It also requires that all students who perform below established levels of pupil proficiency in any of the areas must be provided with appropriate instructional intervention. No change is proposed in this section.

N.J.A.C. 6:39-1.3 requires districts to test in the core course proficiencies in mathematics, science, English, and social studies and sets the timelines for testing. Because the dates cited in code for the statewide assessment for those proficiencies to occur have either passed without State action or are about to pass, the Department proposes to delete N.J.A.C. 6:39-1.3(a) and N.J.A.C. 6:39-1.3(d) at this time to align administrative code with current statewide testing practices while it studies further code amendments designed to coordinate N.J.A.C. 6:39 and other sections of code, for example, N.J.A.C. 6:8-7.1. N.J.A.C. 6:39-1.3(b), (c) and (e) have been recodified as N.J.A.C. 6:39-1.3(a), (b), and (c), respectively, with no change in text.

N.J.A.C. 6:39-1.4(b) currently sets forth the procedures districts must follow when disseminating information relative to the assessment of the core course proficiencies. The department is eliminating N.J.A.C. 6:39-1.4(b) because the requirement in N.J.A.C. 6:39-1.3 to test for core course proficiencies has been eliminated.

N.J.A.C. 6:39-1.4(a), sets forth the manner in which information on statewide assessment results will be disseminated and how exceptions may be granted to the requirements to disseminate statewide basic skills and core course proficiency results. The department proposes to modify the language of N.J.A.C. 6:39-1.4(a)9 and to recodify it as N.J.A.C. 6:39-1.4(b), adding, as well N.J.A.C. 6:39-1.4(b)1 and 2 which detail the criteria for exceptions for school districts for making assessment results public.

N.J.A.C. 6:39-1.5 requires that all publicly available test results be accompanied by interpretative materials and requires the Department of Education to provide assistance to local districts in the development of such materials. No change is proposed in this section.

N.J.A.C. 6:39-1.6 encourages district boards of education to develop programs recognizing students who achieve academic excellence in the core course proficiencies. No change is proposed in this section.

Social Impact

The proposed readoption of N.J.A.C. 6:39 with amendments will enable districts to continue to develop their assessment efforts. It will also provide for continuity without revision of current Statewide assessment practice and the use of the Statewide assessment results by districts in curricula development.

Economic Impact

There is no State funding for statewide core course proficiency testing. Readoption of the current code with amendments will cause the school districts to continue to upgrade their local assessment practices and align them with State assessment objectives. The costs to local school districts will vary depending upon the agreement of their current assessment practices with the Statewide system.

Regulatory Flexibility Statement

The proposed readoption of N.J.A.C. 6:39-1.2 through 1.6 with amendments continues to have no reporting, recording or compliance requirements for small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 51:14B-16 et seq. Requirements of the proposed readoption and

amendments impact only on New Jersey public schools and the Department of Education.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 6:39.

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

6:39-1.3 Core course proficiencies assessment

[(a) The Department of Education shall assess the core course proficiencies established in N.J.A.C. 6:8-7.1(c)2ii. The assessment shall occur using Statewide tests in the following areas and according to the schedule of administration specified below:

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

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

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

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

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

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

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

[(e)](c) A pupil with an educational disability must meet all State and local high school graduation requirements unless exempted in his or her individualized education program in order to receive a State-endorsed high school diploma pursuant to the provisions established under N.J.A.C. 6:28.

6:39-1.4 Dissemination of information

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

1.-8. (No change.)

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

(b) The Commissioner of Education may make exceptions to the dissemination of information requirements contained in (a) above when:

1. The need for a school district to make substantial revisions to the uninterpreted report described in (a)2 above requires an extension of the 30-day interpretation period specified in (a)3 above. The extension may be up to but may not exceed an additional 30 days; and

2. The need for a school district to make substantial revisions to the summary report described in (a)7 above requires an extension of the 45 day period specified in (a)6 above. The extension may be up to but may not exceed an additional 45 days.

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

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

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

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

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

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

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

HUMAN SERVICES

(a)

MENTAL HEALTH AND HOSPITALS

Screening and Screening Outreach Programs

Proposed Readoption: N.J.A.C. 10:31

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

Authority: N.J.S.A. 30:4-27.1 et seq., especially 30:4-27.5.

Proposal Number: PRN 1994-192.

Submit comments by March 20, 1994 to:

Raymond M. Deeney
Administrative Practice Officer
Division of Mental Health and Hospitals
CN 727, Capital Center
Trenton, New Jersey 08625-0727

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), Screening and Screening Outreach Programs (N.J.A.C. 10:31) expires on June 5, 1994. The Division of Mental Health and Hospitals has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. The chapter contains provisions governing scope, purpose, and waivers; program requirements, including the function of a screening center and of an emergency center, the screening process, and availability of staff. Personnel requirements for screening, outreach and emergency services are included, as well as for the acute care system review process. Rules for planning termination of services, police involvement and client's rights are also included.

N.J.A.C. 10:31, which governs the operation of the Screening and Screening Outreach Programs designated throughout New Jersey by the Division of Mental Health and Hospitals, became effective on June 5, 1989 (see 20 N.J.R. 2427(d), 21 N.J.R. 1562(a)) pursuant to P.L. 1987 c.116 (N.J.S.A. 30:4-27.1 et seq.). These programs provide mental health services on and offsite, as needed, including assessment, emergency and referral services to persons with mental illness in a specified geographic area. Individuals who are dangerous to themselves, others or property may also be involuntarily committed by these programs. Due to the liberty, safety and treatment issues encountered by these programs, these rules are necessary to help ensure their adequate operation. Currently the Division has designated twenty-three such programs.

On June 27, 1990, however, certain provisions of N.J.A.C. 10:31-1.4, 2.1, 2.3 and 8.1 were invalidated and remanded to the Department of Human Services for repromulgation by the Appellate Division of the Superior Court of New Jersey in *In the Matter of the Appeal from the Adoption of Screening Center Regulations by the Department of Human Services,* (Dkt. No. A-5857-88II) (App. Div. June 27, 1990). Amendments to N.J.A.C. 10:31 which constituted the Department's response to that invalidation and remand were proposed on April 5, 1993 (see 25 N.J.R. 1324) and adopted on December 20, 1993 (see 25 N.J.R. 5945(b)).

Social Impact

This proposed readoption will assist in ensuring that State-funded Screening and Screening Outreach Programs are operated in a manner

consistent with the appropriate statutory and regulatory standards as well as the intent of the Department. Furthermore, these rules are being readopted to ensure that persons suffering from mental illness receive a high quality of screening and assessment and that all available service options be considered prior to any necessary involuntary commitments.

This proposed readoption applies to all 23 currently designated Screening and Screening Outreach Programs, as well as any additional programs which may be designated by the Division. Generally, the regulated screening program staff, other government agencies, mental health clients, their families and advocates and the general public have reacted favorably to these rules over the past five years. These rules were comprehensively reviewed by a workgroup which included community mental health providers, consumers, advocates and other mental health professionals. Their recommendations are currently undergoing final analysis by Divisional staff and the Division anticipates that some of these recommendations will be proposed as regulatory amendments later in 1994.

Economic Impact

No change in economic impact upon the regulated Screening and Screening Outreach Programs, the clients of these programs, the general public or other governmental agencies is anticipated as a result of this proposed readoption. In Fiscal Year 1993, the Division funded screening centers and associated emergency services in the amount of $21 million. These rules establish the standards which designated screening programs must meet and operate within in order to qualify for initial and continued funding from the Division. Since the goal of these rules is to ensure quality mental health screening services for all State residents regardless of their ability to pay, indigent residents in need of these services may be expected to receive the greatest economic benefit from these rules.

Regulatory Flexibility Analysis

The proposed readoption to N.J.A.C. 10:31 imposes reporting and other compliance requirements on designated screening centers regarding situations in which waivers may be requested (N.J.A.C. 10:31-1.4), the distribution of medication (N.J.A.C. 10:31-2.2), and the transportation of clients (N.J.A.C. 10:31-8.1). Some designated screening centers may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14-16 et seq. The above-cited reporting and compliance requirements imposed upon such screening centers must be uniformly applied regardless of the size of the center to ensure the mentally ill individuals receiving these services throughout the State do so in accordance with basic minimum standards of quality, objectivity and timeliness. These standards are important because the individuals being screened are typically in psychiatric crisis at the time and subject to involuntary commitment. The screening centers are individually funded by the Division to be able to meet the requirements, and therefore incur no costs of compliance.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:31.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services

Proposed Amendments: N.J.A.C. 10:50-1.2, 1.3, 1.4, 1.6, 1.7 and 2.2

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

Authority: N.J.S.A. 30:4D-6b(15); 30:4D-7, 7a, b and c; 30:4D-12; 42 CFR 431.53 and 440.170(a).

Proposal Number: PRN 1994-201.

Submit comments by May 4, 1994 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The Transportation services chapter, N.J.A.C. 10:50, was promulgated to set forth the basic policies and procedures of the New Jersey Medicaid program relating to the transportation of Medicaid recipients by Medicaid-enrolled providers of transportation services. Transportation services for Medicaid recipients is a required component of the Title XIX (Medicaid) program pursuant to 42 CFR 431.53 and 440.170(a).

Under Federal Medicaid regulations, transportation must be available to assist recipients in obtaining necessary medical examinations and treatments. Transportation may be provided either on a fee-for-service basis as an item of medical assistance or an administrative cost. In either situation, the purpose of the transportation must be for a Medicaid recipient to receive a Medicaid-covered service.

The Division of Medical Assistance and Health Services (DMAHS) enrolls transportation providers and makes reimbursement, on a fee-for-service basis as an item of medical assistance, for the following three modes of transportation: ambulance (ground and air), invalid coach, and livery service.

The Division is replacing livery service as a fee-for-service mode of transportation and substituting, in its place, an administrative system which includes both county welfare agency transportation and a State-contracted system in Essex and Hudson Counties. Accordingly, the proposed amendments delete references to livery service in the applicable sections of the chapter. There is no impact on invalid coach or ambulance services.

The Division has already published a public notice in several newspapers throughout the State indicating that cessation of the enrollment of new Medicaid livery provider applicants and the approval of additional livery vehicles for current Medicaid livery providers. The Division intends to eliminate livery as a medical service and substitute an administrative system (for transportation of Medicaid recipients) which includes an expansion of the current county welfare agency transportation network and a State-contracted system as an administrative cost in Essex and Hudson Counties.

A Request for Proposal (RFP) will be issued shortly by the New Jersey State Department of Treasury on behalf of the Division to accept bids for lower mode transportation service(s), formerly called livery, in Essex and Hudson Counties.

The proposed amendments make several changes in N.J.A.C. 10:50-1 and 2 N.J.A.C. 10:50-1 contains general provisions and policies for providers who participate in the Medicaid program, including scope, definitions, covered services, authorization for transportation service, reimbursement policy, and requirements for the transportation certification. N.J.A.C. 10:50-2 contains information pertaining to the HCFA Common Procedure Coding System (HCPCS), including procedure codes and a fee allowance schedule used by providers when billing for transportation services.

The proposed amendments in N.J.A.C. 10:50-1 are summarized as follows:

The definition of "livery service" is deleted from N.J.A.C. 10:50-1.2 because it is no longer applicable.

The definition of "provider" is amended at N.J.A.C. 10:50-1.2 to delete the reference to livery service.

At N.J.A.C. 10:50-1.3,(a)4 through (a)7 are deleted because they pertain to the requirements for enrollment of livery service providers, including licensure of vehicles and drivers, and vehicular insurance and registration.

The remaining paragraphs (a)8 and 9, are recodified as N.J.A.C. (a)4 and 5 with no change in text.

At N.J.A.C. 10:50-1.4, subsection (c) is deleted because it pertains to requirements for livery service companies, vehicles, and drivers.

At N.J.A.C. 10:50-1.6, subsection (b) is revised to eliminate references to the Program's reimbursement policy for livery service with respect to the measurement of mileage.

At N.J.A.C. 10:50-1.6, subsection (d) is deleted because it sets forth the Program's policies for the reimbursement of livery service.

At N.J.A.C. 10:50-1.7, subsection (c) is revised to eliminate the requirements pertaining to livery service with respect to the transportation certification form.

The proposed revision in N.J.A.C. 10:50-2, HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS) is summarized as follows:

10:50-2.2(c): The HCPCS codes, descriptions, and fee schedule for the reimbursement of livery service are deleted.

Social Impact

The proposed amendments potentially impact on all Medicaid recipients who require transportation service to obtain a Medicaid-covered service. The purpose of providing transportation is to enable Medicaid recipients who are in need of such services to be transported to and/or from a Medicaid-covered service. The mode of transportation reimbursed by the Medicaid program is dependent upon the Medicaid recipient's medical condition.

Medicaid recipients in general will continue to be able to obtain necessary medical treatment via the mode of transportation best suited to their medical condition(s) and circumstance(s). In Essex and Hudson Counties, Medicaid recipients who are currently using livery service may continue to receive livery-type services by accessing the State-contracted system.

In the remaining counties, Medicaid recipients may make arrangements with their respective county welfare agency/board of social services for services by taxi, train, bus, and other public conveyances, as indicated in N.J.A.C. 10:50-1.6(o).

The proposed amendments impact on county welfare agencies which may receive additional requests for lower mode transportation.

The proposed amendments also impact on transportation providers who are enrolled in the Medicaid program as providers of livery service. They will no longer be eligible to participate in the Medicaid program as fee-for-service providers unless they are enrolled as providers of ambulance and/or invalid coach services. Currently enrolled providers of livery service may qualify to submit bids in response to the Request for Proposal for the provision of lower mode transportation services in Essex and Hudson Counties.

The social impact on Medicaid-enrolled providers of ambulance service and invalid coach service and Medicaid recipients who use these modes is not changed because the proposed amendments contain no revisions in the Medicaid program's policies concerning ambulance and invalid coach service. Providers of ambulance and invalid coach services enrolled in the Medicaid program will continue to be reimbursed for appropriate transportation service rendered to a Medicaid recipient when the purpose of the trip is to obtain a Medicaid-covered service.

Economic Impact

There is no economic effect on Medicaid recipients as a result of the proposed amendments because there is no cost to Medicaid recipients for necessary transportation services to or from a Medicaid-covered service.

Medicaid providers of ambulance service and invalid coach service will continue to be reimbursed for providing Medicaid-covered transportation services to Medicaid recipients.

The economic impact on existing livery providers will be negative. Currently, there are approximately 125 providers of livery service enrolled in the Program. Approximately 85 providers of livery service are located in Essex and Hudson Counties. It is possible that many of these companies may close as a result of the proposed amendments.

Providers of livery service were reimbursed $20 million in calendar year 1993, Federal/State share combined.

Approximately 12 of the 125 livery service providers are also enrolled in the Program as providers of ambulance and/or invalid coach services. These 12 providers may continue to participate in the Medicaid program as providers of ambulance and/or invalid coach services.

It is also possible for existing providers of livery service to enroll in the Program as providers of ambulance and/or invalid coach service, provided that the rules at N.J.A.C. 8:40 are met with respect to company and vehicular licensure and other standards set forth by the New Jersey State Department of Health.

Regulatory Flexibility Analysis

The proposed new rules do not impose additional reporting, record keeping, or other compliance requirements on the remaining ambulance and invalid coach transportation providers, which may be considered to be small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

All Medicaid providers are required (see N.J.S.A. 30:4D-12) to record the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of the service rendered, and any additional information as required by regulation. For ambulance and invalid coach transportation providers, these proposed amendments do not change the responsibility of providers with regard to reporting, record keeping, or other compliance requirements.

For lower mode transportation services provided through the county welfare agencies, approved vendors must continue to supply required documentation to the county welfare agency that they transported a Medicaid recipient to and/or from a provider of medical services. For lower mode transportation services in Essex and Hudson Counties provided via direct contract with the State, documentation requirements will be specified in the Request for Proposal.

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

10:50-1.2 Definitions

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

...

[“Livery service” means the provision of non-emergency, curb-to-curb transportation in a vehicle that meets the requirements of the Medicaid Program as specified in 10:50-1.4.]

...

“Provider” means air ambulance (fixed wings) service, ground ambulance service, **and** invalid coach service[, or livery service].

...

10:50-1.3 General policies for participation

(a) The approval process for becoming a transportation service provider is as follows:

1.-3. (No change.)

[4. A potential provider seeking approval to provide livery service shall attach to the Medicaid Provider Application (Form FD-20) the following documents, each of which shall bear the name and address of the livery company or the company's principal owner(s), for each vehicle in the provider's fleet:

i. A photocopy of the license to operate a livery service, issued by the clerk of the municipality in which the place of business is located;

ii. A photocopy of the State of New Jersey Insurance Identification Card, issued by the provider's insurance company;

iii. A photocopy of the vehicle registration bearing the classification “Livery”, issued by the New Jersey Division of Motor Vehicles. A potential provider shall also indicate on the photocopy of the vehicle registration the respective vehicle fleet number;

iv. A Certificate of Insurance, including a 10-day notice of cancellation, listing as Certificate Holder: State of New Jersey, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625-0712. The Certificate of Insurance shall indicate coverage for Workers' Compensation and Employers' Liability Insurance; and Automobile Liability Insurance; and

v. A photocopy of an Operator License for each driver, issued by the New Jersey Division of Motor Vehicles.

5. An approved provider of livery service shall forward to the Fiscal Agent for the New Jersey Medicaid Program photocopies of the above-mentioned documents (license, registration and insurance) when the documents are renewed on an annual basis, and when additional livery service vehicles are added to a provider's fleet. A provider shall also forward written notification to the Fiscal Agent when a livery service vehicle is taken out of service.

6. A Medicaid-enrolled provider of ambulance and/or invalid coach service seeking approval to provide livery service shall complete another Medicaid Provider Application (Form FD-20) and attach the required photocopies as indicated above.

7. For livery service, specific requirements concerning vehicles and drivers are located at N.J.A.C. 10:50-1.4.]

Recodify 8.-9. as **4.-5.** (No change in text.)

(b) (No change.)

10:50-1.4 Services covered by the New Jersey Medicaid Program

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

[(c) Livery service is a covered service under the following conditions:

1. When the service is provided to a Medicaid recipient as indicated in N.J.A.C. 10:50-1.6(b).

2. Livery service shall be limited to the transport of ambulatory recipients. Only a New Jersey-based company is eligible to participate in the New Jersey Medicaid Program as a provider of livery service.

3. Vehicle requirements are as follows:

i. A vehicle used to provide livery service shall not be more than eight model years old at the time the service is provided and shall have a seating capacity of not less than five nor more than 10 persons, inclusive of the driver. Each vehicle used to provide livery service shall be licensed, registered, and insured as indicated in N.J.A.C. 10:50-1.3(a)4.

ii. Any passenger car used to provide livery service shall be a four-door vehicle.

iii. In addition, each vehicle used to provide livery service shall:

(1) Display a valid inspection decal issued by the New Jersey Division of Motor Vehicles;

(2) Display livery license plates; and

(3) Display external markings to indicate company name and vehicle number.

iv. The Division of Medical Assistance and Health Services will conduct periodic vehicle inspections to ensure compliance with these requirements.

4. All drivers shall be appropriately licensed as follows:

i. In accordance with N.J.S.A. 39:3-10.1, a driver of a motor vehicle with a capacity of more than six passengers used for the transportation of passengers for hire shall possess a special driver's license issued by the New Jersey Division of Motor Vehicles.

ii. An out-of-State resident who drives a livery service vehicle in the State of New Jersey shall conform to the statutes relevant to livery services in his or her state of residence.

5. All providers shall make available their livery service to Medicaid recipients from 6 A.M. to 10 P.M., Monday through Saturday.]

10:50-1.6 Reimbursement policy

(a) (No change.)

(b) Mileage for ground ambulance[,] **service and** invalid coach[,] **service** [and livery service] is measured by odometer from the point at which the recipient enters the vehicle to the point at which the recipient exits the vehicle.

(c) (No change.)

[(d) For livery service, the amount reimbursable for loaded mileage accrued is only allowed on a per-person basis when the points of departure or destination for the additional recipients transported are different from those of the first recipient. When two or more recipients are transported in the same vehicle at the same time from a common point of departure to a common point of destination, mileage shall only be reimbursed for one recipient.

1. Only the flat rate of $3.00 is reimbursable for each additional recipient transported in a multiple-load situation. The flat rate is only applicable when all recipients are transported in a multiple-load situation from a common point of departure to a common point of destination. This rate is only reimbursable once per person/per trip, either on a one way or round trip basis.]

Renumber existing (e) through (p) as (d) through (o) (No change in text.)

10:50-1.7 Transportation certification

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

(c) The [vehicle fleet number (livery) or the] vehicle recognition number (ground ambulance and invalid coach) that corresponds to the vehicle used to provide the respective transportation service shall be entered on the "Transportation Claim" (Form MC-12) in Item 18 (REMARKS) when submitting hard copy claims to the Division's Fiscal Agent for ground ambulance[,] **and** invalid coach[, and livery] service.

10:50-2.2 HCPCS procedure codes and maximum fee schedule

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

[(c) LIVERY SERVICE

Y0251	Per loaded mile, only one recipient per trip NOTE: This rate may be applied to additional recipients ONLY when the points of departure or destination are different from those of the first recipient.	1.00
Y0252	Flat rate, each additional recipient NOTE: Only this rate is reimbursable for each additional recipient transported in a multiple-load situation from a common point of departure to a common point of destination. This rate is only reimbursable once per person/per trip, either on a one way or round trip basis.]	3.00

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care

Addition of Pediatric Medical Day Care Services

Proposed Amendment: N.J.A.C. 10:65-1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 2.1 and 2.2

Proposed New Rule: N.J.A.C. 10:65, Appendix H—Fiscal Agent Billing Supplement

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

Authority: N.J.S.A. 30:4D-6b(17), 7, 7a, b and c; 30:4D-12.

Agency Control Number: 93-P-18.

Proposal Number: PRN 1994-149.

Submit comments by April 20, 1994 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

The Department's Division of Medical Assistance and Health Services is proposing to amend its existing Medical Day Care Services chapter to provide requirements and standards of care for the provision of pediatric medical day care services and to codify those practices previously disseminated through Medicaid communications. The Division is adding transportation requirements which apply to all recipients of services in medical day care centers, that the special transportation needs and medical equipment used by the recipient must be accommodated.

Pediatric medical day care centers must conform to the current requirements for medical day care centers; that is, licensure by the New Jersey State Department of Health, and approval as a provider by the Division, as well as conformity with the Manual of Requirements for Child Care Centers of the Department of Human Services/Division of Youth and Family Services, N.J.A.C. 10:122.

A child served in a pediatric medical day care center is technology-dependent, frequently supported by a ventilator and/or tracheostomy, with accompanying need for frequent suctioning, and/or for nutritional support provided by extraordinary means or medically unstable, in need of ongoing treatment and monitoring by a nurse because of special care needs. While at the center, the child requires continuous, rather than part time or intermittent, skilled nursing observation and direct care of a licensed practical or registered nurse. The definition of "Medical Day Care Recipient" has been amended to include those served in pediatric medical day care centers and has been moved from the Definitions section to N.J.A.C. 10:65-1.4, Required services, as a new subsection, (b). Other changes have been made throughout the chapter, for example, at N.J.A.C. 10:65-1.4(a)8ii(2), to include specification related to the addition of pediatric services to medical day care.

The general requirement at N.J.A.C. 10:65-1.6 specify that each recipient be seen periodically by his or her attending physician with respect

to medical day care. The child shall be evaluated at least every 60 days, or more frequently as necessary, by his or her attending physician (see N.J.A.C. 10:65-1.4(a)3ii).

Proposed required services have been amended to require that the specialists needed are available at the center and include: speech-language pathology services to evaluate and monitor each child's ability to chew and swallow food; arrangements with appropriate pediatric specialists; inclusion in personal care of developmental stimulation, diaper changing, and toilet training; and the accommodation of special transportation needs and medical equipment used by the children. In addition, the frequency of evaluations and recordkeeping has been increased from every 90 days to every 60 days. At N.J.A.C. 10:65-1.4(a)6i5, the Division has changed the pharmacist's review responsibilities to one hour a month, from four hours a month, after an evaluation of this standard by the professional staff of the Division, and in full consideration of the recipients' care, as an efficient and optimum use of personnel resources.

Proposed staff recipient ratios have been increased for pediatric medical day care centers from the adult requirement of one staff for nine participants to one staff for three children. Medical and nursing staff in a pediatric program must have education and experience in pediatrics. All direct care staff are required to have current certification in cardio-pulmonary resuscitation (CPR). A registered professional nurse, certified for intravenous administration, must be available during the hours of operation when there are technology dependent children present.

The continuity of the material at N.J.A.C. 10:65-1.5(a)1-7 has been revised to add the pediatric day care provisions and to clarify references. For clarity, the Division has shown paragraphs 1 through 7 as deleted and has shown the revised text as new. At N.J.A.C. 10:65-1.5(c), direct care staff requirements are specified.

The Division has added codes to N.J.A.C. 10:65-2.2 which describe, and are to be used for, services to children in medical day care facilities.

The Division is proposing to add, as Appendix H, the Fiscal Agent Billing Supplement, which is a compilation of billing instructions. The instructions will not be printed in the New Jersey Administrative Code, but will be made available to providers, and are filed with the Office of Administrative Law.

These billing instructions are one of a series published for use by medical and health care service providers enrolled in New Jersey Medical Assistance Programs. These billing instructions are not a legal description of all aspects of New Jersey's Medical Assistance Programs or Title XIX of the Social Security Act (Medicaid). Should there be any conflict between material in these instructions and the pertinent laws or regulations governing these programs, the latter take precedence. Each Provider Manual contains applicable references to the New Jersey Administrative Code.

The general information and procedures set forth in these instructions will enable providers to submit accurate claims for services performed under the Medicaid Program and other applicable New Jersey Medical Assistance Programs. Submission of error-free claims will result in prompt processing of claims for services rendered. Providers should become familiar with these billing instructions and maintain this material in a special file for ready reference. Providers will be furnished with updated information for these billing instructions as changes occur.

Social Impact

The Division proposes by amending the Medical Day Care Services chapter to indicate that certain children in need of this specialized service will have access to care within specific requirements and standards of care.

Medical day care services are available to recipients who are categorically eligible including the Medically Needy or enrolled in the Home and Community-Based Services Waivers and the Home Care Expansion Program (HCEP). The proposed pediatric medical day care standards will form the basis for a service which will serve as an alternative to institutionalization because of the severity of the medical needs of this population served in the centers. This service plus additional Medicaid services also enables children to remain home with their families or in foster care rather than be institutionalized.

Economic Impact

The economic impact is considered to be minimal for the following reasons: Currently there are only two licensed pediatric medical day care programs. Indications are that the services will be slow-growing, as each program can only accommodate a small number of children because of the required one to three staff-participant ratio and because the specialized nature of the services requires a commitment to high technology care.

Medical day care services are available to all ages as a regular Medicaid State Plan service. However, until recently, there were no programs geared to serve the pediatric population. As programs become available through licensure by the Department of Health, it has been necessary for the Division to amend its rules to address the uniqueness of a pediatric program and pediatric population needs.

The requirements for a pediatric program have been developed with input from the State Department of Health, Department of Human Services/Division of Youth and Family Services, and the Pediatric Medical Day Care providers. The standards which have been developed are quite high and will encourage only those providers totally committed to quality care for this population to provide this service.

Because of the type of care required by this population, it is assumed that most children would have been institutionalized at greater cost to Medicaid without the availability of pediatric medical day care centers or provided private duty nursing at home under Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) or Home and Community-based Waivers. Therefore, the cost of pediatric medical day care, in most instances, offsets the cost of institutionalization or private duty nursing services under EPSDT or in the Home and Community-Based Services Waivers.

Pediatric medical day care centers will be reimbursed on a per diem basis for each day of attendance by the participant. The rate will be based upon a percentage of nursing facility rates and revised periodically. Two new HCPCS procedure codes will be used to reimburse pediatric medical day care services.

Regulatory Flexibility Statement

The proposed amendments will primarily affect those Medicaid providers who provide pediatric medical day care services, some of which are small businesses, as defined in N.J.S.A. 52:14B-16 et seq. Medicaid providers are required to keep sufficient records to indicate medical treatment provided to a recipient and any additional information as may be required by regulation (N.J.S.A. 30:4D-12(d)). The requirements apply equally, regardless of the size of the business.

These medical day care centers will need to employ professional staff, which are specified in the text of the rule. These requirements are based upon patient-to-staff ratio.

The Department believes that it is of paramount interest to protect the health, safety and welfare of Division recipients; therefore, any small businesses among the medical day care providers should not be exempt from compliance with the rules.

The Division does not believe that medical day care providers will incur any capital costs as a result of this proposal.

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

10:65-1.1 Purpose and scope

(a) The Medical Day Care Program is concerned with the fulfillment of the health needs of Medicaid recipients and/or those who are served under the Division's Home Care Expansion Program and who could benefit from a health services alternative to total institutionalization. Medical day care is a program of medically supervised, health related services provided in an ambulatory care setting to persons who are non-residents of the facility, **and** who [do not require 24-hour in-patient institutional care and yet], due to their physical and/or mental impairment, need health maintenance and restorative services supportive to their community living. **Pediatric medical day care services are available only for technology-dependent and/or medically unstable children who require continuous, rather than part-time or intermittent, care of a licensed practical or registered professional nurse in a developmentally appropriate environment.**

(b) In order to be eligible for services through the Medical Day Care Program, an individual must be eligible for one of the following: community Medicaid, New Jersey Care ... Special Medicaid Programs (including the medically needy segment), certain home care programs including Community Care Program for the Elderly and Disabled (CCPED), Model Waivers, the AIDS Community Care Alternatives Program (ACCAP), the Traumatic Brain Injury Pro-

gram, or the ABC Program for medically fragile children. Persons enrolled in the Home Care Expansion Program are likewise eligible for medical day care services.

10:65-1.2 Definitions

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

"Administration—medical day care center" means **an identifiable administrative unit within** the medical day care center [shall provide an identifiable administrative unit,] headed by a Director/**Administrator**, responsible for the overall conduct of all day care program activities.

...

["Medicaid Eligibility" means, for the purpose of this manual, that in order to obtain Medical Day Care Services, the recipient shall be determined eligible to receive Medicaid services in the community under the existing programs of Aid to Families with Dependent Children, Supplemental Security Income, Medicaid Only, certain Home Care Programs, for example, Community Care Program for the Elderly and Disabled (CCPED), Model Waivers, the AIDS Community Care Alternatives Program (ACCAP), Medically Needy and/or New Jersey Care ... Special Medicaid Programs (For information on how to identify a Medicaid recipient (an eligible person), please refer to N.J.A.C. 10:49-1.2).

1. Medical day care services are available to:

i. Pregnant woman;

ii. The aged, blind and disabled Medicaid recipient enrolled in the Medically Needy Program; and

iii. The beneficiaries enrolled in the Division's Home Care Expansion Program (HCEP).]

"Medical day care center" means an identifiable part of a nursing facility, or a hospital affiliated facility, or a freestanding ambulatory care facility, or such other facility which is licensed by the New Jersey State Department of Health in accordance with its Manual for Standards for Licensure of Adult Day Health Care Facilities, N.J.A.C. 8:43F-2, which possesses a valid and current provider agreement from the [New Jersey] Division [of Medical Assistance and Health Services] and which provides services as described [in this manual] at N.J.A.C. 10:65-1.4.

1. "Pediatric medical day care center" means a medical day care center which additionally conforms to N.J.A.C. 10:122 (Department of Human Services, Division of Youth and Family Services) Manual of Requirements for Child Care Centers.

["Medical day care recipient" means a person who is a Medicaid recipient, or a recipient who is served under the Division's Home Care Expansion Program, **and** who is eligible for services and is diagnosed as having an identifiable medical condition, lacks sufficient social support which impacts negatively on this condition and whose assessed physical and psychosocial needs:

1. Do not require services 24 hours a day on an in-patient basis in a hospital or nursing facility, except under special circumstances;

2. Cannot be met totally in any other ambulatory care setting, such as a physician's office, hospital out-patient department or in a partial care/partial hospitalization program;

3. Require and can be met satisfactorily by a seven-hour, including portal-to-portal travel time, day-long active medical day care program not to exceed five days per week, provided by licensed and non-licensed personnel;

4. Are such that current health status would deteriorate without the direct services and health monitoring available at the center; and

5. Cannot be met while a resident of a residential health care facility (RHCF) setting except as follows:

i. If a resident of an RHCF was in medical day care prior to admission to the RHCF, medical day care services can continue for a limited period to allow for the adjustment into the RHCF;

ii. If a resident of an RHCF requires medical day care to encourage transition into a less structured residential setting such as a boarding home or an independent living arrangement, medical day care can be provided for a limited period;

iii. If a resident of an RHCF has been recently discharged from an acute care facility (general hospital, psychiatric hospital), medical day care services can be available for the purpose of "short term" (as determined by the Division) clinical monitoring; or

iv. If a resident of an RHCF shows evidence of an unstable clinical status which requires a short term structured therapeutic environment, medical day care services are available for a limited period.

v. Since individuals who reside in residential health care facilities are not eligible for CCPED or HCEP, medical day care services are not available to these residents.]

10:65-1.4 Required services

(a) At a minimum, the following services shall be provided by the center for participation in the Medical Day Care Program.

1. (No change.)

2. Dietary services as follows:

i. The nutritional status and dietary needs of each recipient shall be evaluated by a qualified dietitian upon admission to the program. Those recipients on a physician-ordered special diet, or those identified as having specific nutritional needs, shall have an evaluation of their nutritional status every 90 days, **except that this evaluation shall be performed every 60 days in a pediatric medical day care center.** Results of the assessment and evaluation shall be documented in each recipient's record.

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

(4) The pediatric medical day care center shall provide a speech-language pathologist who shall evaluate and monitor each child's ability to chew and swallow food when this is deemed necessary by the center's registered professional nurse and ordered by the attending physician.

ii.-iv. (No change.)

3. Medical services as follows:

i. The center's administrator/director, with the medical director of the center, shall establish written medical and administrative policies governing the provision of medical services to the recipients. The medical director shall be responsible for, but not be limited to, the following:

(1)-(4) (No change.)

(5) Establishing relationships with appropriate personnel in other institutions, such as general or special hospitals, rehabilitation centers, home health agencies, clinics, **case management sites,** laboratories, and related community resources. This would include, but not be limited to, arrangements for emergency room services unavailable within the center. **The pediatric medical day care center must have arrangements for the provision of services by appropriate pediatric specialists (for example pulmonologists, cardiologists);** and

(6) (No change.)

ii. The medical day care center shall provide:

(1) A medical evaluation of all recipients, provided or arranged for by the medical director as needed, but at least every six months[.] **or in the case of children served in a pediatric medical day care center, every 60 days. The documented components of the medical evaluation for children shall be a history and physical, including developmental status, immunization status, laboratory data and a clear identification of medical needs.** (Note: Physician services for the Community Care Program for the Elderly and Disabled/Home Care Expansion Program recipients are not reimbursed by the New Jersey Medicaid program.)

(A)-(E) (No change.)

(2)-(3) (No change.)

4. Nursing services as follows:

i. A registered professional nurse shall be available on the premises of the medical day care center at all times when the center is operating. Additional registered professional nurses shall be present in centers where the daily attendance exceeds 60 participants. **(See N.J.A.C. 10:65-1.5(b) for staff-recipient ratio in pediatric medical day care centers.)** The registered professional nurse [is] **shall be** responsible for the supervision of ancillary nursing staff.

ii. The registered professional nurse shall be responsible for, but not be limited to, the following:

(1) (No change.)

(2) Maintaining the standards of nursing practice including, but not limited to: monitoring of identified medical conditions, administration and supervision of prescribed medications and treatments; coordination of rehabilitative services; development of a restorative nursing plan; monitoring of clinical behavior and nutritional status; assisting with the maintenance or redevelopment of the activities of daily living skills; **monitoring growth and development; implementing infection control procedures; and** communicating findings to the attending physician;

(3)-(13) (No change.)

iii. (No change.)

5. Personal care services as follows:

i. (No change.)

ii. Personal care services shall include education in and assistance with activities of daily living (**ADL**) (for example, walking, eating, toileting, grooming) and supervision of personal hygiene. **In pediatric medical day care centers for children, activities of daily living include appropriate developmental stimulation, diaper changing and toilet training.**

6. Pharmaceutical services as follows:

i. The center shall designate a pharmaceutical consultant who shall be responsible for the following:

(1) (No change.)

(2) Reviewing the records of all recipients at least every 90 days to assure that the medication records are accurate, up-to-date and that these records indicate that medications are administered or self-administered in accordance with physician's orders, **except that in pediatric medical day care centers, the review of records shall be every 60 days.**

(3) Reviewing records at least every 90 days to assure drug regimen, laboratory tests, special dietary requirements, and foods used or administered concomitantly with other medications to the same recipients, are monitored for potential adverse reaction, allergies, drug interaction, contraindications, rationality, drug evaluation, and test modification; and that all irregularities or recommended changes are documented on the recipient's record and reported to the medical director or attending physician, **except that in pediatric medical day care centers, the review of records shall be at least every 60 days.**

(4) (No change.)

(5) Devoting a minimum of [four hours] **one hour** a month to carry out these responsibilities; maintaining a written record of activities, findings and recommendations.

7. (No change.)

8. Social services as follows:

i. (No change.)

ii. The social work staff shall provide, but not be limited to, the following social services:

(1) (No change.)

(2) Providing individual, **family** and group counseling in reference to psychological, social, financial, legal, vocational, and educational needs **of the recipient**;

(3)-(12) (No change.)

9. (No change.)

10. Transportation services as follows:

i. (No change.)

ii. The medical day care center shall accommodate the special transportation needs and medical equipment used by the recipient.

[ii.]**iii.** (No change in text.)

(b) A medical day care recipient is a person who is a Medicaid recipient, or a recipient who is served under the Division's Home Care Expansion Program, and who is eligible for services and is diagnosed as having an identifiable medical condition, lacks sufficient social support which impacts negatively on this condition and whose assessed physical and psychosocial needs:

1. Do not require services 24 hours a day on an in-patient basis in a hospital or nursing facility, except under special circumstances;

2. Cannot be met totally in any other ambulatory care setting, such as a physician's office, hospital out-patient department or in a partial care/partial hospitalization program;

3. Require and can be met satisfactorily by a seven-hour, including portal-to-portal travel time, day-long active medical day care program not to exceed five days per week, provided by licensed and non-licensed personnel;

i. Pediatric medical day care centers providing service for technology dependent and/or medically unstable children shall provide services in the center a minimum of eight hours a day. In exceptional circumstances, if eight hours is contraindicated because of the medical condition of a child, the physician shall have approved no less than five hours attendance and this shall be documented in the child's medical record.

4. Are such that current health status would deteriorate without the direct services and health monitoring available at the center; and

5. Cannot be met while a resident of a residential health care facility (RHCF) setting except as follows:

i. If a resident of an RHCF was in medical day care prior to admission to the RHCF, medical day care services can continue for a limited period to allow for the adjustment into the RHCF;

ii. If a resident of an RHCF requires medical day care to encourage transition into a less structured residential setting such as a boarding home or an independent living arrangement, medical day care can be provided for a limited period;

iii. If a resident of an RHCF has been recently discharged from an acute care facility (general hospital, psychiatric hospital), medical day care services can be available for the purpose of "short term" (as determined by the Division) clinical monitoring; or

iv. If a resident of an RHCF shows evidence of an unstable clinical status which requires a short term structured therapeutic environment, medical day care services are available for a limited period.

v. Since individuals who reside in residential health care facilities are not eligible for CCPED or HCEP, medical day care services are not available to these residents.

6. Require continuous nursing services only available in a medical day care center serving technology dependent and/or medically unstable children.

i. A child served in a pediatric medical day care center shall meet the following criteria:

(1) Be technology dependent, requiring life-sustaining equipment or interventions, including a tracheostomy, ventilator, central venous pressure (CVP) line, hyperalimentation gastrostomy tube or a naso-gastric tube; or

(2) Need ongoing treatment administered by a licensed registered professional nurse (RN) or licensed practical nurse (LPN) to maintain health, such as nebulizer treatments, administration of oxygen, apnea/cardiac monitoring, intermittent coronary catheterization; or

(3) Require the ongoing monitoring and assessment by an RN because of such care needs as seizure disorders or cardiac conditions.

10:65-1.5 Staff

(a) The center shall have adequate staff capability to provide services and supervision to the recipients at all times. The composition of the staff shall depend in part on the needs of the recipients and on the number of recipients the program is serving. At a minimum, the center shall have a medical day care center administrator/director, a registered professional nurse, a social worker, an activities coordinator and a medical director[.], **as well as having a registered pharmacist, speech language pathologist and qualified dietitian, as consultants.** If the freestanding facility has no medical director, a licensed physician shall be appointed to serve in this capacity. **Staff employed by a pediatric medical day care center shall have had recent pediatric experience and shall be provided with ongoing training regarding children with special needs.** [Staff position] **Staffing** requirements are as follows:

[1. The activities coordinator shall meet the requirements of the New Jersey State Department of Health, N.J.A.C. 8:43F-1.13, for a patient activities director.

i. An activities consultant shall possess:

(1) A master's degree in any one of the following: recreation therapy, creative arts therapy, occupational therapy, health care

administration, human services, or a related field and two years of experience in patient activities in a health care setting; or

(2) A bachelor's degree from a college or university, approved by a state department of education with a major in recreation therapy, creative arts therapy, occupational therapy or a related field and two years of paid full time experience in a clinical, residential, or community-based therapeutic recreation program, and three years experience as a consultant in a health care setting.

2. The administrator/director shall be responsible for the overall conduct and management of all program activities and staff on a full-time basis. The administrator/director shall:

i. Be a qualified health professional, such as a nursing home administrator, physician, social worker, licensed nurse, licensed physical therapist, occupational therapist, or speech-language pathologist;

ii. Be experienced in the care of the elderly and disabled and knowledgeable regarding their physical, social and medical health needs; and

iii. Meet the minimum staff requirements defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.4).

3. A dietitian shall be responsible for the direction, provision and quality of dietary services. Each dietitian shall be registered or eligible for registration by the Commission on Dietetic Registration (see N.J.A.C. 8:43F-1.6).

4. The medical director shall provide the medical consultation and supervision of the total health care program provided to the recipients. The medical director shall be licensed as a physician to practice medicine in the State of New Jersey (see N.J.A.C. 8:43F-1.11 and 1.16).

5. The registered professional nurse shall be licensed by the New Jersey State Board of Nursing pursuant to N.J.S.A. 45:11-26 et seq. and shall have at least one year full-time or full-time equivalent experience in nursing supervision and/or nursing administration in a licensed health care facility, as defined by the New Jersey Department of Health (see N.J.A.C. 8:43F-1.7).

6. A pharmaceutical consultant shall be licensed by the New Jersey State Board of Pharmacy with a current license to practice in the State of New Jersey in accordance with N.J.A.C. 8:43F-1.14 and certified by the Joint Board for Certification of Consultant Pharmacists.

7. A social worker shall possess a bachelor's or master's degree from a college or university approved by a state department of education with a major in one of the following: social work, psychology, sociology, or counseling as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.18). For those persons without a master's degree in social work, at least one year of full-time or full-time equivalent social work experience in a licensed health care facility is required.

i. A social work consultant shall possess a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education and at least one year of full time social work experience in a health care facility.]

1. The administrator/director shall be responsible for the overall conduct and management of all program activities and staff on a full-time basis, and;

i. Be a qualified health professional, such as a nursing home administrator, physician, social worker, licensed nurse, licensed physical therapist, occupational therapist, or speech-language pathologist;

(1) In a pediatric medical day care center, the administrator/director shall be a qualified health professional, such as a physician, licensed social worker or licensed clinical social worker with a pediatric concentration; a registered professional nurse with a Master of Science in Nursing (MSN), or Bachelor of Science in Nursing (BSN), or Pediatric Nurse Practitioner (PNP), with recent pediatric experience.

(2) In a medical day care center serving adults, the administrator/director shall be experienced in the care of the elderly and disabled and knowledgeable regarding their physical, social and medical health needs; and

ii. Meet the minimum staff requirements defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.4).

2. The registered professional nurse shall be licensed by the New Jersey State Board of Nursing pursuant to N.J.S.A. 45:11-26 et seq. and shall have at least one year full-time or full-time equivalent experience in nursing supervision and/or nursing administration in a licensed health care facility, as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.7). In a pediatric medical day care center one of the on duty registered professional nurses shall have, at a minimum, the following credentials:

i. Possess a Bachelor of Science in Nursing degree; or

ii. Have at least one year recent full-time pediatric experience.

3. A social worker shall possess a bachelor's or master's degree from a college or university approved by a state department of education with a major in one of the following: social work, psychology, sociology, or counseling as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.18). For those persons without a master's degree in social work, at least one year of full-time or full-time equivalent social work experience in a licensed health care facility is required.

i. A social work consultant shall possess a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education and at least one year of full-time social work experience in a health care facility.

4. The activities coordinator shall meet the requirements of the New Jersey State Department of Health, N.J.A.C. 8:43F-1.13, for a patient activities director.

i. An activities consultant shall possess:

(1) A master's degree in any one of the following: recreation therapy, creative arts therapy, occupational therapy, health care administration, human services, or a related field and two years of experience in patient activities in a health care setting; or

(2) A bachelor's degree from a college or university, approved by a state department of education with a major in recreation therapy, creative arts therapy, occupational therapy or a related field and two years of paid full time experience in a clinical, residential, or community-based therapeutic recreation program, and three years experience as a consultant in a health care setting.

5. The medical director shall provide the medical consultation and supervision of the total health care program provided to the recipients. The medical director shall be licensed as a physician to practice medicine in the State of New Jersey (see N.J.A.C. 8:43-1.16). In a pediatric medical day care center, the medical director shall also be certified by the American Board of Pediatrics.

6. A pharmaceutical consultant shall be licensed by the New Jersey State Board of Pharmacy with a current license to practice in the State of New Jersey in accordance with N.J.A.C. 8:43F-1.14 and certified by the Joint Board for Certification of Consultant Pharmacists.

7. A dietitian shall be responsible for the direction, provision and quality of dietary services. Each dietitian shall be registered or eligible for registration by the Commission on Dietetic Registration (see N.J.A.C. 8:43F-1.6).

(b) For staff-recipient ratio, adequate staff is defined as a ratio of one regular full-time, or full time equivalent, staff person to nine recipients, calculated on the basis of the daily census **for medical day care centers serving adults. In pediatric medical day care centers the ratio shall be one staff person to three children. There shall be at least two nurses on the premises of the pediatric medical day care center during all hours of operation.** The ratio shall include the center administrator/director and all other personnel (except the medical director) who are involved in direct patient care, excluding volunteers. **The maximum daily census in any pediatric medical day care center shall be 27 children.**

1. Without compromising the above required staff-recipient ratio of one to nine **for medical day care centers serving adults or one to three for pediatric medical day care centers,** various staff positions could [conceivably] combine functions within one person, that is, the center administrator/director may be a social worker or activities coordinator, performing dual functions of the director/social worker or director/activities coordinator. **In medical day care programs**

serving adults with 36 or more recipients, the director may not serve a dual function. New **adult** programs for start-up purposes, or [programs] with less than 10 recipients, may have no fewer than two full time staff persons. The registered **professional** nurse shall occupy one of [the two] **these** positions. [In programs of 36 or more recipients, the director may not serve a dual function.]

(c) For pediatric medical day care centers, all direct care staff shall have current certification in cardio-pulmonary resuscitation (CPR) and shall have had recent pediatric experience. Those without recent pediatric experience shall be educated by the center in growth and development and in the care of children with special needs. All direct care paraprofessional staff shall have been certified by the New Jersey State Board of Nursing as homemaker-home health aides, or certified by the Department of Health as nurse aides in accordance with N.J.A.C. 8:39. When there are technology dependent children served in the center, a registered professional nurse certified for intravenous administration must be available during the hours of operation.

10:65-1.7 Records

(a) As a minimum, the recipient's chart shall contain the following information:

1.-3. (No change.)

4. A nursing assessment/history, which shall be completed after the first five days of attendance or within a period of one month (whichever is less), and daily nursing observations for the first five days of attendance. A nursing summary and evaluation shall follow every 90 days **for medical day care, and every 60 days for a pediatric medical day care center,** thereafter, providing appropriate input into the Individualized Multidisciplinary Plan of Care;

i. (No change.)

5. A social assessment history, which shall be completed after the first five days of attendance or within a period of a month (whichever is less), and social summary and evaluation notes every 90 days **for medical day care and every 60 days for a pediatric medical day care center;**

6. An activity assessment and plan, which shall be completed after the first five days of attendance or within a period of a month (whichever is less), and activity summary and evaluation notes every 90 days **for medical day care and every 60 days for a pediatric medical day care center;**

7. (No change.)

8. A dietary assessment, which shall be completed within the first five days of attendance or within a period of one month (whichever is less). When the recipient's nutritional status requires dietary intervention, there shall be ongoing monitoring and [90-day] summary and evaluation notes **every 90 days for medical day care and every 60 days for a pediatric medical day care center;**

9. A multidisciplinary individualized plan of care, which shall be completed after the first five days of attendance or within a period of one month (whichever is less) and updated every 90 days **for medical day care and every 60 days for a pediatric medical day care center,** with input from each discipline;

10.-11. (No change.)

(b) The multidisciplinary individualized plan of care shall be written for each recipient, with input from the recipient, family, and interested community agencies. The plan shall state medical needs of the recipient as evaluated by the attending physician, with nursing, social service, activity and other service needs as determined by the center staff, with in-put from community agencies. Overall goals and services to be provided by the center to fulfill the needs expressed shall be indicated.

1. The multidisciplinary individualized plan of care shall:

i. (No change.)

ii. Be updated at least every 90 days, **for medical day care, and every 60 days for a pediatric medical day care center,** by each discipline;

iii.-iv. (No change.)

(c) (No change.)

10:65-1.8 Basis of payment

(a) The center [participating in the] providing Medical Day Care services [Program] shall agree to accept the reimbursement rates established by the Division as the total reimbursement for services provided to the Medicaid recipient and to the beneficiary enrolled in the Home Care Expansion Program (HCEP). In a nursing facility **based program,** the medical day care per diem rate is 45 percent of that nursing facility's per diem rate. In freestanding centers, the medical day care per diem rate is based on an average of the rates paid to nursing facility medical day care providers, or **on** a percentage of nursing facility rates in effect as of January 1 and July 1 each year. For hospital-affiliated centers, the medical day care rate is a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to nursing facility-based providers. The reimbursement rates set for any Medicaid recipient **or an HCEP beneficiary** in medical day care centers [may] **shall** not exceed charges for non-Medicaid participants. The per diem reimbursement shall cover the cost of all services listed in N.J.A.C. 10:65-1.4 with the following exception[s]:

[1. Exception: Retroactive to October 1, 1990, a one-time adjustment shall be made to Medical Day Care providers for those medical day care services paid at the rate of 43 percent of the NF rate. This adjustment shall be calculated to pay the difference between 43 per cent and 45 per cent of the NF rate multiplied by the days of service paid at the 43 per cent of the NF rate.]

[2.]**1.** Physical therapy and speech-language pathology services shall not be included in the per diem rate [and when provided by the center] **reimbursed for medical day care services.** These [services] **therapies, when provided by the medical day care center,** [must] **shall** be billed separately on the Health Insurance Claim Form, 1500 N.J.

SUBCHAPTER 2. HEALTH CARE FINANCING ADMINISTRATION COMMON PROCEDURE CODING SYSTEM (HCPCS) CODES

10:65-2.1 Introduction

(a) (No change.)

(b) These codes [are] **shall be** used when requesting reimbursement for certain Medical Day Care Services [and when a Health Insurance Claim Form, 1500 N.J., (Appendix G) is required].

10:65-2.2 Health Care Financing Administration Common Procedure Coding System (HCPCS) Codes

(a) HCPCS Codes for medical day care services are as follows:

HCPCS	Description
...	
97799	Physical therapy
[90050] **W9002**	Medical day care visit
[Z1816] **Z1860**	Medical day care visit for the AIDS Community Care Alternatives Program (ACCAP)
Z1863	**Medical day care visit for technology dependent children**
Z1864	**Medical day care visit for medically unstable children**

(b) Fees for medical day care centers are pre-approved by the Division, based on the reimbursement methodology described in N.J.A.C. 10:65-1.8, with each center's fees established in accordance with the setting in which the medical day care program is operated.

APPENDIX H

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter/manual but is not reproduced in the New Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, replacement pages will be distributed to providers and copies will be filed with the Office of Administrative Law. For a copy of the Fiscal Agent Billing Supplement, write to:

Unisys Corporation
CN-4801
Trenton, New Jersey 08650-4801
or contact:
Office of Administrative Law
Quakerbridge Plaza, Building 9
CN-049
Trenton, New Jersey 08625-0049

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Medical Malpractice Reporting Requirements

Proposed New Rules: N.J.A.C. 11:1-7

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:8-8.1, 17:1C-6(e), 17:30D-1 et seq.
Proposal Number: PRN 1994-191.

Submit comments by May 4, 1994 to:
Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The Medical Practitioner Review Panel ("Panel") was established by the State Board of Medical Examiners ("Board") in accordance with N.J.S.A. 45:9-19.8. The Medical Malpractice Liability Insurance Act ("Act") (N.J.S.A. 17:30D-1 et seq.) at N.J.S.A. 17:30D-17(a) requires insurers and insurer associations authorized to issue medical malpractice liability insurance in the State to notify the Panel of any medical malpractice claim settlement, judgment or arbitration award involving any practitioner they insure who is licensed by the Board. That same statutory provision further requires licensed practitioners not covered by medical malpractice insurance issued within the State, but who are either insured by an insurer or insurance association from outside the State or are self-insured, to likewise notify the Panel of any medical malpractice claim settlement, judgment or arbitration award to which they are a party.

Additionally, N.J.S.A. 17:30D-17(b) requires medical malpractice insurers and insurance associations within the State to notify the Panel of any termination or denial of coverage to a practitioner or of any surcharge assessed as a result of a practitioner's practice method or medical malpractice claims history. N.J.S.A. 17:30D-17(c) requires the form of notice to be provided to the Panel by insurers, insurance associations and practitioners to be prescribed by the Commissioner of the Department of Insurance.

Accordingly, these rules are proposed to implement the notification requirements mandated by N.J.S.A. 17:30D-17 by establishing the form and content of the notice required under the Act.

Social Impact

These proposed rules will have a positive social impact insofar as the public will be assured that the Medical Practitioner Review Panel will be notified of any instance of medical malpractice involving New Jersey licensed practitioners. Additionally, disciplinary or license limitation or suspension action may be initiated in appropriate cases by the State Board of Medical Examiners. Accordingly, the reporting procedures mandated by these rules will result in increased protection of medical patients against continuing perilous actions of certain practitioners.

Economic Impact

Insofar as these proposed rules merely prescribe the form and content of statutorily mandated notice, they do not in and of themselves impose any economic impact on any person or entity, beyond the minimal administrative costs involved in preparing and mailing the form.

Regulatory Flexibility Statement

Insofar as these proposed rules merely prescribe the form and content of statutorily mandated notice, they do not impose any reporting, recordkeeping or other compliance requirements on "small businesses" as defined under the Regulatory Flexibility Act at 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 proposed new rules follows:

SUBCHAPTER 7. MEDICAL MALPRACTICE REPORTING REQUIREMENTS

11:1-7.1 Purpose and scope

(a) The purpose of these rules is to implement N.J.S.A. 17:30D-17(a) and (b). These statutory provisions require insurers, insurance associations and licensed medical practitioners to notify the Medical Practitioner Review Panel of any medical malpractice claim settlements, judgments or arbitration awards involving a licensed practitioner, any termination or denial of malpractice insurance coverage to a practitioner, or any surcharge assessed against a practitioner. These proposed rules establish the form and content of the notice required under these statutory provisions.

(b) These rules apply to all insurers or insurance associations authorized to issue medical malpractice liability insurance in New Jersey, and to all practitioners licensed by the State Board of Medical Examiners.

11:1-7.2 Definitions

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

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

"Medical malpractice liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional services by any licensed medical practitioner or health care facility or a claim arising out of ownership, operation or maintenance of the practitioner's or facility's business premises, including primary and excess coverages.

"Medical Practitioner Review Panel" or "Panel" means the panel established pursuant to N.J.S.A. 45:9-19.8.

"Practitioner" means any person licensed to practice medicine and surgery under N.J.S.A. 45:9-1 et seq., podiatry under N.J.S.A. 45:5-1 et seq., or a medical resident or intern.

"State Board of Medical Examiners" means the board established pursuant to N.J.S.A. 45:9-1.

11:1-7.3 Medical malpractice reporting requirements

(a) Any insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall notify the Medical Practitioner Review Panel in writing of the following:

1. Any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by the insurer or insurance association;

2. Any termination or denial of medical malpractice liability coverage to a practitioner; and

3. Any surcharge assessed against a practitioner because of the practitioner's practice method or medical malpractice claims history.

(b) Any practitioner licensed by the State Board of Medical Examiners who is not covered by a policy of medical malpractice liability insurance issued in this State, who has coverage through a self-insured health care facility or health maintenance organization, or has medical malpractice liability insurance which has been issued by an insurer or insurance association from outside the State, shall notify the Panel in writing of any medical malpractice claim settlement, judgment or arbitration award to which the practitioner is a party.

(c) The written notice referred to in (a) and (b) above may be in letter form and shall contain at least the following information:

1. The name and address of the insurer, insurance association or practitioner submitting the information;

2. The name and address and any other information relating to the identity of the practitioner about whom the information is being submitted;

3. In the case of a claim settlement, judgment or arbitration award, the name, address and other information relevant to the identity of the

claimant making the medical malpractice liability claim against the practitioner, as well as the amount and relevant details of the claim settlement, judgment or arbitration award; and

4. In the case of termination or denial of medical malpractice liability coverage to a practitioner or surcharge assessed against a practitioner, the relevant facts supporting the termination or denial of coverage or the surcharge.

(d) The written notice referred to in (a) and (b) above shall be mailed by regular mail or delivered no later than seven days after the settlement, judgment or arbitration award is officially agreed to or entered, the notice of termination or denial of coverage is issued to the practitioner, or notice of the surcharge has been issued to the practitioner.

11:1-7.4 Penalties

(a) Any insurer or insurance association failing to notify the Medical Malpractice Review Panel pursuant to the requirements of this subchapter shall be subject to such penalties as the Commissioner may determine in accordance with N.J.S.A. 17:30D-12. Additionally, the Commissioner may assess a fine not to exceed $1,000 for the first violation and $2,000 for the second and each subsequent violation, which may be recovered in a summary proceeding pursuant to N.J.S.A. 2A:58-1 et seq.

(b) Any practitioner failing to notify the Medical Practitioner Review Panel pursuant to the requirements of this subsection shall be subject to disciplinary action and civil penalties in accordance with N.J.S.A. 45:1-21, 22 and 25.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Notice of Reopening of Comment Period
Direct Loan Program
Allocation of Direct Loan Assistance
Proposed Amendment: N.J.A.C. 12A:31-1.4

Take notice that the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises is reopening the comment period for the above-referenced proposal, published in the December 20, 1993 New Jersey Register at 25 N.J.R. 5759(a), until April 20, 1994.

Submit comments by April 20, 1994 to:

Richard L. Timmons, Assistant Deputy Director
New Jersey Economic Development Authority
CN 990
Trenton, New Jersey 08625

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

General Provisions
Confidential Information
Reproposed Amendments: N.J.A.C. 19:40-4.1, 4.2 and 4.8

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c, 69a, 74d, 74e, 74f and 74h.
Proposal Number: PRN 1994-205.

Submit written comments by May 4, 1994 to:

Dennis Daly, Assistant General Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

On December 20, 1993, the Casino Control Commission ("Commission") proposed various amendments to N.J.A.C. 19:40-4, the subchapter of rules which sets forth the standards and procedures governing the identification and handling of confidential information in the possession of the Commission and the Division of Gaming Enforcement ("Division") (see 25 N.J.R. 5891(a)). As a result of various comments received in response to this proposal, the Commission has determined to make several substantive changes to the original proposal and to republish the proposed amendments.

Please note that this reproposal supersedes the proposal published on December 20, 1993 in the New Jersey Register at 25 N.J.R. 5891(a). Accordingly, any comments received in response to the prior proposal will not be considered in connection with this reproposal unless they are specifically resubmitted during the present comment period. Additional comment from any other interested persons is also permissible and invited.

N.J.A.C. 19:40-4.2(a) specifies information and data that is presumed to be confidential and which will not be released except upon order of the Commission. Under the current rules, this category includes internal controls specified in subsection 99a of the Act, the earnings and revenue of any applicant, licensee or registrant, and information pertaining to an applicant's criminal and family background. The original proposal would have added several new categories to this list: any trade secrets and other proprietary commercial information; any data in a petition, complaint, patron complaint or related document that would identify a casino patron; in a patron complaint, the name of the complainant and any comments made by a Commission member or staffperson; and the contents of any petition for confidential status and the information and data for which confidential status is sought, unless and until the petition is finally denied.

The Commission received several comments concerning the provisions of proposed N.J.A.C. 19:40-4.2(a). Promus Companies Incorporated ("Promus"), whose comment was supported by Resorts International, Inc., TropWorld Casino and Entertainment Resort and Bally's Park Place, Inc., objected to this subsection on the basis that the rule, as originally proposed, did not adequately protect against the inadvertent disclosure of sensitive non-public information routinely obtained by the Division and Commission while investigating and reviewing persons subject to regulation under the Act. The commenters expressed the view, which was endorsed by the Commission as evidenced by the new category of confidential information codified at N.J.A.C. 19:40-4.2(a)7, that the Commission should presumptively deny access to any information obtained by the regulatory agencies which is not otherwise public under the Right-to-Know Law, N.J.S.A. 47:1A-2, or the common law. According to the commenters, this provision will help assure that the confidentiality provisions of section 74 of the Casino Control Act, N.J.S.A. 5:12-74, will continue to serve their essential purpose, namely the prompt and full disclosure of all information requested by the Commission or Division from regulated persons.

Promus and the other casino licensees also suggested another category of information which should be presumptively confidential: information which is deemed confidential as a result of court order, confidentiality agreement or privilege recognized by law. This category has been included in the reproposal at N.J.A.C. 19:40-4.2(a)8.

Conversely, the Press of Atlantic City expressed the view that N.J.A.C. 19:40-4.2(a)5 and 6 of the original proposal, which accorded presumptive confidentiality to the name of any casino patron identified in a petition, complaint, patron complaint or related document, were inconsistent with the requirements of the Right-to-Know Law and common law and should be deleted. The Division agreed that the identity of patrons named in violation complaints should not be presumptively confidential. The reproposal has deleted the category which was previously codified at N.J.A.C. 19:40-4.2(a)5 and eliminated the name of the complaining patron as presumptively confidential information in reproposed N.J.A.C. 19:40-4.2(a)6.

The Press of Atlantic City also expressed a concern that the language of N.J.A.C. 19:40-4.2(a)7, as originally proposed, could be interpreted to make the filing of a petition for confidential status a confidential event.

This was never the intent of the proposal and the language of the reproposal (see N.J.A.C. 19:40-4.2(a)9) has been modified to make clear that only those portions of a petition for confidential status which would, in essence, reveal the information for which confidential status is sought will be treated as confidential unless and until the petition is finally denied.

The Division suggested that "Division files and reports" be added to N.J.A.C. 19:40-4.2(a) as a new category of presumptively confidential information and this suggestion has been codified in the reproposal as paragraph 1 of that subsection. The Division also suggested that comments or evaluations of patron complaints recorded by the Division should be presumptively confidential and N.J.A.C. 19:40-4.2(a)6 has been revised accordingly.

The reproposal continues to provide that any information or data that is not presumptively confidential will be presumed to be public information and, unless a petition for confidential status has been filed or the Commission determines otherwise on its own initiative, will be released or disclosed to any person upon request. Reproposed N.J.A.C. 19:40-4.2(b). Moreover, any documents received or considered in a public proceeding conducted by or on behalf of the Commission is also presumed to be public information. Materials that cannot readily be duplicated, such as audio or video recordings, would be made available for review in the Commission's offices, by appointment.

Promus commented that N.J.A.C. 19:40-4.2(c) was unclear in the manner it related to the procedures contained in the remainder of the section. In order to clarify that all requests for confidential status or public release of documents are to be addressed in accordance with the procedures set forth in N.J.A.C. 19:40-4.2, minor amendments have been made to subsection (c) in the reproposal.

The reproposal provides standards and procedures whereby any person may petition for disclosure of information that is deemed presumptively confidential. Proposed N.J.A.C. 19:40-4.2(d). Likewise, the reproposal provides standards and procedures for petitions requesting confidential treatment of information that is presumed to be public information. Proposed N.J.A.C. 19:40-4.2(e). Each of these subsections has been modified in the reproposal.

First, in response to a comment submitted by the Division, both subsections have been changed to require that any petition for public release or confidential status be filed simultaneously with the Division. Since such matters, of necessity, are to be handled on an expedited basis, simultaneous filings with the Division should assist the Division to respond thereto on a timely basis.

Second, Promus suggested that N.J.A.C. 19:40-4.2(d) be modified to require that notice of the filing of a petition for public release of confidential information be provided by the petitioner or the Commission to any affected person to the extent reasonably practical. The Commission has included a provision requiring the Commission to attempt such notice in the reproposed version of N.J.A.C. 19:40-4.2(d).

Procedures for the processing and determination of such petitions by the Commission are outlined in proposed N.J.A.C. 19:40-4.2(f). As proposed, General Counsel of the Commission will evaluate the petition and any responses thereto, and will issue a written decision. General Counsel will consider, where applicable, the factors specified in proposed subsection 4.2(g), including: constitutional, statutory and regulatory standards relating to confidentiality and public disclosure; relevant case law; the extent to which disclosure is necessary to foster public confidence in the integrity of the regulatory process or to explain the basis for any Commission determination; the confidential interests involved; whether the subject matter likely to become part of the record in a contested case; the extent to which the subject matter is otherwise publicly available; the extent to which financial stability is at issue; reporting and disclosure obligations under securities law and other public policy considerations.

In a suggestion related to its earlier comment concerning the need to notify affected persons of the filing of petitions for the release of confidential information, Promus suggested that N.J.A.C. 19:40-4.2(f)2 be modified to give affected persons a right to file responses to such petitions and the reproposal has been modified accordingly. In addition, in response to comments submitted by The Press of Atlantic City and the Division, a time period of ten days has been established in N.J.A.C. 19:40-4.2(f)3 as the time within which General Counsel will issue a written decision on a petition. Moreover, at the suggestion of the Division, N.J.A.C. 19:40-4.2(f)3 of the original proposal has been further modified to require that all such decisions be filed with the Division.

Any party may, within three working days, file a written request for Commission review of a General Counsel decision. If a timely request for review is filed, any information for which confidential status is asserted will not be released or disclosed until the Commission evaluates the petition. The time restrictions may be extended or constricted to meet the exigencies of the case. Moreover, the chair may impose any restrictions or conditions required to expedite the process where the filing of a petition for confidential status interferes with the orderly processing of any proceeding.

Finally, the proposed amendments to N.J.A.C. 19:40-4.2(i) make clear that the new rules do not limit the Commission's authority to refuse to release or disclose any information or data where confidential treatment is necessary or appropriate to further the policies of the Act or regulations thereunder and where maintenance of confidentiality is consistent with applicable law. Neither do the new rules require the Commission, except as otherwise provided in N.J.A.C. 19:40-4.2(d), to notify persons identified in any document filed with the Commission prior to public disclosure.

The reproposal would amend N.J.A.C. 19:40-4.1 to define terms utilized in the new provisions, and would also amend N.J.A.C. 19:40-4.8 to refer to the release or disclosure of information pursuant to a Commission order in accordance with N.J.A.C. 19:40-4.2.

Social Impact

The reproposal provides detailed standards and procedures for determining whether information or data furnished to or obtained by the Commission or Division should be treated as confidential. As such, the reproposal should benefit licensees, registrants, applicants and other persons involved in investigations, hearings, petitions or other matters before the Commission by ensuring the adequate safeguarding of confidential information and preventing the negligent or unauthorized disclosure of confidential information. Similarly, the promulgation of standards and procedures can be expected to benefit those interested persons who seek disclosure of materials appropriate for public access. The reproposal should also benefit the regulatory agencies by establishing guidelines for making these types of determinations.

Economic Impact

The proposed amendments are not anticipated to have any substantial economic impact. However, to the extent that the new standards and procedures add certainty and consistency to the determination of confidential status, both the regulatory agencies and petitioners should benefit from efficient and expedient resolution of such matters.

Regulatory Flexibility Statement

The standards and procedures in the reproposal are generally applicable to all information furnished to or obtained by the Commission or Division. It is possible that determinations under the new provisions will involve a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., for example, an enterprise licensed as a casino service industry. Nonetheless, the rules in N.J.A.C. 19:40-4 must be consistently applied in all cases in order to ensure procedural fairness to all parties. An exemption for small businesses is therefore not feasible.

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

19:40-4.1 Definitions

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

. . .

"Complaint" means any written request for action against an applicant, licensee or registrant filed with the Commission pursuant to N.J.S.A. 5:12-108, 109 or 129.

"Confidential information" means any information [of] **or** data, furnished to or obtained by the Commission or Division from any source, which is considered confidential pursuant to the provisions of N.J.S.A. [5:12-74(d) and (e)] **5:12-74d and 74e**, or which is otherwise confidential pursuant to applicable statutory provisions, judicial decision or rule of court.

"Patron complaint" means any document filed by or on behalf of a member of the public with the Commission pursuant to N.J.S.A. 5:12-63f, the purpose of which is to call attention to an incident, event or circumstance relating to the conduct of gaming or simulcasting wagering operations.

"Petition" means any written request for formal agency action by the Commission including, without limitation, petitions for declaratory rulings pursuant to N.J.A.C. 19:42-9.1, petitions for rulemaking pursuant to N.J.A.C. 19:40-3.6, and petitions for exclusion filed by the Division pursuant to N.J.S.A 5:12-71, N.J.A.C. 19:42-4 and N.J.A.C. 19:48.

"Related document" means any document or exhibit filed in support of or in opposition to a petition, complaint or patron complaint.

. . .

19:40-4.2 Determination of confidential status

(a) Except as **otherwise** provided by N.J.S.A. [5:12-74(h)] **5:12-74h or N.J.A.C. 19:40-4.2(b)2**, all information and data furnished to or obtained by the Commission or Division which [relates] **relate** to the [internal controls specified in N.J.S.A. 5:12-99(a), or to the earnings or revenue of any applicant, registrant or licensee, or which pertains to an applicant's criminal record, family or background,] **following** shall be presumed to be confidential and shall not be released or disclosed to any person except in accordance with the provisions of [this subchapter.] **N.J.A.C. 19:40-4.8:**

1. All files and reports of the Division created pursuant to the Act;

2. The internal controls specified in N.J.S.A. 5:12-99a and N.J.A.C. 19:45;

3. The earnings and revenue of any applicant, licensee or registrant, including, without limitation, financial projections and draft disclosure and transactional documents;

4. Any trade secrets or other proprietary commercial information;

5. The criminal record, family or background of any applicant, licensee or registrant;

6. In a patron complaint, the address of the complainant, and any comments or evaluation of the complaint made by any member of the Commission, its staff or the Division;

7. Any non-public information, not otherwise required by law to be filed with the Commission or Division, which is received by the Commission or Division in the course of investigating or reviewing any matter;

8. Any information protected from disclosure by court order, confidentiality agreement or privilege recognized by law; and

9. The contents of any petition for confidential status filed pursuant to (e) below, to the extent that such petition identifies the information or data for which confidential status is sought, unless and until such petition is finally denied.

(b) The following shall be presumed to be public information and shall be released or disclosed to any person upon request, unless the information or data is the subject of a petition for confidential status pursuant to (e) below and the petition has not been finally denied:

1. Any information or data that is not presumptively confidential pursuant to (a) above uless the Commission determines, pursuant to (i) below, that the information or data shall not be released;

2. Any document received in evidence or otherwise considered at any public proceeding conducted by or on behalf of the Commission; provided, however, that any audio or video recording or other material that cannot readily be duplicated need only be made available for review in the offices of the Commission by appointment; and

3. The license status of any applicant, licensee or registrant and, if the applicant, licensee or registrant is employed by a casino licensee, his or her place of employment.

[(b)](c) Any question concerning whether [or not] a specific item of information or data within the possession of the Commission or Division is deemed to be confidential information [under N.J.S.A. 5:12-74(d) and (e), or any other applicable statutory provision, judicial decision or rule of court,] shall be submitted to the Commission [or its designee] for determination **in accordance with this section** [or referral to appropriate authorities].

(d) Any person who seeks disclosure of any information or data deemed presumptively confidential pursuant to (a) above may file a petition for public release of confidential information with the Commission. A copy of any such petition shall be filed simultaneously with the Division. Upon receipt of the petition, the Commission shall, to the extent reasonably practical, immediately provide notice of the petition to any person affected thereby. The petition shall:

1. Identify with as much precision as possible the document or other material containing the information or data for which release or disclosure is sought;

2. Cite the factor or factors included in (g) below upon which reliance is placed for release of the information or data; and

3. Advance reasons or argument as to why the information or data should be released.

(e) Any person who seeks confidential status for any information or data that is deemed presumptively public pursuant to (b) above may file a petition for confidential status with the Commission at any time. A copy of any such petition shall be filed simultaneously with the Division. The petition shall:

1. Identify the document or material which contains the assertedly confidential information or data;

2. Specify those parts of the document or material for which confidential status is asserted;

3. Cite the factor or factors included in (g) below upon which reliance is placed for the claim of confidentiality;

4. Advance reasons or argument as to why each specific part of the document is confidential under the cited authority and not otherwise subject to release under N.J.A.C. 19:40-4.8(a)1; and

5. Include as an exhibit two edited copies of the document or material from which the assertedly confidential information or data has been deleted or blacked out. The edited copies shall clearly indicate where information has been omitted and shall be available for immediate release or disclosure to any person upon request.

(f) A petition for public release or for confidential status shall be processed as follows:

1. General Counsel shall determine whether the petition is in substantial compliance with the requirements of (d) or (e) above. If it is determined that the petition is not in substantial compliance, the petitioner shall be notified in writing as to any deficiencies. The petitioner shall have five working days from the date of receipt of such notice to file an amended petition which corrects the noted deficiencies. Should the petitioner fail to file an amended petition within five days, or should the amended petition fail to correct the noted deficiencies, General Counsel may notify the petitioner in accordance with the provisions of (f)4 below that the petition has been denied.

2. The Division, any person affected and any other party the Commission shall permit to respond shall have five business days from the filing of a completed petition or amended petition, as the case may be, to file a response to the petition.

3. General Counsel shall evaluate the petition in accordance with the standards set forth in (g) below, and shall, within ten days of the completed filing, promulgate a written decision on the petition for public release or confidential status, which shall be served upon the petitioner, the Division and any other party permitted to respond to the petition. Any party may request a review of the decision of General Counsel by the Commission by filing a written request therefor within three business days of the date of receipt of the decision. A request for Commission review shall:

i. Specify those parts of the petition or related document for which confidential status is still asserted;

ii. Explain any objections to the decision of General Counsel; and

iii. Advance reasons or argument in support of the positions taken pursuant to (f)3i and ii above.

4. If no timely request for Commission review of the decision of General Counsel is filed, any information determined not to be confidential shall be released or disclosed to any person upon request. If a timely request for review is filed, any information for which confidential status is still asserted shall not be released or disclosed to any person until the Commission evaluates the petition in accordance with the standards set forth in (g) below. If the Commission determines that any information for which confidential status is sought is not confidential, such information shall be released or disclosed to any person upon request.

(g) In evaluating a petition for public release or for confidential status:

1. In any proceeding governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the provisions of N.J.A.C. 1:1-14.1(b) and (c) shall apply.

2. In determining whether section 74 of the Act requires that information or data be given confidential status, the following factors shall, to the extent applicable, be considered:

i. Constitutional, statutory and regulatory standards relating to confidentiality of information, including without limitation, N.J.S.A. 10:4-1 et seq., N.J.S.A. 5:12-74 and N.J.A.C. 1:1-14.1(b) and (c);

ii. Constitutional, statutory and regulatory standards relating to public disclosure or public availability of information including, without limitation, N.J.S.A. 47:1A-1 et seq.;

iii. Relevant case law;

iv. The extent to which disclosure of the information is necessary to foster public confidence in the integrity of the regulatory process, or to explain the basis for any Commission determination;

v. The privacy or confidentiality interests involved;

vi. Whether the subject matter of the petition is or is likely to become part of the record in a contested case;

vii. The extent to which the subject matter of the petition is otherwise publicly available;

viii. In cases involving financial information, the extent to which financial stability is directly at issue in a matter pending before the Commission;

ix. The reporting and disclosure obligations of a public company under state or federal securities laws; and

x. Other pertinent public policy considerations.

(h) The Chair may extend or constrict any time frames contained in (f) above as the exigencies of the case may require. If the normal schedule for consideration of a petition for confidential status shall have the effect of interfering with the orderly processing of any proceeding in which the information or data for which confidential status is sought is relevant to any determination by the Commission, the Chair may, in addition, impose any restrictions or conditions designed to expedite the consideration of such petition.

(i) Nothing in this section shall be deemed to limit the authority of the Commission to refuse to release or disclose any information or data, whether or not a petition for confidential status is filed regarding that information or data, where the Commission determines that confidential treatment is necessary or appropriate to further the policies of the Act and the regulations promulgated thereunder and the maintenance of confidentiality is consistent with applicable law. Nothing in this section shall be deemed to require the Commission to notify any person that he or she is named or otherwise identified in any petition, complaint, patron complaint or related document filed with the Commission.

19:40-4.8 Release; notice

(a) Confidential information within the possession of the Commission or Division shall not be released or disclosed in whole or in part to any person, except:

1.-4. (No change.)

5. Upon presentation of a duly executed and notarized release authorization by the applicant, registrant, or licensee who furnished the confidential information, to any person making a written request for specifically identified confidential information[.]; **or**

6. Upon order of the Commission in accordance with N.J.A.C. 19:40-4.2.

(b) If confidential information is released or otherwise disclosed to any person under any circumstances other than those identified in (a)3 through [(5)] **5** above, written notice of such release or disclosure shall be given to any applicant, registrant or licensee affected, unless notice would otherwise imperil the integrity of casino operations in this State. To the extent known, the notice shall include:

1.-3. (No change.)

(c) (No change.)

(a)

CASINO CONTROL COMMISSION

Applications
Forms
Business Entity Disclosure Forms
Proposed New Rules: N.J.A.C. 19:41-5.6 and 5.6A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 92a and 92b.

Proposal Number: PRN 1994-206.

Submit written comments by May 4, 1994 to:

Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed new rules codify two of the applicant disclosure forms utilized by the Casino Control Commission ("Commission"). Proposed N.J.A.C. 19:41-5.6 describes the content of the Business Entity Disclosure Form—Corporate. Proposed N.J.A.C. 19:41-5.6A likewise describes the content of the Business Entity Disclosure Form—Partnership. These forms are filed with the Commission by applicants for the issuance or renewal of a casino license, gaming-related casino service industry license, junket enterprise license or gaming school license. The same forms are also filed by certain entities that are required to be qualified under the Casino Control Act, N.J.S.A. 5:12-1 et seq., by virtue of their relationship with such licensees or applicants.

This proposal is part of the Commission's ongoing effort to provide all applicants for licensure or registration with comprehensive regulatory guidelines for the application process. The rules are intended to provide a general description of the types of information requested. The rules cannot, and do not attempt to, reiterate the exact scope and specific detail of each question, which should be discerned by reference to the forms themselves.

Social Impact

The proposal describes disclosure forms that are filed with the Commission by applicants for a casino license, gaming-related casino service industry license, junket enterprise license or gaming school license, and their entity qualifiers. Such codification of forms should prove useful to applicants and licensees, and to those who are considering seeking a license from the Commission, by explaining the types of information which must be furnished to complete the application process.

Economic Impact

The proposed rules are not anticipated to have any significant economic impact. Applicants and licensees who file the forms described in the proposal incur time and expense in compiling the requisite information, and in completing and filing the forms. The regulatory agencies likewise incur costs in reviewing and processing these disclosure forms. However, the Commission has always required this type of disclosure as part of the application process. The proposal herein simply codifies Commission forms, which in itself should not result in any incremental economic impact.

Regulatory Flexibility Analysis

Among those affected by this proposal are applicants for a gaming-related casino service industry license, gaming school license or junket enterprise license. It is likely that some of the enterprises who will apply to the Commission for these types of licenses will qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules outline the information and data which must be provided to the Commission through completion of the Business Entity Disclosure Forms. These businesses will incur administrative time and expense in compiling the requisite information, and in completing and filing the forms.

It would not be feasible for these disclosure requirements to exempt small businesses, or to differentiate between applicants based upon size. Adequate disclosure must be required of all enterprises, without regard to size, to ensure that all licensed entities, and their owners, managers,

supervisors and other principal employees, meet the standards set forth in the Casino Control Act, N.J.S.A. 5:12-12.1 et seq.

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

19:41-5.6 [(Reserved)] **Business Entity Disclosure Form—Corporate**

(a) A Business Entity Disclosure Form Corporate (BED—Corporate) shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1. Current or former official and trade names used by the corporation, and the dates of use;

2. The reason for filing, including the name of the license applicant and the type of license sought and, if the license applicant is other than the corporation, the nature of the corporation's relationship to the license applicant;

3. Date and place of incorporation;

4. Current or former business addresses of the corporation;

5. A description of the present and any former business engaged in by the corporation and its holding companies, subsidiaries and intermediary companies;

6. The name, last known address, occupation and date of birth of each incorporator;

7. The name, home address, business address, date of birth and occupation of current and former directors and trustees, and the dates such position was held;

8. The name, home address, business address, date of birth and title of current officers of the corporation, and the dates of office;

9. The name, last known address, date of birth and occupation of former officers of the corporation, and the dates of office;

10. Annual compensation of partners and officers;

11. The name, business address, date of birth and position of each person, other than a partner or officer, who receives annual compensation of more than $25,000, and the length of time employed and amount of compensation;

12. A description of all bonus, profit sharing, pension, retirement, deferred compensation or similar plans;

13. A description of the nature, type, number of shares, terms, conditions, rights and privileges of all classes of stock issued or to be issued;

14. The name, home address and date of birth of each shareholder, the class of stock held, number of shares held and the percentage of outstanding voting or non-voting stock held;

15. A description of the nature, type, terms, covenants, conditions and priorities of all outstanding debt and security devices utilized by the corporation;

16. The name, address and date of birth of each person holding the debt or security devices in (a)15 above, the type of debt instrument held, the original debt amount and current balance;

17. A description of the nature, type, terms and conditions of all securities options, including the title and amount of securities subject to option, the name of each option holder and the market value at the time of issuance;

18. The following information for each account held in the name of the corporation or its nominee, or otherwise under the direct or indirect control of the corporation:

i. The name and address of the financial institution;

ii. Type of account;

iii. Account number; and

iv. Dates held;

19. The name and address of all persons with whom the corporation has contracts or agreements of over $10,000 in value, including employment contracts of more than one year duration, or who have supplied goods and services within the past six months, and the nature of such contract or the goods and service provided;

20. The name and address of each company in which the corporation holds stock, type of stock held, purchase price per share, number of shares held, and percentage of ownership;

21. Information regarding any transaction involving a change in the beneficial ownership of the corporation's equity securities on the part of any director, officer or beneficial owner of more than 10 percent of any class of equity security;

22. A description of any civil, criminal and investigatory proceedings in any jurisdiction, for the corporation and each director, trustee or officer as follows:

i. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;

ii. Any criminal proceeding in which such person has been a party or has been named as an unindicated co-conspirator;

iii. Existing civil litigation to which the corporation is a party, if damages are reasonably expected to exceed $10,000, except for claims covered by insurance; and

iv. Any judgment, consent decree or consent order entered against the corporation pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction;

23. For the corporation and any holding or intermediary company, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law; and any receiver, fiscal agent, trustee or similar officer appointed for the property or business of the partnership or any partner;

24. Whether the corporation has had any license or certificate denied, suspended or revoked by any government agency in this State or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the reasons therefor and the facts related thereto;

25. Whether the corporation or any director, officer, employee or person acting on behalf of the corporation has made bribes or kickbacks to any employee, company, organization or government official;

26. Whether the corporation has:

i. Donated or loaned corporate funds or property for the use or benefit of or in opposing any government, political party, candidate or committee;

ii. Made any loans, donations or disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions; or

iii. Maintained a bank account or other account not reflected on the books or records of the corporation, or maintained any account in the name of a nominee of the corporation;

27. The names and addresses of any current or former directors, officers, employees or third parties who would have knowledge or information concerning (a)26i-iii above;

28. A copy of each of the following:

i. Annual reports to shareholders for the last five years;

ii. Any annual reports prepared within the last five years on Form 10K pursuant to Sections 13 or 15d of the Securities Exchange Act of 1934;

iii. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;

iv. Copies of all annual financial statements prepared in the last five fiscal years, any exceptions taken to such statements by an independent auditor and the management response thereto;

v. The most recent quarterly unaudited financial statement prepared by or for the corporation which, if the corporation is registered with the Securities Exchange Commission (SEC), may be satisfied by providing a copy of the most recently filed Form 100;

vi. Any current report prepared due to a change in control of the corporation, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the corporation's certifying accountant, or other material events, which, if the corporation is registered with the SEC, may be satisfied by providing a copy of the most recent filed Form 8K;

vii. The most recent Proxy or Information Statement filed pursuant to Section 14 of the Securities Exchange Act of 1934;

viii. Registration Statements filed in the last five years pursuant to the Securities Act of 1933; and

ix. All reports and correspondence submitted in the last five years by independent auditors for the corporation which pertain to the issuance of financial statements, managerial advisory services or internal control recommendations;

29. A certified copy of the articles of incorporation, charter and by-laws of the corporation, and all amendments and proposed amendments thereto;

30. An organizational chart of the corporation, including position descriptions and the names of persons holding each position;

31. Copies of Internal Revenue Service Forms 1120 (Corporate Income Tax Return) and 941 (Employer's Quarterly Federal Tax Return) filed for the last five years; and

32. A listing of any records, documents or other information submitted as appendices to the BED-Corporation.

(b) In addition to the information in (a) above, a completed BED-Corporate may include the following documents, which shall be dated and signed by the president, chief executive officer or sole proprietor, and notarized:

1. A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the corporation as requested by the Commission or the Division;

2. A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the corporation from any disclosure or publication of information acquired during the license or investigation process, in accordance with N.J.S.A. 5:12-80b;

3. Consent to inspection, searches and seizures and the supplying of handwriting exemplars, in accordance with N.J.S.A. 5:12-80c; and

4. An affidavit of truth.

19:41-5.6A Business Entity Disclosure Form—Partnership

(a) A Business Entity Disclosure Form Partnership (BED—Partnership) shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1. Current and former official or trade names used by the partnership, and the dates of use;

2. The reason for filing, including the name of the license applicant, the type of license sought and, if the license applicant is other than the partnership, the nature of the partnership's relationship to the license applicant;

3. Current or former business addresses of the partnership;

4. The name, home address, business address, date of birth and occupation of each partner, a description of the partnership interest held and the dates of the partnership interest;

5. Name, last known address, occupation, date of birth of former partners, the percentage of interest last held and the dates of the partnership interest;

6. If the partnership is a license applicant, any assignment, pledge, hypothecation or sale of any partnership interest;

7. A description of the present and any former business engaged in by the partnership;

8. The name, home address, business address, date of birth and title of each officer, and the dates of office;

9. The name, last known address, date of birth and occupation of former officers, and the dates of office;

10. Annual compensation of partners and officers;

11. The name, business address, date of birth and position of each person, other than a partner or officer, who receives annual compensation of more than $25,000, and the length of time employed and amount of compensation;

12. A description of all bonus, profit sharing, pension, retirement, deferred compensation or similar plans;

13. A description of all outstanding debt, and the name, address and date of birth of each debtholder, the type of debt instrument held, the original debt amount and current balance;

14. The following information for each account in the name of the partnership or its nominee, or otherwise under the direct or indirect control of the partnership:

i. The name and address of the financial institution;

ii. Type of account;

iii. Account number; and

iv. Dates held;

15. The name and address of all persons with whom the applicant has contracts or agreements of over $10,000 in value, including employment contracts of more than one year duration, or who have supplied goods and services within the past six months, and the nature of such contract or the goods and service provided;

16. A description of any civil, criminal and investigatory proceedings in any jurisdiction, for the partnership and each partner or officer as follows:

i. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;

ii. Any criminal proceeding in which such person has been a party or has been named as an unindicted co-conspirator;

iii. Any existing civil litigation in which such persons are parties in their official capacity, if damages are reasonably expected to exceed $10,000, except for claims covered by insurance; and

iv. Any judgment, consent decree or consent order entered against the partnership or any partner pertaining to a violation or alleged violation of the federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction;

17. For the partnership and any partner, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law; and any receiver, fiscal agent, trustee or similar officer appointed for the property or business of the partnership or any partner;

18. Whether the partnership or any partner has had any license or certificate denied, suspended or revoked by any government agency in this State or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the reasons therefor and the facts related thereto;

19. Whether the partnership or any partner, officer or employee, or any person acting on behalf of the partnership made bribes or kickbacks to any employee, company, organization or government official;

20. Whether the partnership has maintained a bank account or other account not reflected on the books or records of the partnership, or maintained an account in a name of a nominee of the partnership;

21. The names of any current or former partners, officers, employees or third parties who would have knowledge or information concerning the (a)19 and 20 above;

22. An organizational chart of the partnership, including position descriptions and the names of persons holding each position;

23. A copy of all partnership agreements and amendments and proposed amendments thereto, and all contracts or agreements between any two or more partners relating to the assets, property, profits, management or control of the partnership;

24. A copy of each of the following:

i. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of source and application of funds, and copies of all annual financial statements prepared in the last ten fiscal years with respect to the partnership;

ii. Any Registration Statements filed with the Securities Exchange Commission (SEC) in the last five years pursuant to the Securities Act of 1933; and

iii. All reports submitted within the last five years by independent auditors for the partnership which pertain to the issuance of financial statements or managerial advisory services;

25. Copies of Internal Revenue Service Forms 1065 (Partnership Return Form) and 941 (Employer's Quarterly Federal Tax Return) filed for the last five years; and

26. A listing of any records, documents or other information submitted as appendices to the BED—Partnership;

(b) In addition to the information in (a) above, a completed BED—Partnership may include the following:

1. A certification of truth, signed and dated by the applicant's attorney of record;

2. The following documents. which shall be dated and signed by a partner or general partner or the sole proprietor and notarized:

i. A Release Authorization directing all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the partnership as requested by the Commission or the Division;

ii. A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the partnership from any disclosure or publication of information acquired during the license or investigation process, in accordance with N.J.S.A. 5:12-80b;

iii. Consent to inspection, searches and seizures and the supplying of handwriting exemplars, in accordance with N.J.S.A. 5:12-80c; and

iv. An affidavit of truth.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Transportation of Slot Cash Storage Boxes, Slot Drop Buckets and Slot Drop Boxes to Count Rooms

Proposed Amendments: N.J.A.C. 19:45-1.17 and 1.42

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-5, 69(a), 70(j), 99(a) and 100(c).

Proposal Number: PRN 1994-207.

Submit written comments by May 4, 1994, to:

Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

N.J.A.C. 19:45-1.17(c) presently requires that slot cash storage boxes which have been removed from bill changers must be transported to the casino's count room in the presence of a Commission inspector, a security guard and a count room supervisor. The cage supervisor may be substituted for the count room supervisor, but only when slot cash storage boxes are removed on an emergent basis.

This proposal would streamline and simplify the above procedure by permitting a member of the casino licensee's accounting department to be substituted for the count room supervisor for the transport of slot cash storage boxes, whether on a regular or emergency basis. This substitution would enable slot cash storage boxes to be expeditiously transported to the count room when a count room supervisor is not readily available, without in any way diminishing the security needed for the transfer of these gross revenue funds.

Although subsection (b) of N.J.A.C. 19:45-1.17 would also be revised to conform stylistically with the amendments to section (c), the substantive requirements of subsection (b) would remain unchanged.

The proposal would also amend N.J.A.C. 19:45-1.42(c)2 to incorporate the revised requirements of N.J.A.C. 19:45-1.17(c). Thus, although a total of four persons are still required for the removal of slot drop buckets, slot drop boxes and slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.42(b), only three persons would be required by N.J.A.C. 19:45-1.42(c)2 for their transport to the count room, in conformance with N.J.A.C. 19:45-1.17(c).

Lastly, N.J.A.C. 19:45-1.42(c)3 would be amended to clarify that except for members of the casino accounting department participating in the emergency removal of a slot cash storage box or slot drop box, casino security department employees and representatives of the Commission and Division, all persons participating in the removal of slot drop buckets, slot drop boxes and slot cash storage boxes must wear the pocketless one-piece garments described in the rule.

Social Impact

This proposal would only make minor modifications in the existing procedures for the transportation of slot drop buckets, slot drop boxes and slot cash storage boxes to the count room, and is not expected to have any social impact beyond the streamlining of procedures for the casino licensee.

Economic Impact

This proposal should streamline and expedite the transfer of slot cash storage boxes from the casino floor to the count room by allowing other personnel from the Accounting Department to substitute for the count room supervisor, who may not always be readily available when the boxes are ready to be transported to the count room. It is anticipated that this rule amendment may enable casino licensees to utilize their casino personnel more efficiently.

Regulatory Flexibility Statement

The proposed amendments will only affect casino licensees, none of which is a small business as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.17 Drop boxes, transportation to and from gaming tables; slot cash storage boxes, transportation to and from bill changers; storage in count room

(a) (No change.)

(b) All drop boxes removed from the gaming tables shall be transported **directly to and secured in the count room** by one security department member and one casino supervisor, at a minimum[, directly to, and secured in the count room].

(c) All slot cash storage boxes removed from [the] bill [changer] **changers** shall be transported **directly to and secured in the count room** by a Commission inspector, security department member and [count room supervisor] **a member of the casino accounting department**, at a minimum[, directly to and secured in the count room except that slot cash storage boxes removed on an emergency basis shall be transported by a Commission inspector, security department member and cage supervisor or count room supervisor, at a minimum, directly to and secured in the count room].

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

19:45-1.42 Removal of slot drop buckets, slot drop boxes and slot cash storage boxes; meter readings

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

(c) Procedures and requirements for removing slot drop buckets, slot drop boxes and slot cash storage boxes from the casino shall be as follows:

1. (No change.)

2. All slot drop buckets, slot drop boxes and slot cash storage boxes removed from compartments shall be transported [by at least the employees described in (b) above and a Commission inspector] directly to, and secured in the count room **by the personnel required by N.J.A.C. 19:45-1.17(c),** for the counting of their contents[, except that slot cash storage boxes and slot drop boxes removed on an emergency basis shall be transported by at least a Commission inspector, a casino security department member and a cage supervisor or count room supervisor directly to and secured in the count room]; and

3. [All] **Except for members of the casino accounting department participating in the emergency removal of a slot cash storage box or slot drop box, casino security department employees and representatives of the Commission and Division, all** persons participating in the removal of slot drop buckets, slot drop boxes and slot cash storage boxes[, except for casino security department employees and representatives of the Commission and Division,] shall wear as outer garments only a full-length, one-piece pocketless garment with openings only for the arms, feet and neck.

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

(a)

CASINO CONTROL COMMISSION

Use of Match Play Coupons in Craps

Proposed Amendments: N.J.A.C. 19:45-1.18 and 1.46; 19:47-1.3 and 1.9

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f), 99, and 100.

Proposal Number: PRN 1994-208.

Submit written comments by May 4, 1994 to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

The Commission recently proposed and adopted amendments permitting the use of "match play" coupons at table games which have designated betting areas, such as blackjack, red dog, and baccarat. See 25 N.J.R. 5902(a), 26 N.J.R. 1373(b).

One of the comments submitted in response to the above proposal suggested that the proposal be expanded to include the use of such coupons at games which do not have individual betting areas, such as craps and roulette. After considering that comment, the Commission determined to adopt the original proposal without substantive changes at 26 N.J.R. 1373(b) and to review the possible use of match play coupons in craps and roulette.

As a result, the Commission is proposing to amend N.J.A.C. 19:45-1.18 and 1.46 to permit the use of a match play coupon for the "Pass" and "Don't Pass" bets in craps, which would be placed on the Pass Line and the Don't Pass Line, respectively. Portions of the craps rules, N.J.A.C. 19:47-1.3 and 1.9, would also be amended to referenece the use of match play coupons for Pass and Don't Pass wagers.

A match play coupon still would not be permitted in roulette, due to the constricted nature of the roulette layout and the manner in which roulette wagers are made. However, the Commission will also be considering the publication of another proposal, which would permit the use of a match play chip in roulette and other authorized table games, with the exception of Poker, in which players bet against each other instead of betting against the house.

Social Impact

This proposal would expand the use of match play coupons to certain bets in the game of craps, which may promote and stimulate additional interest in that table game.

Economic Impact

The use of a match play coupon in the game of craps could have a favorable economic impact upon casino patrons, since it would allow players to make a larger wager without any additional financial risk, but would result in increased payouts if the wager wins.

However, the overall eocnomic impact of the proposal is not known at this time, since it is not possible to predict whether match play coupons will actually generate additional patron interest and additional revenues in the game of craps, and whether the expense of operating such a promotion will justify any additional revenues which the promotion may generate.

Regulatory Flexibility Statement

This amendement will affect only New Jersey casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.18 Procedure for accepting cash and coupons at gaming tables

(a) (No change.)

(b) Whenever a match play coupon and an equivalent amount of gaming chips are presented as a wager by a patron, pursuant to N.J.A.C. 19:45-1.46(j)6, at an authorized game in which a match play coupon may be used:

1. The coupon shall be placed underneath the gaming chips in the patron's betting area**, or in craps, underneath the gaming chips for the patron's wager on the Pass or Don't Pass Line**, in such a way that the type and value of the coupon is visible at all times;

2.-4. (No change.)

(c) (No change.)

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(i) (No change.)

(j) Coupons shall be redeemed in the following manner:

1.-3. (No change.)

4. A match play coupon shall be redeemed only at a gaming table which offers an authorized game in which patrons wager only against the house and**, except for the Pass and Don't Pass wagers in craps,** which has an individual betting area for each player on the gaming table layout. Such a coupon shall be redeemed only by a dealer, and only if accompanied by the proper amount of gaming chips required by the coupon. The dealer shall, in accordance with N.J.A.C. 19:45-1.18, accept the coupon as part of the patron's wager and deposit the coupon into the drop box after the wager is won or lost.

(k)-(o) (No change.)

19:47-1.3 Making and removal of wager

(a) (No change.)

(b) All wagers at craps shall be made by placing gaming chips**, match play coupons (only for Pass or Don't Pass wagers)** or plaques on the appropriate areas of the craps layout, except that verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and that such cash is expeditiously converted into gaming chips or plaques in accordance with the regulations governing the acceptance and conversion of such instruments.

(c)-(e) (No change.)

19:47-1.9 Invalid roll of the dice

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

(d) A throw of the dice which results in the dice coming into contact with any **match play coupons or** chips on the table, other than the craps bank of chips located in front of the Boxman, shall not be a cause for a call of "No Roll".

(b)

CASINO CONTROL COMMISSION

Gaming Equipment

Gaming Chips; Value and Non-value; Physical Characteristics Non-value Chips; Impressment and Inventory; Permitted Uses

Nature and Exchange of Gaming Chips and Plaques

Reproposed Amendments: N.J.A.C. 19:46-1.1 and 1.5

Reproposed Repeal and New Rule: N.J.A.C. 19:46-1.4

Proposed Amendments: N.J.A.C. 19:40-1.2; 19:45-1.1; and 19:46-1.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69, 70(i), (l) and (m), 99(a)(15), and 100(d).

Proposal Number: PRN 1994-209.

Submit written comments by May 4, 1994 to:
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The agency proposal follows:

Summary

On July 19, 1993, the New Jersey Casino Control Commission (Commission) published in the New Jersey Register a proposed repeal, new rule, and related amendments regarding, among other things, the physical characteristics of gaming chips. (See 25 N.J.R. 3111(a)). The proposed amendments provided that gaming chips were to have a specified weight and thickness, obligations that had not been previously imposed.

Consequently, the Commission received several comments to the proposal which stressed the need to provide greater flexibility in the design characteristics of gaming chips. Such flexibility is appropriate only insofar as it does not compromise the security and integrity of gaming operations.

Given that gaming chips have been manufactured and used for many years without the regulations specifying their weight and thickness, and that the inclusion in the earlier proposal of such dimensions was primarily intended as a base from which to develop the concept of a one-piece, flat surface gaming chip, the Commission is republishing the proposal in order to provide the requested flexibility. Thus, the diameter and thickness of gaming chips, although still provided for in the reproposed amendments, will now be acceptable if each of those dimensions is within manufacturing tolerances approved by the Commission.

Included with the reproposal are newly proposed amendments to N.J.A.C. 19:40-1.2 and 19:45-1.1, which merely reorganize the definitions of gaming chips and plaques. Also newly proposed are amendments to N.J.A.C. 19:46-1.2, which are intended, where appropriate, to conform the provisions on gaming plaques with those on gaming chips.

Unlike tokens, the weight of gaming chips and plaques is not as critical to ensure the security and integrity of gaming operations. Nevertheless, gaming chips and plaques have to be of a sufficient weight so that they can be used easily in gaming operations.

Accordingly, the amendments as proposed or reproposed herein provide for that flexibility by permitting a casino licensee to select the weight of the gaming chips and plaques that it issues, provided that the weight does not impair the specified security, integrity or operational concerns. The Commission is not aware that the weight of any currently approved chips or plaques fails to meet those standards.

The proposed or reproposed amendments, in partial response to comments received from the Division of Gaming Enforcement (Division), modify the original proposal by prohibiting a casino licensee from using chips or plaques if it knows, or reasonably should know, that they are materially different from their approved samples. In this way, use of the actual chip must await the approval of the sample, and thereby regulatory resources are conserved because the sample, rather than each chip or plaque, is reviewed for compliance with the Act and the Commission's regulations. Conversely, if a casino licensee finds a chip or plaque that is in any material respect different from its approved sample, that chip or plaque is no longer fit for casino use and must be removed from circulation.

The reproposal also varies from the original publication in that it eliminates for secondary colors, other than those used as edge spots on value chips, the requirement that they be within the tolerances specified for primary colors.

In commenting on the original proposal, the Division saw no reason to distinguish between one-piece, flat surface chips and two-piece chips. Consequently, it recommended abandoning the requirement that two-piece chips have certain identical information appear both on the rim and the center of the chip.

Given that the Commission has the necessary authority to require sufficient anti-counterfeiting measures for all types of chips, it agrees with the Division that it is unnecessary to use the categories "one-piece," "two-piece" or "flat surface" to classify gaming chips. Accordingly, those concepts do not appear in the reproposal, which imposes no requirements based solely thereon.

Aside from minor variations due to the elimination of the categories "one-piece," "two-piece" and "flat surface," the remainder of the reproposed repeal, new rule and related amendments are as originally proposed as explained below.

When the gaming chip regulations were originally written, roulette was the only game at which "non-value" chips could be used. Pokette has been added to that list, and there are other games which, if authorized by the Commission, would also require "non-value" chips, that is, chips which have no specific denomination but which are assigned, on a per-player basis, a value depending upon the "buy-in" of that player, who is entitled to use those chips only at that one game, and then only on that occasion.

In the main, however, the gaming chip regulations treat roulette as the only game where "non-value" chips are necessary, and create somewhat unwieldy exceptions thereto in order to deal with the new games, variations or composites at which "non-value" chips are also used. Thus, the proposed amendments and new rule, upon adoption, will also simplify the procedures that will need to be followed in the event the Commission authorizes other games at which "non-value" chips are used.

The proposed amendments and new rule also reorganize the general structure of the chip regulations. In doing so, the proposed amendments and new rule, to the greatest extent possible, incorporate existing requirements and make no substantive changes in the standards that apply to gaming chips. For that matter, the proposed amendments and new rule, as previously mentioned, relax in some instances the requirements for the design of gaming chips, provided the chips continue to meet strict security standards.

For example, those provisions on the impressment and inventory of non-value chips and on their permitted uses are removed from the section describing a gaming chip's physical characteristics, and are transferred to N.J.A.C. 19:46-1.4, which has been amended to deal exclusively with those topics.

Additionally, those provisions on the exchange of non-value chips are being moved from the section which describes the physical characteristics of chips to where they more properly belong in N.J.A.C. 19:46-1.5 on the nature and exchange of chips. Minor technical changes are also being made to that section to make clear that non-value chips may only be redeemed from patrons for value chips, that a casino licensee, consistent with N.J.S.A. 5:12-100k, is obligated to redeem its value chips for one of its casino checks, rather than cash, only upon request of a patron who surrenders value chips in excess of $25.00, and that a casino licensee may redeem, pursuant to a system submitted to and approved by the Commission, its value chips that are presented by any other legally operated casino licensee.

Under the current regulations, the Commission may approve value chips in denominations of $1,000 or $5,000 that do not meet any of the requirements set forth in the regulations, provided that in doing so the control, security and integrity of the chips, and the operation of the games, are not affected. The Commission has exercised that authority to approve high denomination chips which have a larger diameter than the diameter of chips of lower denominations. Given the Commission's limited exercise of that authority in the past, the proposed amendments permit the Commission to approve high denomination value chips that are one and 11/16ths inches in diameter, but require those chips to comply with all other applicable standards.

Moreover, the reproposal leaves intact certain sections of the proposal, despite some comments urging that they be modified. For instance, Paul-Son Dice and Card, Inc., and related entities (Paul-Son), all of which are licensed chip manufacturers or distributors, stated that it historically has submitted design specifications accompanied by "notched" separated samples in seeking preliminary approval of its chips, and sought inclusion of that method in the regulations.

Given that nothing in the original proposal or in the reproposal (N.J.A.C. 19:46-1.1(c)) prevents Paul-Son from submitting its notched samples along with its design specifications, the Commission declines to make the suggested changes, which leave in doubt whether the submission and approval of a fully-integrated sample chip is required. Rather, the proposed and reproposed amendments, consistent with existing practice, require complete and integrated samples to accompany the submission of design specifications. N.J.A.C. 19:46-1.1(c)2. In this way, it is anticipated that the length of the approval process will be shortened because, once the design specifications are approved, the Commission and the Division will immediately have available for review a sample chip or plaque.

Ultimately, submission and approval of a complete and integrated sample of each gaming chip and plaque, manufactured in accordance with its approved design specifications, is required. Of course, once the design specifications are approved, the Commission anticipates that only in the unusual case will any sample chip or plaque that accompanied those specifications fail to win approval also.

Another Paul-Son suggestion not included in the reproposal concerns the unique center shape required on each gaming chip. Nothing in the original proposal or the reproposal requires, as Paul-Son seems to suggest, that the "shape" conform to a specific geometric pattern.

N.J.A.C. 19:46-1.1(h)4. For that matter, the Commission has approved a casino licensee's value chips of different denominations, each with circular metal inlays that are surrounded by a unique shape designed into the rim of the chip. Thus, the reproposed amendments only require a unique design for the center of the chip, which does not necessarily have to be co-extensive with the chip's inlay, if any.

The Commission is also republishing the proposal (N.J.A.C. 19:46-1.1(j)) without making "edge spot" plural. N.J.A.C. 19:40-1.4(a)3.

One section of this reproposal, N.J.A.C. 19:46-1.5, is also the subject of a separate set of proposed amendments, dealing with slot tokens and prize tokens, that is also being published in this issue of the New Jersey Register. Given that each proposal addresses a different subject matter, all of the changes to the slot token and prize token proposal do not appear in this reproposal on gaming chips and vice versa.

For instance, this proposal leaves intact the references to "slot token" that appear throughout N.J.A.C. 19:46-1.5, whereas it is the specific purpose of the slot token and prize token proposal to remove all references to slot tokens from N.J.A.C. 19:46-1.5 and to recodify the operative requirements so removed as proposed new rules N.J.A.C. 19:46-1.34 through 19:46-1.36. The Commission fully intends to reconcile the two proposals upon adoption, and therefore it would be improper for a reader to infer that one proposal countermands the changes proposed by the other. Please be guided accordingly.

This reproposal on gaming chips supersedes the earlier gaming chip proposal that was published at 25 N.J.R. 3111(a). Accordingly, any comments received in response to the prior proposal will not be considered in connection with the reproposal unless those comments are timely submitted in writing during the current comment period. Of course, the original commenters, and any other interested persons, are welcome to submit additional written comments, provided that they do so timely in accordance with this reproposal.

Social Impact

There will be no social impact beyond the casino industry as a result of the reproposal, which only specifies the design characteristics for gaming chips and plaques, makes technical amendments, or reorganizes already existing requirements on non-value chip inventory and impressment, and the permitted uses thereof.

Economic Impact

The Commission anticipates that the additional costs, if any, to casino licensees seeking to comply with the reproposed and proposed amendments and new rules will be nominal.

Of course, if there is an increase in competition among chip manufacturers as a result of the proposed amendments, then the Commission anticipates those companies which are unable to compete effectively may suffer adverse economic consequences. However, any such negative consequences are a product of the marketplace, rather than a direct result of the reproposed amendments, proposed amendments and reproposed new rules.

Regulatory Flexibility Statement

Under the Commission's existing regulations, casino service industries, some of which may be a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., are required to be licensed in order to provide goods and services, such as gaming chips and plaques, to casino licensees. The reproposed amendments, new rules and proposed amendments do not modify those licensing requirements.

Further, casino service industries which supply gaming chips or plaques to casino licensees are currently required to adhere to existing standards on the design and manufacture of those items.

Accordingly, no regulatory flexibility analysis is required because the reproposed amendments and new rules, and the proposed amendments impose no additional reporting, recordkeeping or other compliance requirements on any such casino service industries, and because none of the casino licensees which will be directly affected by the reproposed amendments and new rules, and the proposed amendments is a small business.

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

19:40-1.2 Definitions

(a) (No change.)

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

...

"Gaming chip" and "gaming plaque" are defined in N.J.A.C. 19:46-1.1 and 19:46-1.2, respectively.

...

19:45-1.1 Definitions

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

...

["Gaming chips and plaques" is defined in N.J.A.C. 19:46-1.1 and 19:46-1.2, respectively, of the Gaming Equipment Regulation.]

...

19:46-1.1 Gaming chips; value and non-value; physical characteristics

[(a) Each gaming chip issued by a casino shall be round in shape, be 1-9/16 inches in diameter and have clearly and permanently impressed, engraved or imprinted thereon the name of the casino issuing it and the specific value of the chip except that a casino may issue gaming chips without a value impressed, engraved or imprinted thereon for the purpose of gaming at roulette. Gaming chips with a value contained thereon shall be known as "value chips" and gaming chips without a value contained thereon shall be known as "non-value chips."

(b) Value chips may be issued by a casino licensee in denominations of $.50, $1.00, $2.50, $5.00, $20.00, $25.00, $100.00, $500, $1,000 and $5,000. It, however, shall be within the discretion of the casino licensee to determine which of these denominations will be utilized in its casino or casino simulcasting facility and what amount of each denomination will be necessary for the conduct of gaming operations.]

(a) Each gaming chip issued by a casino licensee for use in gaming or simulcast wagering in its casino or casino simulcasting facility shall strictly comply with the requirements of the Act, this chapter and N.J.A.C. 19:45 and 19:47.

(b) Each gaming chip issued by a casino licensee shall be in the form of a disk and, subject to manufacturing tolerances approved by the Commission, shall have: a uniform diameter of one and 9/16ths inches (39.69 mm); and a uniform thickness of 0.125 inches (3.18 mm), unless the gaming chip contains indentations or impressions approved pursuant to (c) below. Each of the two surfaces of a gaming chip across which the diameter of the chip can be measured shall be known as a "face." The surface of a gaming chip across which its thickness can be measured in a perpendicular line from one face to the other shall be known as its "edge." The casino licensee issuing the chip shall ensure that the weight it selects for the chip does not impair, disrupt or impede:

1. The security of the chip and its ease of use in gaming or simulcast wagering transactions; and

2. The integrity of gaming and simulcast wagering operations.

(c) No gaming chip shall be issued by a casino licensee or utilized in a casino or casino simulcasting facility unless and until:

1. The design specifications of the proposed gaming chip are, prior to the manufacture of the gaming chip, submitted to and approved by the Commission, which submission shall include a detailed schematic depicting the actual size and, as appropriate, location of the following:

i. Each face, with any indentations or impressions;

ii. The edge; and

iii. Any colors, words, designs, graphics or security measures contained on the gaming chip; and

2. A sample gaming chip, manufactured in accordance with its approved design specifications, is submitted to and approved by the Commission; provided, however, that:

i. Each submission of design specifications pursuant to (c)1 above shall be accompanied by a sample gaming chip that is manufactured in accordance with those unapproved specifications; and

ii. No sample gaming chip submitted pursuant to (c)2i above shall qualify for consideration as an approved sample until the design specifications corresponding to that sample have been approved.

(d) No casino licensee shall issue, use or allow a patron to use in its casino or casino simulcasting facility any gaming chip that it knows, or reasonably should know, is materially different from the sample of that gaming chip approved by the Commission.

(e) Each face of a gaming chip issued by a casino licensee shall be designed and manufactured, in a manner approved by the Commission after consultation with the Division, with sufficient graphics or other security measures so as to prevent, to the greatest extent possible, the counterfeiting of such gaming chip; provided, however, that each value chip with a denomination of $25.00 or more shall contain at least three such anticounterfeiting measures.

(f) Each gaming chip which contains a denomination on each face thereof shall be known as a "value chip." Each gaming chip which does not contain a denomination on either face thereof shall be known as a "non-value" chip.

(g) A casino licensee shall be authorized to issue and use value chips in denominations of $.50, $1.00, $2.50, $5.00, $20.00, $25.00, $100.00, $500, $1,000 and $5,000, and in such quantities as the casino licensee may deem appropriate to conduct gaming or simulcast wagering in its casino or casino simulcasting facility. A casino licensee may issue value chips in denominations of $1,000 or $5,000, which, subject to manufacturing tolerances approved by the Commission, shall have a uniform diameter of one and 11/16th inches (42.86 mm), provided that each such chip otherwise complies with the provisions of this chapter.

(h)Each value chip issued by a casino licensee shall contain certain identifying characteristics which shall appear at least once in the identical manner on each face of the gaming chip and shall be applied by a method and in a manner which ensures that each such characteristic shall be clearly visible and remain a permanent part of the gaming chip. These characteristics shall, at a minimum, include:

1. The denomination of the value chip, expressed in numbers;

2. The name, trade name, or other approved identification of the casino licensee issuing the value chip;

3. The primary color of the value chip; and

4. A center design, in a shape approved by the Commission, that is unique to each denomination of value chip issued by a casino licensee and that, upon approval, shall not be used on the gaming chips of any other casino licensee.

[(c)]**(i)** Each **face of a particular** denomination of value chip [shall have a different primary color from every other denomination of value chip. The primary color to be utilized by each casino licensee for each denomination of value chip shall be] **issued by a casino licensee shall contain a predominant color unique to that denomination to be known as the "primary color." A "secondary color" on a value chip is any color, other than that chip's primary color, that the Commission requires a casino licensee to include on the face or edge of the chip as a contrast to the chip's primary color. A primary color, when viewed both in daylight and under incandescent light, shall be within the tolerances established in this subsection, as follows:**

1.-10. (No change.)

[11. Chip colors shall fall within the above tolerances when such chips are viewed both in daylight and under incandescent light. In conjunction with the aforementioned primary colors, each casino licensee shall utilize contrasting secondary colors for the edge spots on each denomination of value chip. Unless otherwise approved by the Commission, no casino licensee shall use a secondary color on a specific denomination of chip identical to the secondary color used by another casino licensee on that same denomination of chip.

(d) Each denomination of value chip utilized in a casino or casino simulcasting facility shall, unless otherwise authorized by the Commission:

1. Have its center portion, which contains the value of the chip and the name or trade name of the casino licensee issuing it, of a different shape for each denomination of chip;

2. Have the name, trade name, or other approved identification of the casino licensee issuing it and the denomination of such chip molded into the outer rim of the chip;

3. Have its circumference so designed so as to be able to determine on closed circuit black and white television the specific denomination of such chip when placed in a stack of chips of other denominations; and

4. Be designed, manufactured and constructed so as to prevent, to the greatest extent possible, the counterfeiting of such chips.

(e) Notwithstanding the above, the Commission shall have the discretion to approve a value chip in the denomination of $1,000 or $5,000 at variance with the requirements of this section provided that any variation is specifically identified as such by the casino licensee and approved as an acceptable alternative by the Commission and provided further that said variation does not affect control, security or integrity of said chips or the operation of the games.]

(j) The edge of each value chip issued by a casino licensee shall contain an identifying characteristic, to be known as an "edge spot," which shall be unique to each denomination of value chip. The edge spot on each value chip shall:

1. Be applied by a method and in a manner which ensures that the edge spot shall be clearly visible and remain a permanent part of the gaming chip;

2. Be created by using:

i. The primary color of the chip; and

ii. One or more secondary colors that, when viewed both in daylight and under incandescent light, are within the tolerances specified in (i) above; and

3. Consist, at a minimum, of a design or pattern which a natural person with adequate training could readily use to identify, when viewed through a closed circuit black and white television system approved by the Commission, the denomination of each value chip when a value chip is placed in a stack of gaming chips, in the table inventory or in any other location where only the edge of the value chip is visible.

(k) The edge spot used on a value chip of a particular denomination shall be unique to the casino licensee which issues the chip and shall not be used by any other casino licensee unless otherwise approved by the Commission.

[(f)]**(l)** Each non-value chip utilized in a casino or casino simulcasting facility shall be issued solely for the purpose of gaming at roulette**, pokette or any other authorized game which the Commission determines is appropriate for the use of non-value chips.** The non-value chips at each [roulette] **gaming** table shall **be used only at the gaming table to which the non-value chips are assigned.**

(m) Each non-value chip issued by a casino licensee shall contain certain identifying characteristics which shall appear at least once in the identical manner on each face of the gaming chip and shall be applied in a manner which ensures that each such characteristic shall be clearly visible and remain a permanent part of the gaming chip. These characteristics shall, at a minimum, include:

1. [Have the] **The** name [or], trade name **or other approved identification** of the casino licensee issuing [them molded into the center of such chip] **the non-value chip**;

2. [Contain a] A design, insert or symbol [differentiating those] **which will permit a set of non-value** chips **being used at a particular gaming table to be distinguished** from the non-value chips being used at every other [roulette] **gaming** table in the casino or casino simulcasting facility;

3. [Have] **The name of the particular authorized game at which the non-value chip shall exclusively be used; provided, however, that a casino licensee may use a non-value chip which otherwise complies with the applicable provisions of this section and contains the word** "Roulette" [impressed in the rim] **on the faces thereof at any authorized game which the Commission determines is appropriate for the use of non-value chips**; and

4. [Be designed, manufactured and constructed so as to prevent, to the greatest extent possible, the counterfeiting of such chips.] **Such**

color combinations as the Commission may approve so as to readily distinguish the non-value chips of each player at a particular gaming table from:

i. The non-value chips of every other player at the same gaming table; and

ii. The value chips issued by any casino licensee.

[(g)](**n**) [Each casino licensee shall utilize contrasting secondary colors or designs for the edge spots] **The edge of each non-value chip issued by a casino licensee shall contain an identifying characteristic, to be known as an "edge spot," which shall be unique to each color combination of non-value chip contained in a set of non-value chips which contain the same face design, insert or symbol as required by (m)2 above. The edge spot** on non-value chips **shall:**

1. Be applied by a method and in a manner which ensures that the edge spot shall be clearly visible and remain a permanent part of the gaming chip;

2. Be created using the colors approved for the face of the particular non-value chip pursuant to (m)4 above, in combination with one or more other colors that, when viewed both in daylight and under incandescent light, are within the tolerances specified in (i) above; and

3. Consist, at a minimum, of a design or pattern which a natural person with adequate training could readily use to identify, when viewed through a closed circuit black and white television system approved by the Commission, the player to which the non-value chip has been assigned when the non-value chip is placed in a stack of gaming chips or in any other location where only the edge of a non-value chip is visible.

[(h) Nothing in this section shall preclude a casino licensee from using non-value chips approved for use in roulette at the game of pokette.

(i) Non-value chips issued at a roulette or pokette table shall only be used for gaming at that table and shall not be used for gaming at any other table in the casino or casino simulcasting facility nor shall any casino licensee or its employees allow any patron to remove non-value chips from the table from which they were issued.

(j) No person at a roulette or pokette table shall be issued or permitted to game with non-value chips that are identical in color and design to value chips to non-value chips being used by another person at the same table. When a patron purchases non-value chips, a chip of the same color shall be placed in a slot or receptacle attached to the outer rim of the roulette wheel or, for pokette, in such other device as approved by the Commission. At that time, a marker button denoting the value of a stack of 20 chips of that color shall also be placed in the slot, receptacle or other device.

(k) Non-value chips shall only be presented for redemption at the table from which they were issued and shall not be redeemed or exchanged at any other location in the casino or casino simulcasting facility. When so presented, the dealer at such table shall exchange them for an equivalent amount of value chips which may then be used by the patron in gaming or redeemed as any other value chips.

(l) Each casino licensee shall have the discretion to permit, limit or prohibit the use of value chips in gaming at roulette and pokette provided, however, that it shall be the responsibility of the casino licensee and its employees to keep accurate account of the wagers being made at roulette and pokette with value chips so that the wagers made by one player are not confused with those made by another player at the table.

(m) An impressment of each roulette table on the gaming floor shall be completed at least once a week. A casino licensee shall not complete a roulette table impressment unless it provides at least one-half hour prior notice to the Commission. The casino licensee shall record the results of such impressment in the Chip Inventory Ledger and shall utilize a "Non-Value Roulette Chip Impressment" form to perform such impressments as follows:

1. A casino department supervisor shall complete the "Non-Value Roulette Chip Impressment" form to record missing and excess chips and shall deliver the form and excess chips to the main bank or fill bank;

2. Upon receipt of the "Non-Value Roulette Chip Impressment" form a main bank cashier or fill bank cashier shall immediately prepare the chips needed to impress the table; and

3. The casino department supervisor shall then deliver, directly to the appropriate table, the chips needed to impress that table.

(n) The completed "Non-Value Roulette Chip Impressment" form shall be maintained by the Accounting Department and shall contain, at a minimum, the following:

1. Date and time of preparation;

2. Design schematic of the chip and the applicable table number;

3. Signature of the casino department supervisor who completes the "Non-Value Roulette Chip Impressment" form and the roulette table impressment; and

4. Signature of the main bank cashier or fill bank cashier preparing the impressment.

(o) Each casino licensee shall submit to the Commission and Division a monthly summary of the non-value chip inventory for each table/design by color which shall include, at a minimum, the following:

1. The balance on hand at the beginning of the month;

2. The number of non-value chips distributed to the gaming tables during the month;

3. The number of non-value chips returned to iventory during the month; and

4. The balance on hand at the end of the month.

(p) No casino licensee shall issue or cause to be utilized in its casino or casino simulcasting facility any value or non-value chips unless and until such chips are approved by the Casino Control Commission. In requesting approval of such chips, a casino licensee, prior to having any such chips manufactured, shall first submit to the Commission a detailed schematic of its proposed chips which shall show the front, back and edge of each denomination of value chip and each non-value chip and the design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear both as to size and location, on the actual chip. Once the design schematics are approved by the Commission, no value or non-value chip shall be issued or utilized until and unless a sample of each denomination of value chip and each color of non-value chip is also submitted to and approved by the Commission.]

[(q)](**o**) No casino licensee or other person licensed by the Commission shall manufacture for, sell to, distribute to or use in any casino outside of Atlantic City, any value or non-value gaming chips having the same edge **spot and** design **specifications** as those approved for use in Atlantic City casinos and casino simulcasting facilities.

19:46-1.2 Gaming plaques; physical characteristics

(a) [In addition to the issuance of gaming chips, a casino licensee may issue gaming plaques in denominations of $5,000, $10,000, $25,000, $50,000 and $100,000.] **Each gaming plaque issued by a casino licensee for use at authorized games, other than slot machines, in its casino or casino simulcasting facility shall strictly comply with the requirements of the Act, this chapter and N.J.A.C. 19:45 and 19:47.**

(b) [Unless otherwise authorized by the Commission, each] **Each** gaming plaque **issued by a casino licensee** shall be **a solid, one-piece object constructed entirely of plastic or any other substance approved by the Commission and shall have no more than six, and at least two, smooth, plane surfaces. At least two of the plane surfaces, each to be known as a "face," shall be opposite and parallel to each other and identical in shape, which shall be either a** square, [rectangular or oval in shape and] **rectangle or ellipse. All other surfaces of a gaming plaque shall be known collectively as the "edge." The casino licensee issuing the plaque shall ensure that the weight it selects for the plaque does not impair, disrupt or impede:**

1. The security of the plaque and its ease of use in gaming transactions; and

2. The integrity of gaming operations.

(c) Each face of a square gaming plaque shall measure no smaller than nine square inches. Each face of a rectangular or elliptical gaming plaque shall measure no smaller than three inches in length

by two inches in width [which,] **when measured,** in the case of [oval gaming plaques, shall be measured at the points of greatest length and width] **an elliptical gaming plaque, at its axes.**

(d) A casino licensee shall be authorized to issue and use gaming plaques in denominations of $5,000, $10,000, $25,000, $50,000 and $100,000, and in such quantities as the casino licensee may deem proper to conduct gaming in its casino or casino simulcasting facility. Each **gaming plaque of a specific** denomination [of gaming plaque] utilized by a casino licensee shall be [of a different] **in a** shape **and of a size, as approved by the Commission, which is identical to the shape and size of all other gaming plaques of that denomination and which size and shape readily distinguishes each gaming plaque of that denomination from every gaming plaque of a different denomination.**

(e) Each gaming plaque issued by a casino licensee shall be designed and manufactured, in a manner approved by the Commission after consultation with the Division, with sufficient graphics or other security measures so as to prevent, to the greatest extent possible, the counterfeiting of such gaming plaque.

[(c)]**(f)** [Each gaming plaque shall have clearly and permanently imprinted, impressed or engraved thereon the specific value of the plaque in numerals] **Each gaming plaque issued by a casino licensee shall contain certain identifying characteristics which shall appear at least once in the identical manner on each face of the gaming plaque and shall be applied by a method and in a manner which ensures that each such characteristic shall be clearly visible and remain a permanent part of the gaming plaque. These characteristics shall, at a minimum, include:**

1. The denomination of the gaming plaque, expressed in numbers of no less than three-eighths inch in height[, and the];

2. The name, **trade name, or other approved identification** of the casino **licensee** issuing [it] **the gaming plaque;** and [a]

3. A unique serial number.

[(d) No casino licensee shall issue or cause to be utilized in its casino or casino simulcasting facility any gaming plaques unless and until such plaques are approved by the Casino Control Commission or its authorized designee. In requesting approval of such plaques, a casino licensee, prior to having any such plaques manufactured, shall first submit to the Commission a detailed schematic of its proposed plaques which shall show the front, back and edge of each denomination of plaque and the design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear, both as to size and location, on the actual plaque. Once the design schematics are approved by the Commission, no plaque shall be issued or utilized until and unless a sample of each denomination of plaque is also submitted to and approved by the Commission or its authorized designee.

(e) No gaming plaque shall be issued until the casino licensee has submitted to the Commission and the Commission has approved a system for accounting for gaming plaques by serial number. Such system shall include the receipt and inventory of the gaming plaques and cage procedures.]

(g) No gaming plaque shall be issued by a casino licensee or utilized in a casino or casino simulcasting facility unless and until:

1. The design specifications of the proposed gaming plaque are, prior to the manufacture of the gaming plaque, submitted to and approved by the Commission, which submission shall include a detailed schematic depicting the actual size and, as appropriate, location of the following:

i. Each face;

ii. The edge; and

iii. Any colors, words, designs, graphics or security measures contained on the gaming plaque;

2. A sample gaming plaque, manufactured in accordance with its approved design specifications, is submitted to and approved by the Commission; provided, however, that:

i. Each submission of design specifications pursuant to (g)1 above shall be accompanied by a sample gaming plaque that is manufactured in accordance with those unapproved specifications; and

ii. No sample gaming plaque submitted pursuant to (g)2i above shall qualify for consideration as an approved sample until the design specifications corresponding to that sample have been approved; and

3. A system of internal procedures and administrative and accounting controls, governing the distribution, redemption, receipt and inventory of gaming plaques, buy serial number, is submitted and approved pursuant to N.J.A.C. 19:45-1.3.

(h) No casino licensee shall issue, use or allow a patron to use in its casino or casino simulcasting facility any gaming plaque that it knows, or reasonably should know, is materially different from the sample of that gaming plaque approved by the Commission.

19:46-1.4 [Submission of gaming chips, plaques and match play coupons for review and approval] **Non-value chips; permitted uses; inventory and impressment**

[A casino licensee shall submit to the Commission a sample of each denomination of gaming plaque, a sample of each value and non-value chip in its primary and secondary sets, and a sample of each match play coupon, and shall not utilize such chips, plaques or coupons for gaming purposes until approved by the chairman.]

(a) Each non-value chip issued at a gaming table shall be used only for gaming at that table and shall not be used for gaming at any other table in the casino or casino simulcasting facility. No casino licensee or any employee thereof shall allow any patron to remove a non-value chip from the table at which it was issued.

(b) No patron at a gaming table shall be issued or permitted to game with non-value chips that are identical in color and design to any non-value chip issued to any other patron at the same table. When a patron purchases non-value chips at a gaming table, the casino licensee shall designate, in a manner to be approved by the Commission, the value to be assigned to each chip of the particular color and design issued to the patron.

(c) An impressment of the non-value chips assigned to each gaming table shall be completed at least once a week. A casino licensee shall not perform a non-value chip impressment unless it provides at least one-half hour prior notice to the Commission. The casino licensee shall record the results of the impressment in the chip inventory ledger required pursuant to N.J.A.C. 19:46-1.6 and shall perform the impressment as follows:

1. A casino department supervisor shall complete a "Non-Value Chip Impressment" form to record missing and excess chips and shall deliver the form and excess chips to the main bank or fill bank;

2. Upon reciept of the "Non-Value Chip Impressment" form, a main bank cashier or fill bank cashier shall immediately prepare the chips needed to impress the table; and

3. The casino department supervisor shall then deliver, directly to the appropriate table, the non-value chips needed to impress that table.

(d) The completed "Non-Value Chip Impressment" form shall be maintained by the accounting department and shall contain, at a minimum, the following:

1. The date and time of preparation;

2. The design schematic of the chip and the applicable table number;

3. The signature of the casino department supervisor who completes the "Non-Value Chip Impressment" form and the impressment for such table; and

4. The signature of the main bank cashier or fill bank cashier preparing the impressment.

(e) Each casino licensee shall submit to the Commission and Division a monthly summary of the non-value chip inventory for each gaming table by non-value chip design and color. The monthly summary shall include, at a minimum, the following:

1. The balance on hand at the beginning of the month;

2. The number of non-value chips distributed to the gaming table during the month;

3. The number of non-value chips returned to inventory during the month; and

4. The balance on hand at the end of the month.

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques, and match play coupons

(a) (No change.)

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables [and]. **Gaming plaques and value chips** shall only be redeemed at the cashiers' cage; provided, however, that [gaming] **value** chips may be exchanged by a patron at the slot booths for coin or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 to play the slot machines, and may be used for simulcast wagering.

(c) Non-value chips shall be presented for redemption only at the gaming table from which they were issued and shall not be redeemed or exchanged at any other location in the casino or casino simulcasting facility. When non-value chips are presented for redemption, the dealer shall accept them in exchange for an equivalent amount of value chips which may then be used by the patron in gaming or simulcast wagering or redeemed in the same manner as any other value chips.

(d) Each casino licensee shall have the discretion to permit, limit or prohibit the use of value chips in gaming at roulette or any other authorized game which the Commission determines is appropriate for the use of non-value chips; provided, however, that it shall be the responsibility of the casino licensee and its employees to keep an accurate account of the wagers being made with value chips at any such game so that the wagers being made by each player are readily distinguishable from those being made by every other player at the table.

Recodify existing (c)-(e) as **(e)-(g)** (No change in text.)

[(f)]**(h)** Each casino licensee shall redeem promptly its own genuine gaming chips and plaques [by], **except when the gaming chips or plaques were obtained or being used unlawfully. A casino licensee shall redeem value chips or gaming plaques by exchanging them for an equivalent amount of** cash or [by], **upon request by a patron who surrenders value chips or gaming plaques in any amount over $25.00, for a casino** check **of that casino licensee in the amount of the chips or plaques surrendered and** dated the day of such redemption [on an account of the casino licensee as requested by the patron, except when the gaming chips or plaques were obtained or being used unlawfully]. Slot tokens shall be redeemed or exchanged in the following manner:

1.-2. (No change.)

[(g)]**(i)** Each casino licensee shall have the right to demand the redemption of its gaming chips, slot tokens or plaques from any person in possession of them and such person shall redeem said chips, slot tokens or plaques upon presentation [of an equivalent amount of cash] by the casino **licensee of cash in an equivalent amount or, in the case of non-value chips, upon presentation by the casino licensee of an equivalent amount of value chips in accordance with (c) above**; provided, however, that slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchanged in accordance with (f)2 above.

Recodify existing (h) as **(j)** (No change in text.)

[(i)]**(k)** [A] **Each** casino licensee shall redeem promptly its own genuine [gaming] **value** chips, tokens and plaques [from] **presented to it by any** other legally operated casino [licensees] **licensee** upon the representation that such **value** chips, tokens and plaques were received or accepted unknowingly, inadvertently or in error, were unvalidably received in slot machines through patron play or were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange, **with other legally operated casino licensees,** of [foreign gaming] **value** chips, tokens and plaques:

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee.

Recodifying existing (j)-(k) as **(l)-(m)** (No change in text.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Slot Tokens
Prize Tokens
Slot Machine Hoppers

Proposed New Rules: N.J.A.C. 19:46-1.34 through 1.36

Proposed Amendments: N.J.A.C. 19:40-1.2; 19:45-1.1, 1.9, 1.9B, 1.14, 1.15, 1.24, 1.24B, 1.25A, 1.34, 1.35, 1.36, 1.36A, 1.37, 1.38, 1.39, 1.40, 1.40A, 1.40C, 1.41, 1.43, 1.44, 1.46 and 1.46A; 19:46-1.5, 1.6, 1.26 and 1.33; and 19:51-1.1 and 1.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69, 70i, 99 and 100.

Proposal Number: PRN 1994-210.

Submit written comments by May 4, 1994 to:

Leonard J. DiGiacomo
Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Under the current regulations of the New Jersey Casino Control Commission (Commission), an object can be approved as a slot token only if, among other things, the object is capable of activating a slot machine. Although such a restriction on slot tokens is within the Commission's jurisdiction to impose, the Commission has recently issued a declaratory ruling in which it concluded that the definition of a slot machine in section 45 of the Casino Control Act, N.J.S.A. 5:12-45, is satisfied by a token that is delivered as a slot machine payoff and is exchangeable for $7.00 in cash, even though the token will be designed so that it cannot activate slot machine play.

Consistent with that declaratory ruling, the proposed amendments to N.J.A.C. 19:46-1.33 create two types of tokens: "slot tokens," which can both activate slot machine play and be received as a slot machine jackpot payout, and "prize tokens," which can be received as a payout because they are "tokens exchangeable for cash," N.J.S.A. 5:12-45, but which cannot be used to activate slot machine play. Because of the distinction between the two types of tokens, related amendments that are minor in nature are also being made to several other sections in the proposal, such as N.J.A.C. 19:45-1.40A, 1.43 and 1.44, and 19:51-1.1 and 1.2, simply to reconcile the inconsistencies that would arise due to the changes being proposed in N.J.A.C. 19:46-1.33.

There are other substantive changes that accompany the proposal, most notably the elimination of the type of slot token that could be received in a complimentary distribution program to activate slot machine play, but which could not be won as a jackpot dispensed from a slot machine. Such tokens, which were marketed as "Hot Spots" by the former Atlantis Casino Hotel, never achieved industry-wide popularity and were used only at the Atlantis, which has not operated since 1989. Thus, the proposed amendments would delete from the rules all references to those types of tokens and thereby preclude a casino licensee, upon adoption of the proposal, from thereafter offering those tokens as a complimentary service or item.

The proposed amendments to two definitional sections, N.J.A.C. 19:40-1.2 and 19:45-1.1, create new definitions that are necessitated by the changes to N.J.A.C. 19:46-1.33, and recodify other definitions that are applicable to multiple chapters.

Because prize tokens will not be available as complimentary services or items, the proposal also includes amendments to N.J.A.C. 19:45-1.9, 1.9B, 1.46 and 1.46A that, upon adoption, will implement the restriction.

The proposed amendments to N.J.A.C. 19:45-1.14, 1.15, 1.34 and 1.35 specify the interactions between and among general cashiers, master coin bank cashiers, slot cashiers and changepersons as a result of the amend-

ments to N.J.A.C. 19:46-1.33 on slot tokens and prize tokens. Additionally, amendments to N.J.A.C. 19:45-1.15 are proposed to clarify that general cashiers are authorized, in the discretion of each casino licensee, to have slot tokens in their imprest inventory, and to receive slot tokens from, and to sell slot tokens to, patrons. Further, N.J.A.C. 19:45-1.34 is proposed for amendment in order to conform to existing practice whereby casino licensees are permitted to operate one or more slot booths.

After a patron wins a prize token, the patron may redeem the token for cash or a casino check as proposed in N.J.A.C. 19:46-1.33, but may not use the token to wager anywhere in a casino or a casino simulcasting facility. Because slot tokens are similarly redeemable, the proposed amendments to N.J.A.C. 19:45-1.24 and 1.24B permit casino licensees to accept slot tokens and prize tokens from patrons to establish cash deposit accounts or to transfer funds electronically by wire, respectively.

Because prize tokens will not be available to activate slot machine play, the proposed amendments to N.J.A.C. 19:45-1.25A provide that patrons issuing a slot counter check may receive only coin, currency or slot tokens, but not prize tokens, for the instrument.

Although N.J.A.C. 19:46-1.33 is the primary subject of this proposal through its introduction of prize tokens, those tokens necessarily will cause a redesign in the slot machines that will be able to accommodate them. Thus, amendments to N.J.A.C. 19:45-1.36, 1.36A and 1.37, and to 19:46-1.26, are also being proposed to address the need for slot machines to have separate hoppers and meters for dispensing and recording payouts of prize tokens.

Under the proposal, each slot machine can have no more than two hoppers. Although it is anticipated that slot machines that dispense prize tokens will have one all-purpose hopper and one payout-only hopper, the proposal would not preclude slot machines from having two payout-only hoppers. Even though all the prize tokens in any one hopper would have to be of the same denomination, the prize tokens in one hopper could be of a different denomination from the prize tokens in the other hopper, which may afford casino licensees with marketing strategies not heretofore available. Of course, adequate signs would be required to describe for patrons, among other things, what payouts are possible for a particular winning combination.

On the other hand, if both hoppers are all-purpose hoppers, the proposal requires that each hopper contain coins or slot tokens of the same denomination. At this time the Commission believes that to do otherwise would create too great a risk of patron confusion attributable, in part, to the fact that slot machines would be able to accept coins and slot tokens of different denominations, with the potential for extensive record-keeping and monitoring controls that far outweigh any advantage to the casino industry if the restrictions were omitted.

Of course, a nominal all-purpose hopper that is incapable of accepting coin or slot tokens is really a payout-only hopper. Thus, the proposed amendments would permit payout-only hoppers to pay out coin or slot tokens that are placed in that hopper exclusively through hopper fills.

With this flexibility, casino licensees may consider some innovative marketing techniques, such as offering patrons the opportunity of winning silver dollars at a slot machine that only accepts dimes. Likewise, a slot machine that, for example, only accepts quarters but that can pay out both quarters and five dollar tokens may potentially reduce the number of hopper fills to that machine because fewer tokens would be needed to pay out one or more of the machine's larger jackpots.

Of course, whether the number of hopper fills will actually decrease may depend on a number of factors, such as the dollar amount of the jackpots that are offered and the capacity of the hopper to hold a sufficient quantity of coins or tokens of a particular denomination. Despite the uncertainty, the proposal affords casino licensees the opportunity to experiment with various hopper combinations in the absence of any countervailing regulatory concerns that would require more stringent controls.

N.J.A.C. 19:45-1.38 requires coins and slot tokens to be removed from a slot machine before the machine is taken off the casino floor. The proposed amendments, with minor stylistic changes, leave those requirements intact while adding the requirement that any prize tokens in those slot machines also be removed in accordance with internal controls approved by the Commission.

Under the proposed amendments to N.J.A.C. 19:45-1.39, 1.40 and 1.40C, prize tokens will not be available as a jackpot from a progressive slot machine, as a hand-paid jackpot or as a multi-casino payout.

N.J.A.C. 19:45-1.41 sets forth the procedures for filling hoppers and hopper storage areas. Consequently, the proposed amendments interlace throughout that section the necessary references to slot tokens, prize tokens, all-purpose hoppers and payout-only hoppers. In addition to minor stylistic changes that are also being proposed to that section, the amendments conform that section to other regulatory provisions by affording the accounting department the flexibility to process hopper fill slips within a reasonably practicable time after receipt.

The proposed amendments to N.J.A.C. 19:46-1.5 and 1.6 recodify the portions of those sections that deal with slot tokens and coins. Thus, the exchange, redemption, receipt, inventory, etc., of gaming chips and plaques will, upon adoption of the proposal, be the subject of those sections, whereas several new rules, N.J.A.C. 19:46-1.34 through 1.36, will cover those topics regarding slot tokens and prize tokens. As part of that recodification, "change machine" is added to the list in N.J.A.C. 19:46-1.33(a)1iii of permissible locations from which a casino licensee may issue slot tokens, which is consistent with the definition of change machine.

Finally, N.J.A.C. 19:46-1.33 is being amended, consistent with existing practice, to prohibit a casino licensee from using slot tokens or prize tokens that it knows, or reasonably should know, are materially different from the approved sample of the token. In this way, use of the actual token must await the approval of the sample, and thereby regulatory resources are conserved because the sample, rather than each token, is reviewed for compliance with the Act and the Commission's regulations. Conversely, if a casino licensee finds a token that is materially different from its approved sample, that token is no longer fit for casino use and must be removed from circulation.

One section of this proposal, N.J.A.C. 19:46-1.5, is also the subject of a separate set of reproposed amendments, dealing with gaming chips, that is being published elsewhere in this issue of the Register. Given that each proposal addresses a different subject matter, all of the changes to the gaming chip reproposal do not appear in this proposal on slot tokens and prize tokens, and vice versa.

For instance, the reproposal on gaming chips leaves intact the references to "slot token" that appear throughout N.J.A.C. 19:46-1.5, whereas it is the specific purpose of this proposal to remove all references to slot tokens from N.J.A.C. 19:46-1.5 and to recodify the operative requirements so removed as proposed new rules N.J.A.C. 19:46-1.34 through 1.36. The Commission fully intends to reconcile the two proposals upon adoption, and therefore it would be improper for a reader to infer that one proposal countermands the changes proposed by the other. Please be guided accordingly.

Social Impact

Obviously, the direct impact of the proposed amendments and rules will be on casino licensees, which may elect to develop new strategies for marketing their slot machine operations to the gaming public as a result of the amendments and rules. Although the consequent impact on those customers is impossible to predict, the Commission anticipates that the flexibility created by the amendments and rules may increase the enjoyment that patrons apparently derive from the gaming experience.

Economic Impact

Under the proposed amendments, no casino licensee is required to offer slot tokens or prize tokens. The choice to do so remains with the individual licensees, and therefore any administrative costs, which the Commission anticipates will be nominal in any event, that a casino licensee may incur in complying with the proposal will be directly attributable to the business discretion of the individual licensee rather than the proposal itself.

Should one or more casino licensees exercise the option to offer prize tokens, it is impossible to predict the economic impact on those licensees, or on those that elect not to offer the tokens. However, any such economic consequences are a result of normal market forces common in the casino industry over which the proposed amendments are likely to have little, if any, control.

In the event there is a demand for the new form of token that the proposed new rules and amendments would permit, there may be an economic impact on those companies that manufacture, distribute or supply prize tokens, or the slot machines that will be able to accommodate them. However, quantifying that impact is impossible to predict with any certainty because of the number of variables involved, not the least of which is whether any casino licensee will elect to use such tokens and, assuming that there is at least one that does, the extent to which there is any patron demand to play the types of slot machines at which the new tokens will be used.

Regulatory Flexibility Statement

Under the Commission's existing regulations, casino service industries, some of which may be a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., are required to be licensed in order to provide casino applicants or licensees with goods and services, such as tokens and slot machines, that directly relate to casino, simulcast wagering or gaming activity. The proposed amendments do not modify those licensing requirements.

Further, casino service industries that provide tokens, or the slot machines that accommodate them, to casino licensees are currently required to adhere to existing standards on the design and manufacture of those products. Although the proposed amendments provide greater flexibility by permitting a new type of token, licensure as a casino service industry will continue, consistent with existing requirements, to be required for those enterprises, including those that are small businesses, that will provide casino licensees with any form of token or with the slot machines in which those tokens are used.

Accordingly, no regulatory flexibility analysis is required because the proposed amendments impose no additional reporting, record-keeping or other compliance requirements on any such casino service industries, and because none of the casino licensees that will be directly affected by the proposed amendments is a small business.

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

19:40-1.2 Definitions

(a) (No change.)

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

...

"All-purpose slot machine hopper" or "all-purpose hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Bill changer" means any mechanical, electrical, or other device, contrivance or machine designed to interface mechanically, electrically or electronically with a slot machine for the purpose of dispensing from an all-purpose hopper an amount of coins or slot tokens that is equal to the amount of currency or the denomination of a coupon inserted into the bill changer.

...

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), or for winnings from slot machine or simulcast wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine or simulcast wagering payoffs.

...

"Change machine" means any mechanical, electrical, or other device which operates independently of a slot machine which, upon insertion of currency therein, shall dispense an equivalent amount of loose or rolled coin or slot tokens.

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of coin, currency and slot tokens received pursuant to N.J.A.C. 19:45-1.35(d) and used for the even exchange with slot machine patrons of coupons, coin, currency, gaming chips, slot tokens and prize tokens.

"Coin acceptor" means the slot and accompanying device, approved by the Commission, that is the part of a slot machine into which a patron, in the normal course of operating the machine, inserts a coin or slot token for the purpose of activating play and which identifies any coin or slot token so inserted as appropriate for use in that machine and rejects all slugs or other non-conforming objects so inserted.

"Hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Payout-only slot machine hopper" or "payout-only hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Prize token" is defined in N.J.A.C. 19:46-1.33.

...

"Slot token" is defined in N.J.A.C. 19:46-1.33.

"Slug" means a metal disk having no cash value.

...

19:45-1.1 Definitions

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

...

["Bill changer" means any mechanical, electrical, or other device, contrivance or machine designed to interface mechanically, electrically or electronically with a slot machine for the purpose of dispensing an amount of coins or slot tokens from the slot machine hopper equal to the amount of currency or the denomination of a coupon inserted into the bill changer.]

...

["Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), for winnings from slot machine or simulcast wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine or simulcast wagering payoffs.]

...

["Change machine" means any mechanical, electrical, or other device which operates independently of a slot machine which, upon insertion of currency therein, shall dispense an equivalent amount of loose or rolled coin or slot tokens.

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of coin, currency and slot tokens received pursuant to N.J.A.C. 19:45-1.35(d) and used for the even exchange with slot machine patrons of coupons, coin, currency, gaming chips and slot tokens.]

...

["Hopper" is defined in N.J.A.C. 19:45-1.41.]

...

"Patron cash deposit" means an amount of cash, cash equivalents, **slot tokens, prize tokens,** gaming chips or plaques deposited with a casino **licensee** by a patron for his **or her** subsequent use **pursuant to N.J.A.C. 19:45-1.24**.

...

["Slug" is defined as a metal disk having no cash value.]

...

19:45-1.9 Complimentary services or items

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

(i) Prize tokens shall not be offered or provided as a complimentary service or item.

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m (1) through (3), N.J.A.C. 19:45-1.9(f), 19:45-1.9(h) or 19:45-1.46. Complimentary cash gifts shall include, without limitation:

1.-2. (No change.)

3. Slot tokens issued to any person; **provided, however, that prize tokens shall not be offered or provided as a complimentary service or item;**

4.-5. (No change.)

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

19:45-1.14 Cashiers' cage; satellite cages; master coin bank; coin vaults

(a) (No change.)

(b) Each establishment shall have within the cage or in such other area as approved by the Commission a physical structure known as a master coin bank to house master coin bank cashiers. The master coin bank shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein and serve as the central location in the casino for the following:

1. The custody of currency, coin, **prize tokens,** slot tokens, forms, documents and records normally generated or utilized by master coin bank cashiers, slot cashiers, [changepeople] **changepersons**, and slot attendants;

2. The exchange of currency, coin, coupons, **prize tokens** and slot tokens for supporting documentation;

3. The responsibility for the overall reconciliation of all documentation generated by master coin bank cashiers, slot cashiers, [changepeople] **changepersons**, and slot attendants;

4.-5. (No change.)

(c) The cage shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein; such design and construction shall be, at a minimum, as effective as the following:

1. Fully enclosed except for openings through which materials such as gaming chips and plaques, **slot tokens and prize tokens,** patron checks, cash, records, and documents can be passed to service the public, gaming tables, and slot booths;

2.-4. (No change.)

(d) (No change.)

(e) Each establishment may have separate areas for the storage of coin, **prize tokens** and slot tokens ("coin vaults") in locations outside the cage or master coin bank, as approved by the Commission.

(f)-(h) (No change.)

19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, master coin bank, and coin vaults

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

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash **and, at the discretion of the casino licensee, slot tokens,** and such cashiers' functions shall [be,] **include,** but are not limited to, the following:

i. (No change.)

ii. Receive gaming chips, **slot tokens and prize tokens** from patrons in exchange for cash;

iii. Receive **cash,** traveler's checks and other cash equivalents from patrons in exchange for currency, **slot tokens** or coin;

iv. (No change.)

v. Receive cash, cash equivalents, **slot tokens, prize tokens** and gaming chips from patrons in exchange for Customer Deposit Forms;

vi. (No change.)

vii. Receive Customer Deposit Forms from patrons in exchange for cash **or slot tokens**;

viii. Receive coupons from patrons in exchange for currency, **slot tokens** or coin, in conformity with N.J.A.C. [19:45-1.46(i)] **19:45-1.46(j)**.

ix.-x. (No change.)

xi. Receive from check, chip bank, **master coin bank** and reserve cash [cashiers'] **cashiers** documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage;

xii. (No change.)

xiii. Exchange Slot Counter Checks in accordance with N.J.A.C. 19:45-1.25A; [and]

xiv. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40; **and**

xv. Receive slot tokens from, and transmit slot tokens and prize tokens to, the master coin bank in exchanges supported by proper documentation.

2. Check cashiers shall not have access to cash, gaming chips and plaques and such cashiers' functions shall [be,] **include,** but are not limited to, the following:

i.-vii. (No change.)

3. Chip bank cashiers shall not have access to currency or cash equivalents, but shall operate with a limited inventory of $0.50 and $0.25 cent coins which may only be used to facilitate odds payoffs or vigorish bets. Such cashiers' functions shall [be,] **include,** but are not limited to, the following:

i.-v. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall [be,] **include,** but are not limited to, the following:

i. Receive cash, cash equivalents, issuance copies of Slot Counter Checks, original copies of Jackpot Payout Slips, personal checks received for non-gaming purposes, **slot tokens, prize tokens,** gaming chips and plaques from general cashiers in exchange for cash;

ii.-x. (No change.)

5. Master coin bank cashiers' functions shall [be,] **include,** but are not limited to, the following:

i. Receive currency, coin, slot tokens, **prize tokens,** gaming chips, **and** coupons from slot cashiers in exchange for proper documentation;

ii. (No change.)

iii. Provide slot cashiers with currency, coin, **prize tokens** and slot tokens in exchange for proper documentation;

iv.-v. (No change.)

vi. Prepare the daily bank deposit of excess cash [and coin]; [and]

vii. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40; **and**

viii. Receive slot tokens and prize tokens from, and transmit slot tokens to, general cashiers in exchanges supported by proper documentation.

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

(f) Coin vaults authorized pursuant to N.J.A.C. 19:45-1.14(e) shall be under the control of the casino accounting department. The storage of coin, **prize tokens** or slot tokens in, or the removal of coin, **prize tokens** or slot tokens from, any coin vaults shall be properly documented, and the amount of coin, **prize tokens** and slot tokens in each coin vault shall be reconciled at the end of each gaming day.

19:45-1.24 Procedure for acceptance, accounting for and redemption of [patron's] **patron** cash deposits

(a) Whenever a patron requests [that the] **a** casino **licensee to** hold his **or her** cash, cash equivalents, **slot tokens, prize tokens,** gaming chips or plaques for subsequent use [he], **the patron** shall [deposit] **deliver** the cash, cash equivalents, **slot tokens, prize tokens,** gaming chips or plaques [with] **to** a general cashier **who, after converting any of those non-cash items into cash, shall deposit the cash for credit to the patron cash deposit account established for that patron pursuant to this section.**

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

(h) On the original and duplicate of the Customer Deposit Form, or in stored data, the general cashier shall record, at a minimum, the following information.

1.-4. (No change.)

5. Nature of the amount received (cash, cash equivalents, chips, plaques, **slot tokens, prize tokens** or wire transfer).

(i)-(q) (No change.)

19:45-1.24B Procedure for sending funds by wire transfer

(a) Whenever a patron requests a casino licensee to send funds by wire transfer to a financial institution on behalf of the patron, the patron shall present to the general cashier the cash, cash equivalents, casino check, chips, plaques, **slot tokens** or **prize** tokens

representing the amount sought to be transferred, or, in the case of a cash deposit, request that the unused balance of the cash deposit be transferred. In the case of a cash deposit, the procedures set forth in N.J.A.C. 19:45-1.24 for redemption of a cash deposit shall be observed.

(b) The general cashier shall obtain from the reserve cash cashier a Wire Transfer Request Form, a four-part serially prenumbered form, and shall record thereon, at a minimum, the information required by (b)1 through 7 below:

1.-3. (No change.)

4. The source of funds to be transferred (cash, cash equivalent, casino check, chips, plaques, **slot tokens, prize** tokens or cash deposit);

5.-8. (No change.)

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

19:45-1.25A Procedure for exchange of slot counter checks by slot patrons

(a) A casino licensee may offer credit to slot patrons pursuant to N.J.A.C. 19:45-1.27. Slot Counter Checks may be prepared by slot cashiers at slot booths and coin redemption locations and by general cashiers at the cashiers' cage **in exchange for which patrons may receive any combination of coin, currency or slot tokens.** For casino licensees which issue credit to slot players, the following procedures and requirements over Slot Counter Checks shall be observed:

1.-3. (No change.)

(b) For each Slot Counter Check exchanged, in accordance with (a) above, the general cashier or slot cashier shall:

1.-5. (No change.)

6. Receive the signed original and all duplicate copies of the Slot Counter Check directly from the patron. The general cashier or slot cashier shall, if verification occurs in accordance with (b)1i above, compare the patron's signature on the signed Slot Counter Check to the form referenced in (b)1 above and sign the form referenced in (b)1 above if the signatures appear to agree. In no instance shall currency, coin or slot tokens be given to the patron prior to the receipt of the signed copy of the Slot Counter Check by the general cashier or slot cashier. Distribution of the Slot Counter Check copies shall be as follows:

i. The issuance copy of the Slot Counter Check, which shall serve as documentation of the exchange of currency, coin or **slot** tokens for the Slot Counter Check and shall be maintained by the general cashier or slot cashier in his or her imprest fund immediately after the issuance of currency, coin or **slot** tokens to the patron.

ii.-iii. (No change.)

(c) Nothing in this section shall preclude a casino licensee from issuing a Slot Counter Check to a patron directly at a slot machine, provided the casino licensee follows the procedures and requirements established below:

1.-3. (No change.)

4. The accounting department representative, with no incompatible functions, shall verify the currency, coin and/or **slot** tokens against the amount recorded on the Slot Counter Check and the Request. If in agreement, the accounting department representative shall sign the original and duplicate copy of the Request and return the duplicate copy of the Request to the general cashier or slot cashier.

5. (No change.)

6. Once the currency, coin and/or **slot** tokens has been verified in accordance with (c)4 above, the funds shall be secured in a sealed envelope or container along with the original and all copies of the Slot Counter Check and the original Request for transportation to the patron by the accounting department representative in the presence of the slot supervisor referenced by (c)1 above.

7.-10. (No change.)

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

19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor [a] **one or more** physical [structure] **structures, each to be** known as a slot booth, to house [the] **one or more** slot [cashier] **cashiers** and to serve as the central location in the casino **or, when there are multiple slot booths, in that portion of the casino,** for the following:

1. (No change.)

2. The exchange by patrons of coin for currency or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1];

3. The exchange by patrons of currency for coin or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1];

4. The exchange by patrons of gaming chips, **prize tokens** or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1] for currency, **slot tokens** or coin;

5. The exchange by patrons of coupons for currency, coin or slot tokens in conformity with N.J.A.C. [19:45-1.46(i)] **19:45-1.46(j)**;

6. [The exchange by patrons of slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 for coupons which are redeemable for goods or services offered by, or on behalf of, the casino licensee in accordance with N.J.A.C. 19:46-1.5(f)2;

7.] The exchange by patrons of signed Slot Counter Checks for currency, coin or slot tokens, **or any combination thereof,** in conformity with N.J.A.C. 19:45-1.25A;

Recodify 8.-11. as **7.-10.** (No change in text.)

[12.]**11.** The exchange with the [cashiers' cage or] master coin bank of any coin, currency, slot tokens, **prize tokens,** chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the [cage cashier or] master coin bank cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of coin, currency, **prize tokens** and slot tokens with changepersons, the slot booth shall not be allowed to obtain coin, currency, **prize tokens** or slot tokens, from other than patrons, through exchange or otherwise, from any source other than [the cashiers' cage,] the master coin bank[,] or a coin vault approved pursuant to N.J.A.C. 19:45-1.14(e). An exchange with the [cashiers' cage, main] **master** coin bank or coin vault must be accompanied by [the] **a** Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins, **prize tokens** or slot tokens to the slot booth. An exchange with a changeperson must be documented in accordance with procedures approved by the Commission.

(b) [The] **Each** slot booth shall be designed and constructed to provide at all times maximum security for the materials housed therein and for the activities performed therein.

19:45-1.35 Accounting controls for slot booths and change machines

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

(d) The slot booth inventory may be used to supply changepersons with an imprest inventory of coin, currency and slot tokens, provided that such inventory shall only be used to accept **any combination of** currency, coin, gaming chips, slot tokens [and], **prize tokens or** coupons presented by a patron in exchange for an equivalent amount of **any combination of** currency, coin[, and] **or** slot tokens. The slot booth inventory may also be used to provide a changeperson with coin, currency and slot tokens in exchange for an equal amount of **any combination of** coin, currency, coupons [and], **prize tokens or** gaming chips. The exchange of coupons shall be in accordance with N.J.A.C. [19:45-1.46(i)] **19:45-1.46(j)**. If a changeperson's inventory is obtained from a location other than a slot booth, the location and the procedures for the issuance and maintenance of the inventory shall be approved by the Commission.

(e)-(f) (No change.)

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage boxes; entry authorization logs

(a) Each slot machine located in a casino shall have the following coin, **prize token** or slot token containers:

1. [A container,] **At least one but no more than two containers, each to be** known as a payout reserve container ("hopper"), in which coins, **prize tokens** or slot tokens are retained by the slot machine to automatically pay jackpots or to dispense change as directed by

a bill changer connected to the slot machine[,]; provided, however, that [the hopper shall not retain slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2]:

i. Coins or slot tokens shall be retained in a separate hopper, known as an "all-purpose hopper," that is designed to accept coin or slot tokens of the same denomination, and only such coin or slot tokens, upon insertion thereof into the slot machine's coin acceptor, and that is capable of paying out or dispensing only coin or slot tokens of the same denomination as jackpots or as change; provided, however, that any coins or slot tokens that are accepted by the coin acceptor and that exceed the capacity of the hopper shall be diverted to the slot drop bucket and, if applicable, the slot drop box;

ii. Prize tokens shall be retained only in a separate hopper, known as a "payout-only hopper," that is capable of retaining and making jackpot payouts only of prize tokens of the same denomination, and that is incapable of making change or of accepting any coin or slot token upon insertion thereof into the slot machine's coin acceptor, which shall divert coins or slot tokens that it has accepted to the slot drop bucket or any applicable slot drop box;

iii. No slot machine shall have more than one all-purpose hopper unless each hopper accepts the same denomination of coin or slot token;

iv. Notwithstanding (a)1ii above, coins or slot tokens of the same denomination that are placed in a payout-only hopper exclusively through hopper fills may be retained in that hopper to make payouts to winning patrons, subject to the Division's inspection and the Commission's approval of the machine as part of the review of that machine and of the internal controls therefor;

v. Unless both hoppers on slot machines with multiple hoppers either each contain the same denomination of coin, slot tokens or prize tokens, or are each connected to a separate win meter pursuant to N.J.A.C. 19:45-1.37 and 19:46-1.26, a winning jackpot that is hit on a round of play shall be paid out from only one, but not both, of the machine's hoppers on that round of play, and no casino licensee shall offer or provide a jackpot at such slot machine that will be paid out from both hoppers for the same winning combination; and

vi. Prize tokens shall not be placed in or retained by a payout-only hopper that retains coins or slot tokens pursuant to (a)1iv above;

2.-3. (No change.)

(b) (No change.)

(c) A slot drop box shall have:

1. A slotted opening through which coins and **slot** tokens can be deposited;

2.-3. (No change.)

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

[(f) Each slot machine equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall contain a separate slot drop bucket or slot drop box to collect and retain all such slot tokens that are inserted into the slot machine.]

Recodify (g)-(k) as **(f)**-(j) (No change in text.)

19:45-1.36A Slot machines; hopper storage areas

(a) A hopper storage area may be used in connection with the operation of a slot machine, for the purpose of temporarily storing coins, **prize tokens** or slot tokens[,] **that are** to be deposited only into [that corresponding] **the** slot machine's [payout reserve container ("hopper")] **hopper that corresponds with the coin or type of token stored in the hopper storage area.**

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

19:45-1.37 Slot machines and bill changers; identifications signs, meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-3. (No change.)

4. A display on the front of the slot machine that provides fair notice of the following:

i. The rules of play, character combinations which will award payouts and the related payouts; [and]

ii. If the slot machine offers a payout of merchandise or some other thing of value, a clear description of the merchandise or thing of value including its cash equivalent value (unless the payout is an annuity jackpot), the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit for offering the merchandise or thing of value as provided in N.J.A.C. 19:45-1.40A, and the availability or unavailability to the patron of the optional cash equivalent value authorized by N.J.A.C. 19:45-1.40A(m). The display need only contain the name or a brief description of the merchandise or thing of value offered, provided that a sign containing all of the information specified in (a)4ii above shall be displayed in a location near the slot machine as approved by the Commission; [and]

iii. If the slot machine offers a progressive jackpot, the dates the progressive jackpot will be offered and the payout limit, if the casino licensee establishes a time limit or payout limit as provided in N.J.A.C. 19:45-1.39. If no time limit or payout limit is established, the display shall state that the casino licensee reserves the right to change or discontinue the progressive slot machine upon 30 days notice. The display need not contain this information provided that a sign which does contain this information shall be displayed in a location near the slot machine as approved by the Commission[.]; **and**

iv. If the slot machine is equipped with a payout-only hopper, a statement either that:

(1) Any prize tokens that are paid out as a jackpot from that hopper cannot be used to activate play at any slot machine; or

(2) Any coins or slot tokens that are paid out from that hopper cannot be used to activate play at that slot machine.

5.-7. (No change.)

(b) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. (No change.)

2. A mechanical, electrical or electronic device, to be known as a "drop meter," that continuously and automatically counts the number of coins or slot tokens **that are** dropped into the machine's slot drop bucket or slot drop box[, provided, however, that for machines equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2, a separate "drop meter" shall count the number of such slot tokens dropped into the separate slot drop bucket or slot drop box required by N.J.A.C. 19:45-1.36(i)];

3. [A] **For each hopper in a slot machine, a separate** mechanical, electrical or electronic device, to be known as a "jackpot meter", that continuously and automatically counts **and records, for that hopper only,** the number of coins, **prize tokens** or slot tokens **that are** automatically paid by the machine from the **corresponding** hopper; and

4. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine, that advises a player of the number of coins, **prize tokens** or slot tokens that have been paid to [him] **the player from the corresponding hopper** by the machine upon hitting a winning combination; **provided, however, that a slot machine with multiple hoppers shall have a separate win meter for each hopper if:**

i. The machine is capable of paying out from both hoppers on the same winning combination; and

ii. The denomination of the coins, slot tokens or prize tokens in one of the hoppers is different from the denomination of the coins, slot tokens or prize tokens in the other hopper.

(c) Unless otherwise authorized by the Commission each slot machine which does not totally and automatically pay the full amount of a jackpot to a patron shall be equipped with a mechanical, electrical or electronic device to be known as a "manual jackpot meter" that continuously and automatically records a pulse(s) for a predetermined number of coins or slot tokens **that are** to be paid manually[, provided, however, that the manual payout shall not include slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2].

(d) (No change.)

(e) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with mechanical, electrical or electronic devices as follows:

1. A "change meter," that continuously and automatically counts the number of coins or slot tokens **that are** vended from the slot machine's **all-purpose** hopper to make change, whether for currency or coupons;

2.-3. (No change.)

(f) All meters described [herein] **in this section and in N.J.A.C. 19:46-1.26** shall be placed in a position so that **the** numbers thereon can be read and recorded without opening the slot machine.

(g) [The] **Each** casino licensee shall set each **of its** slot [machine] **machines** to pay out, at a minimum, 83 percent of the amount of coins, currency or **slot** tokens **that are** placed by patrons into [the] **that** slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. No payout of any merchandise or thing of value or payment of cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.

(h)-(i) (No change.)

19:45-1.38 Slot machines and bill changers; location; movements

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

(d) Prior to removing a slot machine from the gaming floor[, the]:

1. The machine's slot drop bucket or slot drop box shall be removed and transported to the count room [and all];

2. All meters shall be read and recorded in conformity with the procedures set forth in N.J.A.C. 19:45-1.42[.]; **and**

3. Any coins or **slot** tokens in [the payout reserve container and] **any of the slot machine's hoppers or in** the corresponding hopper storage area shall be removed, transported, and counted with the slot drop bucket or slot drop box[. Notwithstanding the foregoing,]; **provided, however, that** a slot machine may be removed from the casino with coins or **slot** tokens contained therein [when removal] **so long as:**

i. Removal of [such] **the** coins **or the slot tokens, or any combination thereof,** is precluded by mechanical or electrical difficulty[. If];

ii. The casino licensee records in a slot machine movement log whether coins or **slot** tokens remain in [a] **the** slot machine [when it] **that** is removed from the casino, [this fact] and **also records in that log the nature of the mechanical or electrical difficulty,** the date and time that [such] **the** coins or **slot** tokens are removed from the slot machine and transported to the count room [shall be recorded in the machine movement log.], **the date and time that the slot machine is removed from the casino, and the date and time that the slot machine is opened; and**

iii. The removal and transportation to the count room of [such] **the** coins or **slot** tokens [must be] **is** completed immediately after the slot machine is opened; **and**

4. Any prize tokens in a payout-only hopper or in a corresponding hopper storage area shall be removed, transported and counted in accordance with procedures and internal controls submitted to and approved by the Commission pursuant to N.J.A.C. 19:45-1.3.

(e) (No change.)

19:45-1.39 Progressive slot machines

(a)-(k) (No change.)

(l) Except as otherwise authorized by this section, a progressive slot machine removed from the gaming floor shall be returned to or replaced on the gaming floor within five gaming days. The amount on the progressive meter(s) on the returned or replacement machine shall not be less than the amount on the progressive meter(s) at the time of removal. If the machine is not returned or replaced, then the progressive meter(s) amount at the time of removal shall, within five days of the slot machine's removal, be added to a slot machine approved by the Commission which machine offers the same or a greater probability of winning the progressive jackpot, and accepts a denomination of coin or **slot** token not greater than the denomination accepted by the slot machine which was removed. Any time limit for the offering of a progressive jackpot shall be extended by the number of days during which the progressive jackpot was not offered as the result of any action taken by a casino licensee pursuant to this subsection.

(m) Prize tokens shall not be available as a payout from a progressive slot machine.

19:45-1.40 Jackpot payouts of cash or slot tokens that are not paid directly from the slot machine

(a)-(o) (No change.)

(p) No casino licensee shall offer a jackpot of prize tokens unless that jackpot is totally and automatically paid directly from the slot machine.

19:45-1.40A Jackpot payouts of merchandise or other things of value

(a)-(p) (No change.)

(q) Except as otherwise authorized by this section, a slot machine which offers merchandise or some other thing of value as a payout which is removed from the gaming floor shall be returned to or replaced on the gaming floor within five days. If the machine is not returned or replaced, the merchandise or thing of value shall, within five days of the slot machine's removal, be offered as a payout on a slot machine approved by the Commission which offers the same or a greater probability of winning the merchandise or thing of value, and accepts a denomination of coin or **slot** token not greater than the denomination accepted by the slot machine which was removed. Any time limit for offering a jackpot of merchandise or other thing of value shall be extended by the number of days during which the merchandise or thing of value was not offered as the result of any action taken by a casino licensee pursuant to this subsection.

19:45-1.40C Multi-casino slot system jackpot payouts of cash

(a) Any slot machine jackpot payout of cash or **slot** tokens which will be included in the calculation of gross revenue by two or more casino licensees as part of a multi-casino progressive slot system shall be subject, except as otherwise provided in this section, to any procedural or documentation requirement established in N.J.A.C. 19:45-1.40. All forms utilized in the preparation or payment of a multi-casino progressive slot system jackpot shall be clearly identified as forms used for such purpose.

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

(d) If a multi-casino slot machine system will not permit slot department personnel employed by the casino licensee where the jackpot is won to determine from the slot machine or the progressive display the actual amount of the jackpot payout of cash or **slot** tokens won by the patron, the following additional requirements shall apply:

1. The slot cashier who is responsible for preparing the Multi-Casino Payout shall request the slot system operator to provide documentation of the actual amount of the jackpot payout of cash or **slot** tokens won by the patron;

2.-3. (No change.)

(e) Prize tokens shall not be available as a Multi-Casino Payout.

19:45-1.41 Procedure for filling payout reserve containers of slot machines and hopper storage areas

(a) [The payout reserve container ("hopper")] **Each hopper** of a slot machine may be filled by requesting coin, **slot tokens** or **prize** tokens, **which are compatible** with **the hopper to be filled, on** a Hopper Fill Slip, or by utilizing coin, **slot tokens** or **prize** tokens **that are compatible with the hopper to be filled and that are** stored in its corresponding hopper storage area pursuant to N.J.A.C. 19:45-1.36A.

(b) The filling of a hopper or a hopper storage area by means of a Hopper Fill Slip shall be accomplished as follows:

1. Whenever a slot supervisor, attendant or mechanic requests coins, **slot tokens** or **prize** tokens to fill a [payout reserve container ("Hopper")] **hopper** or a hopper storage area of a slot machine, he or she shall obtain a properly completed and signed Hopper Fill Slip ("Hopper Fills") from a slot [booth] cashier [("Slot Cashier")].

2. Hopper Fills shall be serially prenumbered forms, each series of Hopper Fills shall be used in sequential order, and the series numbers of all Hopper Fills received by a casino **licensee** shall be accounted for by employees independent of the cashiers' cage and

the slot department. All original and duplicate void Hopper Fills shall be marked "VOID" and shall require the signature of [the] **a** slot [booth] cashier [("Slot Cashier")]. Notwithstanding the above, a serially prenumbered combined Jackpot Payout/Hopper Fill form may be utilized in conjunction with N.J.A.C. 19:45-1.40(b), as approved by the Commission, provided that the combined form shall be used in a manner which otherwise complies with the procedures and requirements established by this section.

3. For establishments in which Hopper Fills are manually prepared, the following procedures and requirements shall be observed:

i. (No change.)

ii. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Hopper Fills, placing Hopper Fills in the dispensers, and removing from the dispensers the triplicates remaining therein. [These employees shall have no incompatible functions.]

4. (No change.)

5. On originals, duplicates and triplicates, or in stored data, the Hopper Fill shall include, at a minimum, the following information:

i. The asset number of the slot machine to which the coins, **slot tokens or prize tokens** are to be distributed;

ii. The date and shift during which the coins, **slot tokens or prize tokens** are distributed;

iii. The denomination of **the** coin, **slot tokens or prize tokens that are** to be distributed;

iv. The amount of coins, **slot tokens or prize tokens that are** to be distributed;

v. The location from which the coins, **slot tokens or prize tokens** are distributed;

vi. (No change.)

vii. The signature or identification code of the person requesting coins, **slot tokens or prize tokens** to fill the hopper (on the original and the duplicate only); and

viii. Whether the coins, **slot tokens or prize tokens** are to be placed in the slot machine's **all-purpose** hopper[,] **or payout-only hopper**, or in its corresponding hopper storage area.

6. (No change.)

7. All coins, **slot tokens** or **prize** tokens distributed from a slot booth to a slot machine or its corresponding hopper storage area shall [be transported], **during their transportation directly to the machine and until their deposit into the appropriate hopper, remain** in pre-wrapped secured bags; **provided, however, that:**

i. A casino security department member shall transport the pre-wrapped secured bags containing loose coin, **slot tokens** or **prize** tokens directly to the slot machine or its corresponding hopper storage area, **accompanied** by [a casino security department member who shall at the same time transport] the duplicate Hopper Fill for signature[.];

ii. The secured bags in which prize tokens are transported shall have sufficient identifying features, approved by the Commission, to distinguish those bags and their contents from the secured bags in which coins or slot tokens are transported; and

iii. The casino security department member shall observe the deposit of the coins, **slot tokens** or **prize** tokens in the **appropriate** slot machine hopper or the slot machine's corresponding hopper storage area, and the closing and locking of the slot machine or its corresponding hopper storage area by the slot mechanic or slot attendant before obtaining the signature of the slot mechanic or attendant on the duplicate copy of the Hopper Fill.

8. A slot mechanic who participates in [Hopper Fill transactions] **filling a slot machine hopper** shall inspect the slot machine and determine if the empty [Hopper] **hopper** resulted from a machine malfunction. [When a] **A** slot attendant [participates] **participating** in [Hopper Fills, he] **a hopper fill** shall review the Machine Entry Authorization Log and alert a slot mechanic to inspect the slot machine if the entries in the log indicate a consistent malfunction problem.

9. Signatures attesting to the accuracy of the information contained on the Hopper Fill shall be, at a minimum, of the following personnel at the following times:

i. The original:

(1) The slot cashier—upon preparation; and

(2) The security department member transporting the coins,**slot tokens or prize tokens** to the slot machine—upon receipt from the cashier of the coins, **slot tokens or prize tokens** to be transported; and

ii. The duplicate[;]**:**

(1) The slot cashier—upon preparation;

(2) The security department member transporting the coins, **slot tokens or prize tokens** to the slot machine—upon receipt from the cashier of coins, **slot tokens or prize tokens** to be transported; and

(3) The slot mechanic or attendant—after depositing the coins, **slot tokens or prize tokens** in the **appropriate hopper of the** slot machine and closing and locking the slot machine.

10. Upon meeting the signature requirements as described in [(b)9i and ii] **(b)9** above, the security department member shall maintain and control the duplicate and the slot cashier shall maintain and control the original **of the Hopper Fill Slip.**

11. At the end of each gaming day, at a minimum, the original and duplicate Hopper Fill Slip shall be forwarded as follows:

i. The original Hopper Fill Slip shall be forwarded to the cashiers' cage by the slot cashier for exchange for coin, currency or credit, after which the original shall be forwarded to the accounting department [for agreement], **which, as reasonably practicable after receipt, shall confirm that the information on the original Hopper Fill agrees** with the **information on the** triplicate or **in** stored data.

ii. The duplicate Hopper Fill Slip shall be forwarded directly to the accounting department [for recording], **which, as reasonably practicable after receipt, shall record the information from the Hopper Fill Slip** on the Slot Win Sheet, [agreement] **and shall confirm that the information recorded on the Hopper Fill Slip agrees** with the meter readings recorded on the Slot Meter Sheet[,] and [agreement] with the **information on the** triplicates or **in** stored data.

(c) [The filling of the hopper of a] **Each** slot machine **hopper may be filled** from its corresponding hopper storage area [shall be accomplished] as follows:

1. Whenever a slot machine's hopper requires coin, **slot tokens** or **prize** tokens, a slot attendant or mechanic, **after confirming that the hopper storage area contains the necessary coin, slot tokens or prize tokens to replenish the hopper to be filled,** may, in the presence of a member of the security department, transfer the necessary coin, **slot tokens** or **prize** tokens from that slot machine's hopper storage area directly to the **appropriate** hopper of the corresponding slot machine. The casino security department member shall observe the deposit of the coins, **slot tokens** or **prize** tokens in the **appropriate** slot machine hopper and the closing and locking of the slot machine and its corresponding hopper storage area by the slot mechanic or attendant.

2. After transferring the coins, **slot tokens** or **prize** tokens to the slot machine's **appropriate** hopper, the slot attendant or mechanic shall make the entries required on the slot machine's log, [indicating the] **which, at a minimum, shall include the following:**

i. The date[,] **and** time [and] **of the transfer;**

ii. The type of hopper in the slot machine to which the coins, slot tokens or prize tokens were transferred;

iii. The amount of coins, **slot tokens** or **prize** tokens **that were** placed in [the] **that** hopper[, as well as his or her]; **and**

iv. The name and license number **of the slot attendant or slot mechanic who made the transfer.**

(d) (No change.)

19:45-1.43 Slot count; procedure for counting and recording contents of slot drop buckets and slot drop boxes

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

(i) Procedures and requirements for conducting the hard count shall be as follows:

1. (No change.)

2. All slot tokens in denominations of $25.00 or more shall be counted or weighed at the beginning of the hard count, in the presence of the Commission inspector. The casino licensee may count or weigh other denominations of coins or slot tokens at the same time, provided that the high denomination slot token count

proceeds to completion without interruption, except as otherwise provided herein. The Commission inspector shall, independently of the casino licensee, record on a countdown sheet the total amount of each slot token in a denomination of $25.00 or more which is counted or weighed. The inspector shall compare the totals on his or her countdown sheet with the amounts of those **slot** tokens recorded by the hard count team on the Slot Win Sheet, and verify that the amounts are in agreement and are correct, and if not, shall either satisfactorily account for any discrepancies, if possible, or document the incident and promptly report it to the Division. At the conclusion of the hard count, the inspector shall recompare the totals on the countdown sheet with the final totals determined by the casino licensee.

3.-12. (No change.)

(j) Procedures and requirements at the conclusion of the hard count shall be as follows:

1.-4. (No change.)

5. The inspector shall then compare the amounts of the slot tokens listed on his or her countdown sheet with the amounts of those **slot** tokens shown on the Slot Win Sheet, and verify that the amounts are in agreement and are correct, and if not, either satisfactorily account for any discrepancies, if possible, or document the incident and promptly report it to the Division.

6.-10. (No change.)

19:45-1.44 Computer recordation and monitoring of slot machines

(a) (No change.)

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

1. (No change.)

2. Record the number and total value of coins or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1] deposited in the slot drop bucket or slot drop box of the slot machine;

3. [Record the number and total value of slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 deposited in the separate slot drop bucket or slot drop box of the slot machine required by N.J.A.C. 19:45-1.36(i);

4.] Record the number and total value of coins**, prize tokens** or slot tokens automatically paid by the slot machine as the result of a jackpot;

Recodify 5. as **4.** (No change in text.)

[6.]**5.** Record the number and total value of coins or slot tokens vended from the slot machine **all-purpose** hopper to make change;

Recodify 7.-9. as **6.-8.** (No change in text.)

(c) (No change.)

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(o) (No change.)

(p) Prize tokens shall not be distributed as complimentary services or items pursuant to this section.

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

(a)-(p) (No change.)

(q) Prize tokens shall not be dispensed from automated coupon redemption machines.

19:46-1.5 Nature and exchange of gaming chips, [slot tokens and] plaques[,] and match play coupons

(a) All wagering on authorized games**, other than slot machines,** in a casino or casino simulcasting facility shall be conducted with gaming chips or plaques; provided however, that [slot tokens or coins shall be permitted for use in slot machines or simulcast wagering and] match play coupons shall be permitted for use in wagering at authorized games in accordance with N.J.A.C. 19:45-1.18 and 19:45-1.46. Gaming chips previously issued by a casino licensee which are not in active use by that casino licensee shall not be used for wagering at authorized table games or casino simulcasting, and shall not be accepted nor exchanged for any purpose at a gaming table or a casino simulcast counter. Such chips shall only be redeemed at the cashiers' cage pursuant to (f) below.

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths or with changepersons for currency, coin or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1] to play the slot machines, and may be used for simulcast wagering.

(c) [Slot tokens shall only be issued to a patron from a slot booth, cashiers' cage, bill changer or by a slot change person. Slot tokens shall only be issued upon the request of a patron; provided, however, complimentary slot tokens may be issued by a casino licensee in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46. Slot tokens shall only be redeemed at a coin redemption booth, a slot booth or the cashiers' cage.

(d)] Except as provided in [(i)] **(h)** below and as otherwise may be specifically approved by the Commission, **each casino licensee shall redeem its** gaming chips[, tokens] and plaques [shall] only [be redeemed by a licensee] from its patrons and shall not [be] knowingly [redeemed] **redeem its gaming chips and plaques** from any non-patron source.

[(e) Gaming chips, tokens and plaques shall be considered solely as evidence of a debt owed to their custodian by the casino licensee and shall be considered at no time the property of anyone other than the casino licensee issuing them.]

(d) Each gaming chip and plaque is solely evidence of a debt that the issuing casino licensee owes to the person legally in possession of the gaming chip or plaque, and shall remain the property of the issuing casino licensee, which shall have the right at any time to demand that the person in possession of the gaming chip or plaque surrender the item upon the casino licensee exercising its right of redemption in accordance with (f) below.

[(f)]**(e)** Each casino licensee shall redeem promptly its own genuine gaming chips and plaques [by] **, except when the gaming chips or plaques were obtained or being used unlawfully. A casino licensee shall redeem gaming chips or plaques by exchanging them for an equivalent amount of** cash or [by] **, upon request by a patron who surrenders gaming chips or plaques in any amount over $25.00, for a casino** check **of that casino licensee in the amount of the chips or plaques surrendered and** dated the day of such redemption [on an account of the casino licensee as requested by the patron, except when the gaming chips or plaques were obtained or being used unlawfully. Slot tokens shall be redeemed or exchanged in the following manner:

1. Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 shall be redeemed promptly by the issuing casino at the request of the patron for:

i. Cash; or

ii. Check dated the day of such redemption on an account of the casino licensee;

2. Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchangeable for a coupon which is redeemable for goods or services offered by, or on behalf of, the casino licensee; provided, however, that a casino licensee shall require that the amount of tokens exchangeable be equal to the face value of the coupon, the denomination of which shall be approved by the Commission].

[(g)]**(f)** Each casino licensee shall have the right to demand the redemption of its gaming chips[, slot tokens] or plaques from any person in possession of them and such person shall redeem said chips[, slot tokens] or plaques upon presentation [of an equivalent amount of cash] by the casino **licensee of cash in an equivalent amount**[; provided, however, that slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchanged in accordance with (f)2 above].

[(h)]**(g)** [No] **Each** casino licensee shall **accept, exchange, use or redeem only gaming chips or plaques that it has issued and shall not** knowingly accept, exchange, use or redeem gaming chips[, tokens] or plaques**, or objects purporting to be gaming chips or plaques, that have been** issued by [another casino licensee] **any other person,** except that a casino licensee may redeem from its patrons

[foreign] gaming chips[, tokens] or plaques **issued by another legally operated casino licensee** upon the representation of a patron that [such tokens had been received by the patron from payout chutes of slot machines on the premises or] such chips[, tokens] or plaques had been purchased or received as payment in a gaming transaction from an employee of such licensee working on the premises.

[(i)](h) [A] **Each** casino licensee shall redeem promptly its own genuine gaming chips[, tokens] and plaques [from] **presented to it by any** other legally operated casino [licensees] **licensee** upon the representation that such chips[, tokens] and plaques were received or accepted unknowingly, inadvertently or in error[, were unavoidably received in slot machines through patron play] or were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange, **with other legally operated casino licensees,** of [foreign] gaming chips[, tokens] and plaques:

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee.

Recodify (j) as (i) (No change in text.)

[(k) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths and coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."]

19:46-1.6 Receipt of gaming chips[, tokens] or plaques from manufacturer or distributor; inventory, security, storage and destruction of chips[, tokens] and plaques

(a) When gaming chips[, tokens] or plaques are received from the manufacturer or distributor thereof, they shall be opened and checked by at least three people, one of whom shall be from the accounting or auditing department of the casino licensee. Any deviation between the invoice accompanying the chips[, tokens] and plaques and the actual chips[, tokens] or plaques received or any defects found in such chips[, tokens] or plaques shall be reported promptly to the Commission and Division.

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

[(i) The casino licensee shall submit to the Commission for approval procedures to record the receipt, inventory, storage and destruction of gaming tokens.]

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) The Commission shall have the discretion to review and approve all gaming and simulcast wagering equipment and other devices used in a casino, casino simulcasting facility or hub facility as to quality, design, integrity, fairness, honesty and suitability including without limitation gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, **slot tokens, prize tokens,** data processing equipment, pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines and totalisators.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino, casino simulcasting facility or hub facility including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, card reader devices, data processing equipment, **slot tokens, prize** tokens, slot machines, pari-mutuel machines, self-service pari-mutual machines, credit voucher machines and totalisators have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino, casino simulcasting facility or hub facility shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice, cards, and pai gow tiles may be found at N.J.A.C. 19:46-1.16, 19:46-1.18 and 19:46-1.19B, respectively.

19:46-1.26 Slot machines and bill changers; identifications; signs; meters; other devices

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each bill changer shall have the following identifying features:

1.-2. (No change.)

3. A display on the front of the bill changer that clearly indicates the amount of coins **or slot tokens** dispensed by the slot machine **all-purpose** hopper after currency or a coupon has been inserted and accepted; and

4. (No change.)

(c) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. (No change.)

2. A mechanical, electrical or electronic device, to be known as a "drop-meter," that continuously and automatically counts the number of coins or slot tokens **that are** dropped into the machine's slot drop bucket or slot drop box; [provided, however, for machines equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2, a separate "drop meter" shall count the number of such slot tokens dropped into the separate container required by N.J.A.C. 19:45-1.36(i);]

3. [A] **For each hopper in a slot machine, a separate** mechanical, electrical or electronic device, to be known as a "jackpot meter," that continuously and automatically counts **and records, for that hopper only,** the number of coins, prize tokens or slot tokens **that are** automatically paid by the machine from the **corresponding** hopper;

4. A mechanical, electrical or electronic device, to be known as a "manual jackpot meter," that continuously and automatically records the number of coins or slot tokens to be paid manually[, provided, however, that the manual payout shall not include slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2];

5. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine, that advises [the] **a** player **of** the number of coins, **prize tokens** or slot tokens that have been paid to [him] **the player from the corresponding hopper** by the machine upon hitting a winning combination; **provided, however, that a slot machine with multiple hoppers shall have a separate win meter for each hopper if:**

i. The machine is capable of paying out from both hoppers on the same winning combination; and

ii. The denomination of the coins, slot tokens or prize tokens in one of the hoppers is different from the denomination of the coins, slot tokens or prize tokens in the other hopper; and

6. (No change.)

(d) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with **the** mechanical, electrical or electronic devices [as follows:

1. A "change meter," that continuously and automatically counts the number of coins or slot tokens vended from the slot machine's hopper to make change, whether for currency or coupons;

2. A number of "bill meters" that continuously, automatically and separately count, for each denomination of currency accepted by the bill changer, the actual number of bills accepted by the bill changer; and

3. If the attached bill changer can accept coupons, but does not contain the coupon meters identified in N.J.A.C. 19:45-1.46B:

i. A "numerical coupon meter," that continuously, automatically and separately counts the total number of all coupons accepted by the bill changer; and

ii. A "value coupon meter," that continuously, automatically and separately counts the total dollar value of all coupons accepted by the bill changer.] **that are required by N.J.A.C. 19:45-1.37(e).**

[(e) Unless otherwise authorized by the Commission, each slot machine that accepts currency shall have meters that accomplish the objectives set forth in (c) above.

(f) All meters described herein shall be placed in a position so that the numbers thereon can be read and recorded without opening the slot machine.

(g) A casino licensee shall set each slot machine to payout at a minimum 83 percent of the amount of coins, currency or tokens placed by patrons into the slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. No payout of any merchandise or thing of value or payment in cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.

(h) Each slot machine in a casino shall have such test connections as may be specified by the Division and approved by the Commission for the on-site inspection, examination and testing of such machine.]

Recodify (i) as **(e)** (No change in text.)

19:46-1.33 Issuance and use of **slot** tokens for gaming **and simulcast wagering; prize tokens**; slot token **and prize token** specifications

(a) [A] **Each** casino licensee may, with Commission approval, issue **the following types of** metal [tokens designed] **disks having two faces and an edge:**

1. A "slot token" that is:

i. Designed for gaming use in [its] **the hoppers of the casino licensee's** slot machines and in simulcast wagering[, provided that each such slot token:] **within the casino licensee's casino simulcasting facility;**

ii. Capable, upon insertion into the coin acceptor of a designated slot machine operated by the casino licensee that issued the slot token, of activating the play of that slot machine;

iii. Issuable, in an exchange with a patron upon request, only from a slot booth, the cashiers' cage, a change machine or bill changer, or by a changeperson; provided, however, that each casino licensee may issue slot tokens as complimentary services or items in accordance with a distribution program authorized pursuant to N.J.A.C. 19:45-1.46;

iv. Exchangeable, by a patron at the casino where the slot token was issued, in the manner provided by N.J.A.C. 19:45-1.34 and 19:45-1.35; and

v. Redeemable, by the issuing casino licensee promptly upon request of the patron surrendering one or more slot tokens, only at a coin redemption booth, a slot booth or the cashiers' cage for an equivalent amount of cash or for a casino check of that casino licensee in the amount of the slot tokens surrendered and dated the day of the redemption; and

2. A "prize token" that is:

i. Designed to be awarded and issued only as a payout from a payout-only hopper of a designated slot machine that is operated by the casino licensee using the token;

ii. Incapable of activating slot machine play;

iii. Unavailable for use in simulcast wagering;

iv. Redeemable, by the issuing casino licensee promptly upon request of the patron surrendering one or more prize tokens, only at a coin redemption booth, a slot booth or the cashiers' cage for an equivalent amount of cash or for a casino check of that casino licensee in the amount of the prize tokens surrendered and dated the day of the redemption;

v. Exchangeable, by a patron at the casino where the prize token was issued, in the manner provided by N.J.A.C. 19:45-1.34 and 19:45-1.35;

vi. Unavailable as a manually paid jackpot;

vii. Unavailable as a payout from a progressive slot machine;

viii. Unavailable as a multi-casino jackpot; and

ix. Unavailable as a complimentary service or item.

(b) Each slot token and each prize token shall be designed so that it:

1.-2. (No change.)

3. Contains **on each face, in the case of a slot token only,** a statement [that the token is acceptable only at the casino issuing it], **approved by the Commission as to form and content, that notifies a patron that the slot token will be accepted to activate play only in slot machines operated by the casino licensee that issued it;**

4.-11. (No change.)

12. Contains **on each face, in the case of a prize token only,** a statement [that it is not redeemable for cash, if the slot token is issued pursuant to section (d)2 below], **approved by the Commission as to form and content, that notifies a patron that the prize token does not activate play.**

Recodify (b) as (c) (No change in text.)

[(c) No casino licensee shall issue or cause to be utilized in its casino any tokens for gaming use in slot machines unless and until such tokens are approved by the Casino Control Commission. In requesting approval of any slot tokens, a casino licensee shall first submit to the Commission a detailed schematic of its proposed token which shall show the front, back and edge of the token, its diameter, thickness and any logo, design and wording thereon, all of which shall be depicted on the schematic as they will appear, both as to size and location, on the actual slot token. Once the design schematic is approved by the Casino Control Commission or its designee, no slot token shall be issued or utilized until and unless a sample of the token is also submitted to and approved by the Commission.

(d) A slot token shall be capable of insertion into and activating the play of a designated slot machine operated by the casino licensee which issued the slot token.

1. A slot token that is redeemable by the patron pursuant to N.J.A.C. 19:46-1.5(f)(1) shall:

i. Be issued upon a patron's request, or be issued in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46;

ii. Be available as a payout from the slot machine payout reserve container (hopper); and

iii. Be available for use in simulcast wagering.

2. A slot token that is exchangeable only for a coupon pursuant to N.J.A.C. 19:46-1.5(f)2 shall:

i. Be issued only in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46;

ii. Not be available as a payout from the slot machine hopper;

iii. Be retained in a separate slot drop bucket or slot drop box, pursuant to N.J.A.C. 19:45-1.36(i); and

iv. Not be available for use in simulcast wagering.]

(d) Each prize token shall:

1. Have a diameter that is different from the diameter:

i. Of any slot token approved for use by any casino licensee; and

ii. Authorized for each denomination of slot token as enumerated in (c) above; and

2. Have a metal content that is different from the metal content of any slot token approved for use by the casino licensee that issued the prize token.

(e) No slot token or prize token shall be issued by a casino licensee or utilized in a casino or casino simulcasting facility unless and until:

1. The design specifications of the proposed slot token or prize token are, prior to the manufacture of the slot token or prize token, submitted to and approved by the Commission, which submission shall include a detailed schematic depicting the actual size of the token's diameter and thickness and, as appropriate, location of the following:

i. Each face;

ii. The edge; and

iii. Any words, logos, designs, graphics or security measures contained on the slot token or prize token; and

2. A sample slot token or prize token, manufactured in accordance with its approved design specifications, is submitted to and approved by the Commission.

(f) No casino licensee shall issue, use or allow a patron to use in its casino or casino simulcasting facility any slot token or prize

token that it knows, or reasonably should know, is materially different from the sample of that slot token or prize token approved by the Commission.

19:46-1.34 Wagering at slot machines; use of slot tokens and prize tokens

(a) All wagering at slot machines in a casino shall be conducted with coins or slot tokens; provided, however, that currency may be accepted through bill changers.

(b) Slot tokens may be used to make simulcast wagers.

(c) Prize tokens shall not be used for simulcast wagering.

19:46-1.35 Redemption of slot tokens and prize tokens from nonpatrons; duty of patrons to surrender slot tokens and prize tokens upon demand

(a) Except as provided in (e) below and as may be specifically approved by the Commission, each casino licensee shall redeem its slot tokens and prize tokens only from its patrons and shall not knowingly redeem its slot tokens and prize tokens from any nonpatron source.

(b) Each slot token and prize token is solely evidence of a debt that the issuing casino licensee owes to the person legally in possession of the slot token or prize token, and shall remain the property of the issuing casino licensee, which shall have the right at any time to demand that the person in possession of the slot token or prize token surrender the item upon the casino licensee exercising its right of redemption in accordance with (c) below.

(c) Each casino licensee, upon demand, shall have the right to redeem its slot tokens and prize tokens from any person in possession of them, who shall surrender the slot tokens and prize tokens upon the casino licensee presenting the person with an equivalent amount of cash.

(d) Each casino licensee shall accept, exchange, use or redeem only slot tokens or prize tokens that it has issued and shall not knowingly accept, exchange, use or redeem slot tokens or prize tokens, or objects purporting to be slot tokens or prize tokens, that have been issued by any other person, except that each casino licensee may redeem from its patrons slot tokens or prize tokens issued by any other legally operated casino licensee upon a patron's representation that he or she received such tokens from the payout chutes of slot machines on the casino licensee's premises, or that the patron purchased or received such tokens as payment in a gaming transaction from an employee of the casino licensee during the normal course of the employee's duties on the premises while at work.

(e) Each casino licensee shall redeem promptly its own genuine slot tokens and prize tokens presented to it by any other legally operated casino licensee upon the representation that such slot tokens and prize tokens were received or accepted unknowingly, inadvertently or in error, were unavoidably received in slot machines through patron play, or mistakenly were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange, with other legally operated casino licensees, of slot tokens and prize tokens:

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee.

(f) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths and coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."

19:46-1.36 Slot tokens and prize tokens; receipt, inventory, security, storage and destruction

(a) Each casino licensee shall inspect all slot tokens or prize tokens, or any combination thereof, upon receipt from the manufacturer or distributor to ensure, at a minimum, that:

1. The quantity and denomination of slot tokens or prize tokens that are actually received from the manufacturer or distributor agrees with the amount of such tokens listed on the shipping documents; and

2. There are no physical defects in the slot tokens or prize tokens that were received.

(b) The inspection required by (a) above shall be conducted by at least three people (the "inspection team"). Each inspection team shall consist of at least one representative from the following categories:

1. The accounting or auditing department of the casino licensee;

2. The casino security department of the casino licensee; and

3. With prior Commission approval, a casino employee from any of the casino licensee's other departments.

(c) Each casino licensee shall report to the Commission and the Division promptly after an inspection required by (a) above discloses any discrepancy in the shipment including, but not limited to, the following:

1. The shipment contains defective slot tokens or prize tokens; or

2. The quantity and denomination of the slot tokens or prize tokens actually received does not agree with the amount listed on the shipping documents.

(d) Each casino licensee shall submit to the Commission for approval procedures to record and process the receipt, inventory, storage and destruction of slot tokens and prize tokens.

19:51-1.1 Definitions

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

"Gaming equipment" means any mechanical, electrical or electronic contrivance or machine used in connection with gaming or any game and includes, without limitation, roulette wheels, roulette tables, big six wheels, craps tables, tables for card games, layouts, slot machines, **slot tokens, prize tokens,** cards, dice, chips, plaques, match play coupons, card dealing shoes, drop boxes, and other devices, machines, equipment, items or articles determined by the Commission to be so utilized in gaming as to require licensing of the manufacturers, distributors or [services] **servicers,** or as to require Commission approval in order to contribute to the integrity of the gaming industry or to facilitate the operation of the Commission or the Division.

. . .

19:51-1.2 License requirements

(a) (No change.)

(b) Enterprises required to be licensed in accordance with subsections 92a and b of the Act and (a) above shall include, without limitation, the following:

1. Manufacturers, suppliers, distributors, servicers and repairers of roulette wheels, roulette balls, big six wheels, gaming tables, slot machines, cards, dice, gaming chips, gaming plaques, slot tokens, **prize tokens,** dealing shoes, drop boxes, computerized gaming monitoring systems, totalisators, pari-mutuel machines, self-service pari-mutuel machines and credit voucher machines;

2.-3. (No change.)

(c)-(j) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF PARKS AND FORESTRY

State Trails System

Proposed New Rules: N.J.A.C. 7:5D

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1B-3; 13:1D-9; 13:8-30 et seq.; 13:8B-1 et seq.; and L. 1975, c.367.

DEPE Docket Number: 17-94-03/267.

Proposal Number: PRN 1994-199.

Submit written comments, identified by the above Docket Number, by May 4, 1994 to:

Janis E. Hoagland
Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) proposes a new chapter at N.J.A.C. 7:5D in order to implement the New Jersey Trails System Act, N.J.S.A. 13:8-30 et seq. The proposed chapter establishes standards, procedures and practices for designating and maintaining trails as part of the State Trails System created by the Act. Once these rules have been adopted, the Department intends to codify the Act's designation of the Appalachian Trail as the initial component of the State Trails System. See N.J.S.A. 13:8-31(b) and 13:8-35(b). At that time, the Department also intends to propose the designation of at least three more trails (the Batona Trail, the Delaware and Raritan Canal State Park, and the Sussex Branch Trail) to the System.

In 1974, the Legislature approved the New Jersey Trails System Act (Act), which is modeled after the National Trails System Act, P.L. 90-543, as amended by P.L. 95-248. The objective of the New Jersey Act is to designate trails for public use in both natural and urban areas in order to provide for the ever-increasing outdoor recreation needs of an expanding population and to promote public access to, travel within, and enjoyment and appreciation of the outdoor, natural and remote areas of the State. N.J.S.A. 13:8-31(a). To meet this goal, the Act authorizes the Department to establish a statewide system of scenic and recreation trails, and designates the New Jersey section of the Appalachian Trail as the initial component of the system. N.J.S.A. 13:8-31(b) and 13:8-35(b). The Act also prescribes methods and standards for designating additional trail components to the system; confers upon the Department the power to adopt the rules and regulations necessary to effectuate its purposes; and authorizes the expenditure of Green Acres bond funds for trail acquisition purposes. N.J.S.A. 13:8-31(b), 13:8-42, and 13:8-44.

In response to the passage of the Act, the Department has engaged in a variety of planning activities to evaluate the nature and extent of trails needs in the State. In 1975, the Department and the Department of Transportation jointly convened the New Jersey Trails Council (Council) as a lay advisory board to assist in these planning activities. The Legislature formally recognized the role of this advisory body in 1976, when it authorized the Council to undertake a study and prepare a plan for a coordinated system of trails throughout the State. See L. 1975, c.367. After an extensive public participation process, the Council issued the New Jersey Trails Plan in 1982.

The New Jersey Trails Plan consists of a comprehensive inventory of existing trails on public lands and the potential for future trails; an analysis of present and future trails needs; an analysis of legal, social and policy issues affecting trails resources; and a number of administrative, legislative and policy recommendations for establishing and maintaining the State trails system, improving existing trails, and acquiring and developing new trails. The Trails Plan recommends the development of a statewide trails system which includes trails and trail use categories for each of six major types of trail use: foot, water, horse, bicycle, snow and motorized. Within each of these categories, the Trails Plan contains specific recommendations on the respective roles of the State, counties and municipalities in developing, designating and maintaining trails; and recommends designation of several existing or proposed trails as initial components of the statewide trails system.

Although the Trails Council was disbanded after the 1982 issuance of the Trails Plan, the Department reconvened a new Trails Council in April 1993. The current Trails Council consists of eleven members representing trails groups, conservation and recreation groups, and the State. The Department and the Trails Council are currently updating the Trails Plan, and expect to release draft revisions to the Trails Plan by early 1994 for public review and comment.

Based on the requirements of the Act, the recommendations of the Trails Plan, and the continuing trails planning conducted by the Council and the Department, the Department now proposes the State Trails System rules, N.J.A.C. 7:5D, to provide a regulatory framework for the operation of the State Trails System.

A summary of the proposed State Trails System rules follows:

N.J.A.C. 7:5D-1, General Provisions, outlines the purpose and scope of the State Trails System rules, and contains definitions of key terms used throughout the proposed chapter.

N.J.A.C. 7:5D-2, New Jersey Trails Council, describes the purpose, organization, and duties of the New Jersey Trails Council. Through this subchapter, the Department proposes to continue the Council as an advisory body to provide public input into the administration of the System, including the designation of trails to the System.

N.J.A.C. 7:5D-3, Land Acquisition for Trails, describes the trail acquisition powers of the Department under the Act and under the New Jersey Conservation Restriction and Historic Preservation Act, N.J.S.A. 13:8B-1 et seq.

N.J.A.C. 7:5D-4, Classes of Trails, establishes scenic trails, recreation trails and connecting trails as the classes of trails within the State Trails System, and prescribes the purposes and uses for which such trails may be designated to the System.

N.J.A.C. 7:5D-5, Designation of State Trails to the System, specifies qualifications which must be met for trail designation, criteria for determining the suitability of trails for designation to the the State Trails System, the procedure by which trails may be designated to the System, and the procedure for repealing designation of a trail to the System if the Department determines that it is not feasible to administer the trail in a manner consistent with the purposes for which it was designated to the System.

N.J.A.C. 7:5D-6, Trails Management, requires the administering agency of a designated trail to prepare a trail management plan, and lists management objectives to be addressed through preparation of a trail management plan. Under this subchapter, the administering agency is responsible, through its preparation of a trails management plan, for identifying trail segments and access points appropriate for the needs of disabled trail users and conducting planning to meet any applicable guidelines and/or requirements under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101. At the present time, there are no ADA guidelines specifically applicable to newly constructed or altered recreational facilities and parks. However, a Federal recreation advisory committee under the supervision of the U.S. Department of Justice, Civil Rights Division, is in the process of soliciting and reviewing public comment on this subject, and may propose such guidelines in 1994.

N.J.A.C. 7:5D-7, Department-funded Construction Projects Affecting Designated Trails, sets up a review procedure for assessing and minimizing the impact on designated trails of construction projects funded by the Department. This review procedure was developed under the authority of N.J.S.A. 13:8-38, which prohibits disturbance of natural vegetation within the external boundaries of the trail right-of-way, and which requires the Department to make every effort to avoid any use of the trail right-of-way that is incompatible with the purposes for which a trail is designated to the System, and N.J.S.A. 13:8-42, which authorizes the Department to promulgate rules governing the protection of the State Trails System.

As proposed, the N.J.A.C. 7:5D-7 review procedure will apply only to construction projects, wholly or partially funded by the Department, that temporarily or permanently cross, border upon, or interrupt use of a designated trail right-of-way or its associated facilities. If the Department determines that a proposed project will temporarily interfere with the trail right-of-way, it may require the applicant to conduct mitigation measures to maintain or temporarily relocate the trail as a condition of Department funding. If the Department

determines that the proposed project will permanently interfere with the trail right-of-way, rendering it unsuitable for its designated purposes, the proposed procedure would allow the Department to disapprove use of the trail for the proposed project.

N.J.A.C. 7:5D-8, State Trails System, lists those trails designated as components of the System. Once trails have been designated to the System through the procedure in this chapter, this subchapter will list the location, classification, administering agency, and designated uses of each designated trail. This subchapter also provides for public access to information about the System.

Once the proposed criteria and procedures for trail designation have been adopted, the Department intends to codify the statutory designation of the Appalachian Trail as the initial component of the State Trails System. See N.J.S.A. 13:8-31(b) and 13:8-35(b). At that time, the Department also intends to propose designation of the Batona Trail, the Delaware and Raritan Canal State Park, and the Sussex Branch Trail to the System. These trails were all recommended for inclusion in the System by the 1982 Trails Plan, and each is particularly suited for designation in accordance with the objectives of the Act and the guidelines contained in these proposed rules.

Social Impact

The proposed rules are expected to have a positive social impact by facilitating the designation of trails throughout the State to the State Trails System. As stated in the Act, designation of trails to the System is intended to help preserve the natural, recreational, ecological, geological, historic and cultural qualities of trails and the areas through which they pass; to increase open space and recreational opportunities; and to enhance the quality of life in New Jersey for all State residents and visitors. By providing the Department with the standards necessary to implement the provisions of the Act, the proposed chapter will allow the Department to establish in full force and effect the beneficial environmental and recreational programs envisioned by the Act.

The proposed rules contain several provisions designed to ensure full public participation and full consideration of social impacts throughout the process of trail designation and maintenance. For example, the New Jersey Trails Council, which is to be continued by these rules, will provide members of the public with an opportunity to participate in trails planning and will provide a public forum for discussion of trails issues and concerns. In addition, proposed N.J.A.C. 7:5D-5.2 requires consideration of historic and cultural qualities of trails, accessibility of trails to users, multiple use potential of trails and public support for trails as part of the designation process. Finally, proposed N.J.A.C. 7:5D-6.1 requires the preparation of trails management plans that encourage multiple use of trails, consider the needs of disabled trail users, minimize potential impacts of designated trails on adjacent landowners, and provide for parking and other ancillary facilities necessary to support trails use.

Economic Impact

By providing a framework for the designation of trails to the State Trails System, this chapter should have a positive secondary economic impact on businesses dependent on tourism and outdoor recreational activities. This chapter may also have some beneficial economic impact on non-State property owners on whose lands trails are located and on adjacent landowners by providing official recognition of the value of designated trails, and encouraging their proper management to preserve and enhance that value.

Although the Act authorizes the expenditure of Green Acres bond funds for trail acquisition purposes, it did not appropriate any funds for the administration of the State Trails System. Therefore, all administrative functions under these rules will be performed by existing Department and administering agency staff. Currently, several staffers in the Department's Division of Parks and Forestry perform trails-related work as part of their program responsibilities. Depending on future staffing and funding conditions, and depending on the number of trails proposed for designation to the System, it may be necessary for the Department or affected administering agencies to hire additional staff to meet their responsibilities under the Act and the proposed rules.

Proposed N.J.A.C. 7:5D-7, which establishes a review procedure for assessing and minimizing the impact on designated trails of projects funded by the Department, may have an adverse economic impact on recipients of Department funding if it is determined that project changes or other mitigation measures are necessary to minimize a proposed project's impacts on a designated trail. The magnitude of this adverse economic impact will depend upon a number of factors, including the nature of the project, the extent of the proposed encroachment upon the designated trail, and the project alterations or mitigation determined by the Department to be appropriate.

Environmental Impact

The proposed rules, which will establish the regulatory framework necessary for the operation of the State Trails System, are expected to have a positive enviromental impact. As stated in the Act, designation of trails to the System is intended to help preserve the natural, recreational, ecological, geological, historic and cultural qualities of trails and the areas through which they pass; to increase open space and recreational opportunities; and to enhance the quality of life in New Jersey for all State residents and visitors. By providing for designation of trails to the System and maintenance of designated trails, this chapter will facilitate the preservation of trails and conservation of adjacent corridors, to the benefit of the State's flora, fauna, and environment. In addition, the Department anticipates that the proposed rules will help preserve the open, natural, scenic and other environmental values of designated Trails by involving the public in trails-related recreational activities and increasing public awareness of the values of designated trails.

As noted, proposed N.J.A.C. 7:5D-7 establishes a review procedure for assessing and minimizing the impact on designated trails of projects funded by the Department. This review procedure is expected to have a positive environmental impact on the designated trails, flora, fauna, and surrounding areas by minimizing to the extent practicable the environmental and other impacts of Department-funded projects.

Finally, the designation to the State Trails System of linear corridors of land and water that link larger areas of open spaces may in the future provide a basis for defining and designating greenways throughout the State.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act (Act), N.J.S.A 52:14B-16 et seq., the Department has determined that proposed N.J.A.C. 7:5D-7 may impact small businesses as defined by the Act. Proposed N.J.A.C. 7:5D-7 establishes a review procedure for assessing and minimizing the impact on designated trails of projects funded by the Department. This subchapter may have an adverse economic impact on recipients of Department funding, some of which may be small businesses, if it is determined that project changes or other mitigation measures are necessry to minimize a proposed project's impacts on designated trails. The magnitude of this adverse economic impact will depend upon a number of factors, including the nature of the project, the extent of the proposed encroachment upon the designated trail, and the project alterations or mitigation determined by the Department to be appropriate.

As proposed, N.J.A.C. 7:5D-7 does not contain specific exemptions or provisions addressing its impact on small businesses. However, the Department anticipates that the N.J.A.C. 7:5D-7 review process will be sufficiently flexible to allow an equitable balancing of the concerns of small business and the Department's objective of minimizing degradation of designated trails.

Full text of the proposed new rules follows:

CHAPTER 5D
STATE TRAILS SYSTEM

SUBCHAPTER 1. GENERAL PROVISIONS

7:5D-1.1 Purpose and scope

This chapter constitutes the rules of the Department concerning the implementation of the New Jersey Trails System Act, N.J.S.A.

13:8-30 et seq. This chapter establishes standards, procedures and practices for designating and maintaining trails as part of the State Trails System, in order to provide for the ever-increasing outdoor recreation needs of an expanding population and to promote public access to, travel within, and enjoyment and appreciation of the outdoor, natural and remote areas of the State. Designation of trails to the System is intended to help preserve the natural, recreational, ecological, geological, historic and cultural qualities of trails and the areas through which they pass; to increase open space and recreational opportunities; and to enhance the quality of life in New Jersey for all State residents and visitors.

7:5D-1.2 Construction

This chapter shall be liberally construed to permit the Department to effectuate the purposes of the New Jersey Trails System Act, N.J.S.A. 13:8-30 et seq.

7:5D-1.3 Severability

If any subchapter, section, subsection, provision, clause or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion or application directly involved in the controversy in which such judgment is rendered and shall not affect or impair the validity of the remainder of this chapter or the application thereof to other persons.

7:5D-1.4 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 New Jersey Trails System Act, N.J.S.A. 13:8-30 et seq.

"ADA" means the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

"Administering agency" means (1) any agency of the Department that is assigned responsibility for managing a particular parcel of land, or (2) any Federal agency, State department, local unit or charitable conservancy that establishes a land management policy for a particular parcel of land included in a designated State trail.

"Charitable conservancy" means a corporation or trust whose purposes include the acquisition and preservation of land or water areas, or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c)3 of the Internal Revenue Code.

"Commissioner" means the Commissioner of the Department or his or her designated representative.

"Conservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, convenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, executive for the purposes listed at N.J.S.A. 13:8B-2(b).

"Council" means the New Jersey Trails Council.

"Department" means the New Jersey Department of Environmental Protection and Energy, its successors and assigns.

"Division" means the Division of Parks and Forestry in the Department.

"Local unit" means a municipality, county or other political subdivision of the State or agency thereof.

"New Jersey Trails Council" means the advisory board established by the Department and authorized by L. 1975 c.367, to undertake a study and prepare a plan for a coordinated system of trails throughout the State, and continued by the Department for the purpose of providing public input into the administration of the State Trails System.

"Scenic easement" means a perpetual easement in land which (1) is held for the benefit of the public, (2) is specifically enforceable by its holder or beneficiary, and (3) limits or obligates the holder of the servient estate and his or her heirs and assigns with respect to their use and management of activities conducted thereon, the object of such limitations and obligations being the maintenance or enhancement of the natural beauty of the land in question or of areas affected by it.

"State Trails System" or "System" means the statewide system of individual trails or group of trails authorized by the Act and designated pursuant to this chapter.

"Trail facility" means any area, structure or equipment that functions to provide a service to the trail user, including, but not limited to, parking lots, picnic areas and rest rooms.

"Trail right-of-way" means a road, path, or water body and adjacent land, under the jurisdiction of an administering agency and designated for public trail access pursuant to this chapter.

"Trails Plan" means the plan for a coordinated system of trails throughout the State authorized by L. 1975, c.367, as updated.

SUBCHAPTER 2. NEW JERSEY TRAILS COUNCIL

7:5D-2.1 New Jersey Trails Council

(a) The New Jersey Trails Council shall advise the Department on the designation of trails to the State Trails System and the management of the State Trails System.

(b) The Council shall consist of representatives from trail user groups, outdoor recreation and conservation organizations, and State governmental agencies. Members of the Council representing trail user groups and outdoor recreation and conservation organizations shall be appointed by the Commissioner and shall serve for a period of three years from the date of appointment and until their successors are duly appointed. Members of the Council representing State governmental agencies shall serve as ex-officio members, and shall be appointed by the Commissioner of their respective departments.

(c) The Council shall:

1. Provide a forum for the public to discuss issues related to the designation and management of the State Trails System or the contents of the Trails Plan;

2. Advise the Department on the establishment, development, and maintenance of scenic, recreation and connecting trails on lands owned by the Department;

3. Advise the Department on the trail development potential of proposed State acquisitions;

4. Review proposals for trail designation submitted by Federal or State agencies, local units, private organizations or persons and advise the Department on such proposals;

5. Periodically evaluate the Trails Plan and advise the Department on additions, deletions, and modifications;

6. Review trail proposals and funding allocations consistent with any Federal requirements for trail acquisition and management, and advise the Department on the results of its review; and

7. Encourage the development of trails throughout the State and provide information to the State and the public on trails issues of Statewide interest.

SUBCHAPTER 3. LAND ACQUISITION FOR TRAILS

7:5D-3.1 Land acquisition for trails

(a) The Department, with the advice of the Council, may acquire interest in land for trails purposes in fee simple, or by conservation restriction or scenic easement, through purchase, donation or exchange.

(b) The Department shall review for trails acquisition potential all formal declarations of railroad right-of-way abandonments by the Interstate Commerce Commission or other Federal agencies.

SUBCHAPTER 4. CLASSES OF TRAILS

7:5D-4.1 Classes of trails

(a) The State Trails System is composed of the following classes of trails:

1. Scenic trails;

2. Recreation trails; and
3. Connecting trails.

7:5D-4.2 Scenic trails

(a) Scenic trails are designated to the State Trails System to provide the public with the opportunity for the appreciation of natural and cultural areas, and to facilitate the conservation and enjoyment of significant scenic, historic, natural, ecological, geological or cultural areas through which such trails pass.

(b) The Department shall specify the uses of scenic trails upon their designation to the State Trails System. Such uses shall be limited to non-motorized recreational uses. The Department may allow segments of scenic trails to be used for hiking, canoeing, horseback riding, bicycling, and/or ski touring, as appropriate.

(c) Scenic trails must be five miles or longer in length, but a scenic trail may consist of segments or components of a group of trails totalling five miles or more.

7:5D-4.3 Recreation trails

(a) Recreation trails are designated to the State Trails System to provide the public with the opportunity for a variety of outdoor recreational uses.

(b) The Department shall specify the uses of recreational trails upon their designation to the State Trails System. Such uses may include hiking, canoeing, horseback riding, bicycling, ski touring, snowmobiling, motorcycling, use of off-road vehicles (ORV's), or cultural or historical touring.

7:5D-4.4 Connecting trails

Connecting trails are designated to the State Trails System to provide additional points of public access to scenic or recreation trails or to provide connections between such trails, including connections between points of interest on such trails.

SUBCHAPTER 5. DESIGNATION OF TRAILS TO THE STATE TRAILS SYSTEM

7:5D-5.1 Qualifications for designation

(a) To qualify for designation to the State Trails System, a trail must satisfy one of the following qualifications:

1. The trail right-of-way is owned through fee simple title or held under a conservation restriction or scenic easement by the State and administered by the Department;

2. The trail right-of-way is owned through fee simple title or held under a conservation restriction or scenic easement by a local unit or a charitable conservancy, and access to and use of the trail right-of-way is guaranteed through a legal instrument dedicating the trail right-of-way for trail purposes duly filed with the appropriate county clerk; or

3. The trail right-of-way is owned by the Federal government or State agency other than the Department and there is a written cooperative agreement between the owner agency and the Department designating land or water areas for trail purposes.

7:5D-5.2 Criteria for designation

(a) A proposal to designate a trail to the System prepared pursuant to N.J.A.C. 7:5D-5.3(a) shall be based on the following criteria:

1. Scenic Quality: Trail designation proposals shall take into account the presence of high quality or rare natural features, vistas, historical or cultural features or other points of interest that can be sighted or visited along the trail;

2. Accessibility: Trail designation proposals shall take into account the availability of access points for vehicles, trailers or disabled trail users along or adjacent to the trail right-of-way. Water trail rights-of-way must have public access at both ends of the trail and at areas where portage is required;

3. Length: Trails shall be a minimum of five miles in length to be eligible for consideration as scenic trails, but this criterion may be satisfied by segments or components of a group of trails totalling five miles or more. Recreation or connecting trails are not subject to a length criterion;

4. Multiple Use: Trails which can accommodate more than one type of trail use are preferred to those which can support only a single use;

5. Development and Maintenance Costs: Trails which require little capital development or reconstruction of areas critical to the designated purpose of the trail are preferred to those which require extensive time and cost to develop and maintain;

6. Public Support: Trail designation proposals shall take into account public input and recommendations from counties, municipalities, private citizens' groups or other persons indicating endorsement of or opposition to the trail designation; and

7. Environmental Impact: Trails which require extensive development causing erosion or destruction of plant, animal, historic or cultural resources shall not be included in the State Trails System unless no alternative routes are available.

7:5D-5.3 Trail designation procedure

(a) Any Federal or State agency, local unit, private organization or person may submit to the Department a proposal for the designation of a trail to the System. The trail designation proposal shall be submitted to the Department at the following address: State Trails System, Office of Natural Lands Management, Department of Environmental Protection and Energy, CN 404, Trenton, New Jersey 08625-0404. The trail designation proposal shall consist of the following:

1. A written narrative description of the trail area and trail right-of-way, including a description of the length, surrounding land use, physical condition, and need for land acquisition and/or development for the proposed trail, and a description of public support of or opposition to the proposed trail;

2. A United States Geological Survey 7.5 minute quadrangle map marked to show the location of the proposed trail;

3. A written evaluation of whether the proposed trail should be designated as a scenic trail, recreation trail or connecting trail as set forth at N.J.A.C. 7:5D-4;

4. A written statement of how the proposed trail qualifies for designation under the qualifications set forth at N.J.A.C. 7:5D-5.1;

5. A written analysis of how the proposed trail is suitable for designation under the criteria set forth at N.J.A.C. 7:5D-5.2; and

6. A listing and justification of proposed uses for the trail upon designation.

(b) The Department encourages persons proposing the designation of a trail to the System to obtain letters of endorsement from public officials and agencies, and private citizens and organizations, as applicable, indicating support for the proposed trail designation.

(c) The Division, with the advice of the Council, shall evaluate each trail designation proposal according to the criteria at N.J.A.C. 7:5D-5.1 and 5.2. The Division shall prepare a recommendation for the Commissioner's review evaluating the proposed trail's suitability for designation and recommending that the Commissioner approve or disapprove the proposed trail designation.

(d) The Commissioner shall review all trail designation recommendations submitted by the Division and shall take one of the following actions on each proposal:

1. Propose the trail designation and designated uses of the trail as an amendment to N.J.A.C. 7:5D-8.1;

2. Request that the Division reconsider its recommendation and resubmit the proposal for the Commissioner's review, if appropriate; or

3. Reject the proposed trail designation.

7:5D-5.4 Repeal of trail designation

(a) If at any time after the designation of a trail to the System the Department determines that the trail is not meeting its designated uses and/or management objectives and that mitigation measures are not available to bring the trail into conformance with its designated uses and/or management objectives, the Department may propose to repeal the designation of the trail to the System.

(b) The procedure for repealing the designation of a trail to the System is as follows:

1. If the Division makes a preliminary determination that the designation of a trail to the System should be repealed, it shall

conduct a site evaluation of the trail to determine the extent of the trail deterioration, change of use, or unsuitability;

2. Upon completion of the site evaluation, the Division shall submit the site evaluation to the administering agency for a determination of whether mitigation measures are available to bring the trail into conformance with its designated uses and/or management objectives;

3. The Division, with the advice of the Council, shall review the administering agency's determination under (b)2 above, and, if appropriate, shall recommend repeal of the trail designation to the Commissioner;

4. The Commissioner shall review all trail designation repeal recommendations submitted by the Division and shall take one of the following actions on each proposal:

i. Propose the trail repeal as an amendment to N.J.A.C. 7:5D-8.1;

ii. Request that the Division reconsider its recommendation and resubmit the proposal for the Commissioner's review, if appropriate; or

iii. Reject the proposed repeal of the trail designation.

SUBCHAPTER 6. TRAILS MANAGEMENT

7:5D-6.1 Trails management

(a) Except as provided under (g) below and under N.J.A.C. 7:5D-7.1(g), all uses of a trail right-of-way that are inconsistent with the uses specified by the Department upon designation of the trail to the System are prohibited without prior approval by the Department.

(b) Upon designation of a trail to the System, the administering agency, in coordination with the Department and with the advice of the Council, shall prepare a management plan for the trail right-of-way.

(c) Management objectives to be addressed through preparation of a trail management plan include:

1. Management of scenic trails primarily to protect and enhance their natural and scenic qualities;

2. Protection of the natural vegetation of trail rights-of-way. Clearing of vegetation shall be permitted for public safety, trail construction, creation of occasional vistas, construction or maintenance of trail use facilities or other natural resource management that does not adversely affect the trail right-of-way or its designated uses and/or management objectives;

3. Development of multiple compatible trail uses which allow convenient exits and entrances. Special consideration shall be given to identifying trail segments and access points appropriate for the needs of disabled trail users and conducting planning to meet any applicable guidelines and/or requirements under the ADA;

4. Full consideration of and coordination with adjacent landowners and their operations in order to minimize potential adverse effects on these owners from trail use;

5. Identification of pre-existing trail uses that are inconsistent with the nature of the trail and its designated uses and/or management objectives, and evaluation of techniques to mitigate their impact;

6. Description of erosion control measures, if necessary, taking into account the designated uses of the trail and preservation of the natural environment; and

7. Identification of parking or other ancillary facilities necessary to support the classification and uses of the trail.

(d) The administering agency shall be responsible for the initial development and continued maintenance of a designated trail. The management techniques employed by the administering agency shall be compatible with the trail classification and the purposes for which the trail was designated. The administering agency may allow uses of the trail other than the designated uses only with the prior approval of the Department.

(e) In developing a trails management plan, the administering agency shall solicit the advice of the local unit(s) with jurisdiction over the area(s) through which the trail passes.

(f) The administering agency is encouraged to solicit advice on trail design and management, and assistance for routine trail maintenance, from volunteers and user groups.

(g) The administering agency shall cooperate to the fullest extent possible with the owner of the trail right-of-way in complying with the requirements of the ADA, as applicable.

(h) Emergency vehicles and authorized maintenance vehicles shall be permitted access to designated trails for emergency and management purposes.

(i) The Department shall provide administering agencies with standardized trail head signs for posting.

1. The administering agency shall place and maintain signs at trail entrances, exits, and other strategic points to indicate that a trail is a component of the System.

(j) The Department will inspect each designated trail at least every two years, with the cooperation and assistance of the administering agency. If the Department determines that the trail is not meeting one or more of its designated uses and/or management objectives, it may authorize the administering agency to undertake mitigation measures, including temporary prohibition of one or more trail uses. If the Department determines that mitigation measures are not available to bring the trail into conformance with its designated uses and/or management objectives, it may recommend repeal of the trail designation in accordance with the procedure at N.J.A.C. 7:5D-5.4.

SUBCHAPTER 7. DEPARTMENT-FUNDED CONSTRUCTION PROJECTS AFFECTING DESIGNATED TRAILS

7:5D-7.1 Review of Department-funded construction projects affecting designated trails

(a) The Department shall assess all proposed construction projects partially or wholly funded by the Department that temporarily or permanently cross, directly border upon, or interrupt use of a designated trail right-of-way or its facilities to determine the project's potential impact on the trail, trail users, associated facilities and adjacent property owners.

(b) It is the Department's policy to incorporate, through a memorandum of understanding if appropriate, an informal analysis of the impact of a proposed project on designated trails into its review of non-Department-funded construction projects under its other regulatory programs. The Department may require permittees to take measures to mitigate the impact of proposed projects on designated trails if such measures are consistent with the statutory and regulatory authority governing the permit program.

(c) The Department's review under (a) or (b) above shall assess the following:

1. The location and nature of the proposed project, including the length of time the project is expected to be under construction;

2. The potential impacts of the proposed project on the trail, including, but not limited to, soil erosion, sediment deposition, degradation of water quality, flooding, safety and health hazards, destruction or degradation of natural, historic or cultural resources, or disruption of scenic values; and

3. Proposed or potential methods for mitigating or remediating the proposed project's impacts on the trail.

(d) The Division, with the advice of the Council, shall review a proposed Department-funded construction project within 90 days of receipt of the project plans from the Department's funding program and shall provide a recommendation on the proposed project to the Commissioner.

(e) The Commissioner shall review the recommendation of the Division made under (d) above and shall take one of the following actions on the recommendation:

1. If the Commissioner determines that the proposed Department-funded construction project will temporarily interfere with the trail right-of-way, the Commissioner may require, as a condition of Department funding, mitigation measures to maintain or relocate the trail and its facilities in a manner consistent with the designated classification of the trail during the period of construction or permanently thereafter; or

2. If the Commissioner determines that the proposed Department-funded construction project will permanently interfere with the trail right-of-way or its uses, thereby rendering the trail unsuitable

for its designated purposes, and that no satisfactory remediation or mitigation is possible, the Commissioner may disapprove use of the trail for the proposed project. Remediation for permanent interference with the trail right-of-way may include relocation of the trail right-of-way in a manner consistent with N.J.A.C. 7:5D-5.1 and 5.2.

(f) Emergency measures to protect public health, safety and welfare may be undertaken in the trail right-of-way without prior review by the Department. However, persons or organizations undertaking such measures must notify the Division in writing within 24 hours of commencing such measures.

SUBCHAPTER 8. STATE TRAILS SYSTEM

7:5D-8.1 State Trails System

(a) The following trails are designated as components of the State Trails System:

1. (Reserved)

7:5D-8.2 Public information

Interested persons may obtain information on the State Trails System by contacting:

Office of Natural Lands Management
Department of Environmental Protection and Energy
CN 404
Trenton, New Jersey 08625-0404
(609) 984-1339

(a)

ENVIRONMENTAL REGULATION—HAZARDOUS WASTE REGULATION ELEMENT

Hazardous Waste Identification and Listing; Removal of K053-K059 and K074 from the List of Hazardous Waste from Specific Sources

Proposed Amendments: N.J.A.C. 7:26-8.2 and 8.14

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEPE Docket Number: 16-94-02/279.

Proposal Number: PRN 1994-194.

Submit written comments, identified by the Docket Number given above, by May 9, 1994 to:

Janis E. Hoagland, Esq.
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing to delete from the listings of hazardous waste at N.J.A.C. 7:26-8.14 the following wastestreams: K053 through K059, generated during leather tanning and finishing; and K074, generated during the production of titanium dioxide by the chloride process.

The Department is also proposing to amend N.J.A.C. 7:26-8.2 to add exemptions from hazardous waste regulation for wastes which fail the test for the toxicity characteristic because they contain trivalent chromium. In order to qualify for these exemptions, a generator's waste must meet all of the following conditions: (1) the waste must contain trivalent chromium exclusively (or nearly exclusively), (2) the waste must be generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and does not generate hexavalent chromium, and (3) the waste must be typically and frequently managed in non-oxidizing environments. The burden is on the generator of the chromium-bearing waste to prove that it qualifies for the exemption from hazardous waste regulation. In the case of an enforcement action, the generator must be able to demonstrate and appropriately document that the waste satisfies all of the conditions of the exemption (N.J.A.C. 7:26-1.13). The Department will consider a waste to meet the "nearly exclusively" trivalent chromium criterion, if the generator can show that the concentration of hexavalent chromium in the waste is equal to or less than the concentration of hexavalent chromium in the wastes specifically delineated in the exemption at N.J.A.C. 7:26-8.2(a)29. (The exemption at N.J.A.C. 7:26-8.2(a)29 is a listing of wastes which the United States Environmental Protection Agency (EPA) has already determined meet the criteria of the exemption at N.J.A.C. 7:26-8.2(a)28).

These amendments are being proposed in accordance with changes made to the Federal program by EPA in implementing the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.), 45 *Federal Register* 72035 and 72037 (1980), and subsequent related Federal rulemaking as discussed below.

EPA originally listed as hazardous wastes the wastes streams K053 through K059 and K074 because of the presence of chromium, chromium and lead, and (in the case of wastewater treatment sludges generated by plants in certain subcategories) chromium and reactivity. Subsequently, EPA was presented with information from an interested party which caused the agency to reconsider the listings. With respect to chromium, EPA determined that these listed wastes contained exclusively or virtually exclusively trivalent chromium and that these wastes, therefore, did not warrant listing because hexavalent chromium and not trivalent chromium is the constituent of concern. In addition to delisting, EPA granted an exclusion for these wastes from hazardous waste status based upon their failing the test for the toxicity characteristic. EPA emphasized that the exclusion only applies insofar as the wastes were listed or would fail the test for the toxicity characteristic solely because of their chromium content. If the wastes are hazardous for any other reason (that is, they fail the test for the toxicity characteristic for any other constituent or fail the test for any other characteristic, or are listed for any other reason) they remain in the RCRA control system. 45 *Federal Register* at 72,035 (1980). For a more detailed explanation of EPA's basis for distinguishing between the different valence states of chromium in the hazardous waste management regulations, see 45 *Federal Register* 72,029 and 72,036 (1980) and 45 *Federal Register* 74,884 (1980).

For those wastes which were listed because of the presence of lead, substantial data submitted to EPA indicated convincingly that lead was not typically used in the production process, nor was it found in process wastes, in regulatorily significant amounts or concentrations. EPA concluded that continued listing on the basis of lead content was inappropriate, especially since these wastes still remain subject to the test for the toxicity characteristic and those containing excessive concentrations of lead will be brought into the hazardous waste management system under that test. 45 *Federal Register* at 72,038 (1980).

With respect to the two wastewater treatment sludges which were listed as hazardous due to reactivity (more specifically because of the possibility of release of harmful concentrations of hydrogen sulfide gas under usual waste management conditions), historical waste management data submitted to EPA indicated that harmful release of hydrogen sulfide does not occur typically and frequently in waste management practice. EPA, therefore also delisted these sludges for reactivity. EPA noted, however, that these wastes would still remain subject to the test for the reactivity characteristic and, therefore, be regulated as hazardous waste should harmful hydrogen sulfide generation occur during waste management. 40 *Federal Register* at 72,038 (1980).

As part of the October 30, 1980, EPA Interim Final Rule (45 *Federal Register* 72035), which exempted from hazardous waste regulation the chromium wastes referenced above, EPA set up a procedure whereby a generator could obtain a temporary exclusion from hazardous waste regulation for other chromium-bearing wastes provided the wastes were managed in accordance with certain provisions. To be eligible for this temporary exclusion, a generator had to petition EPA for rulemaking and demonstrate why the wastes in question met the temporary exclusion standard. In conjunction with this interim final rule, EPA proposed to amend the Extraction Procedure (EP) toxicity characteristic to apply to hexavalent chromium rather than total chromium. The interim final rule was to remain in effect until such time as EPA acted on the proposal to amend the EP toxicity characteristic.

On January 4, 1985 (50 *Federal Register* 614), in the Definition of Solid Waste Final Rule, EPA added section 261.1(f) which specifically placed the burden of proof on a generator to show that a waste met the terms of an exclusion or exemption. Prior to the Definition of Solid Waste rulemaking, Congress amended the Resource Conservation and Recovery Act by enacting the Hazardous and Solid Waste Amendments (HSWA) of 1984. In rulemaking pursuant to HSWA (50 *Federal Register*

28702, July 15, 1985) EPA eliminated the temporary exclusions from hazardous waste regulation. HSWA places a time limit on the effectiveness of any temporary exclusion granted before its enactment. The statutory amendments state that wastes covered by a petition granting such a temporary exclusion are no longer exempted from RCRA regulations unless a final decision granting or denying the petition, after notice and comment, has been issued. Generators of the wastes which had already been determined to be within the conditional exclusion (that is, those wastes from the tannery industry, shoe manufacturing and other leather product manufacturing and wastewater treatment sludges from the production of titanium dioxide pigment using the chloride process) were not required to petition EPA and were therefore unaffected by the termination of the temporary exclusion provision. While the interim final rule conditionally excluding certain chromium-bearing wastes remained in effect, the requirement to petition for a temporary exclusion from hazardous waste regulation for other chromium-bearing wastes was removed.

On March 29, 1990 (55 *Federal Register* 11758), EPA adopted the Toxicity Characteristic (TC) Revisions Final Rule, which replaced the EP toxicity test with the TC leaching procedure. EPA chose to address the issue of the conditional chromium exemption and the aforementioned proposal to amend the EP toxicity characteristic to apply to hexavalent chromium only (rather than total chromium) in the TC Rule. EPA stated that the TC rule would not apply to wastes already excluded from hazardous waste regulation. These wastes would continue to be exempt from regulation as hazardous wastes, even if they did exhibit the TC. EPA noted, however, that these special waste exclusions were currently being reevaluated in accordance with the criteria and procedures mandated by Congress under HSWA. EPA also stated that its original concerns regarding the potential for trivalent chromium to be converted to hexavalent chromium remained; thus the prudent course would be to continue to regulate total chromium concentrations under the TC. Because of this, EPA stated that it was considering proposing the deletion of the exclusion for specific chromium wastes from the leather tanning and finishing industry as well as certain sludges from the production of titanium dioxide pigment using chromium-bearing ores by the chloride process. EPA has not followed through on this statement to date, and has recently indicated to the Department that it is not actively pursuing the deletion of the exclusion for specific chromium wastes.

The Department originally proposed to follow EPA's intended path and delete the aforementioned "K" wastes from the lists of hazardous waste in the November 7, 1983 *New Jersey Register* (see 15 N.J.R. 1916) but subsequently withdrew the proposal on May 7, 1984 (see 16 *N.J.R.* 1102) because of evidence submitted to EPA from an interested party which disputed the conclusion that trivalent chromium was not hazardous. The Department has since reevaluated the available information about chromium toxicity, including the information submitted to EPA. The Department has concluded that the trivalent chromium content of these wastes does not and is not likely to create a substantial present or potential hazard to human health or the environment and that listing these wastes as hazardous imposes unnecessary regulatory burdens on waste generators. These wastes can be properly managed under the State's solid waste management program.

It must be emphasized that the delisting of K053 through K059 and of K074 applies only as described above and if these wastes are hazardous for any other reason (for example, failure of the test for the toxicity characteristic for any constituent other than trivalent chromium, failure of the test for any characteristic including reactivity, or current listing as a hazardous waste) they are still regulated under the RCRA and State control systems.

Social Impact

These proposed amendments will have a positive social impact in that removing these wastestreams from the State hazardous waste list will eliminate unnecessary regulatory burdens, and additional costs to the leather tanning and finishing industry and the inorganic chemicals industry in their disposal of waste. For example, manifesting, shipment via a licensed hazardous waste transporter and annual reporting will no longer be required.

Economic Impact

The proposed amendments will have both positive and negative economic impacts. The amendments will reduce the economic burden on generators and other facilities that presently dispose of K053 through K059 and K074 wastes under the State's hazardous waste rules, since, generally, disposal of non-hazardous solid waste is not as costly as disposal of hazardous waste. Generators of these wastes will not be required to manifest this waste as hazardous, use a hazardous waste transporter or send it to a commercial treatment, storage or disposal facility (TSD), and, therefore, will not incur the costs associated with these requirements (for example, annual report fees, manifest purchase and processing fees). TSDs currently authorized to accept these "K" wastes may experience a negative economic impact due to a reduction in waste shipped to them. Information available to the Department indicates, however, that the total amount of K053 through K059 and K074 wastes generated in the State is minimal compared to other listed and characteristic wastes and therefore the loss of the processing of these wastes should not cause a significant economic loss to these facilities. Also, should these wastestreams qualify as hazardous wastes for any reason, including failure of any of the characteristic tests (with the exception of certain chromium-bearing wastes which fail the test for the toxicity characteristic), they must continue to be managed as a hazardous waste at a TSD, further reducing any possible economic impact to TSDs from this proposal.

Environmental Impact

The proposed delisting of the K053 through K059 and K074 chromium-containing wastes will not have a negative environmental impact. Wastes from the leather tanning and finishing industry and waste from titanium dioxide production by the chloride process do not typically contain the constituents of concern (chromium and lead) for which they were originally listed. Therefore, these materials can be properly managed under the State's solid waste management program. Though these wastestreams are no longer listed hazardous waste, they must still be tested for hazardous waste characteristics. Should one of these wastestreams fail any of the characteristic tests (with the exception of the chromium-bearing wastes which fail the test for the toxicity characteristic but which meet the proposed exemption at N.J.A.C. 7:26-8.2(a)28), it will still be regulated as a hazardous waste, thereby ensuring protection of human health and the environment.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments will not impose reporting, recordkeeping or other compliance requirements on small businesses. In fact, the proposed amendments lessen the reporting and recordkeeping burden on all affected businesses, including small businesses, by removing these substances from the hazardous waste lists. The Department, therefore, has determined that a regulatory flexibility analysis is not required.

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

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-27. (No change.)

28. Wastes which fail the test for the toxicity characteristic because chromium is present or are listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15 due to the presence of chromium, which do not fail the test for the toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

i. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

ii. The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

iii. The waste is typically and frequently managed in non-oxidizing environments.

29. Specific wastes which meet the standards of (a)28i, ii and iii above (so long as they do not fail the test for the toxicity characteristic, and do not fail the test for any other characteristic) are:

i. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

ii. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/

chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

iii. Buffing dust generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

iv. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

v. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

vi. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

vii. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

viii. Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

7:26-8.14 Hazardous waste from specific sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
...			
[Leather Tanning Finishing]	[K053]	[Chrome (blue) trimming generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling]	](T)]
	[K054]	[Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling]	[(T)]
	[K055]	[Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; and through-the-blue]	[(T)]
	[K056]	[Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling]	[(T)]
	[K057]	[Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling]	[(T)]
	[K058]	[Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; and through-the-blue]	[(R,T)]
	[K059]	[Wastewater treatment sludges generated by the following subcategory of the leather tanning and finishing industry: hair save/non-chrome tan/retan/wet finish]	[(R)]
...			
Inorganic Chemicals			
...			
Inorganic Chemicals	[K074]	[Wastewater treatment sludges from the production of TiO_2 pigment using chromium bearing ores by the chloride process]	[(T)]

(a)

ENVIRONMENTAL REGULATION—HAZARDOUS WASTE REGULATION PROGRAM

Notice of Opportunity for Informal Public Input on the Management of Waste Oil

DEPE Docket Number: 19-94-03/19.

Take notice that the New Jersey Department of Environmental Protection and Energy ("Department"), pursuant to its authority at N.J.S.A. 13:1E-6(a), is seeking preliminary comments and suggestions on the best way in which to manage and regulate waste oil.

Interested persons may submit written comments (including data, draft rules, opinions, and other information relevant to the management of waste oil) on or before June 3, 1994 to:

Janis E. Hoagland, Esq.
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402
Attn: DEPE Docket Number: 19-94-03/19.

Questions regarding current waste oil regulation in the state may be directed to the Hazardous Waste Regulation Program, at (609) 292-8341.

The Department is reviewing its program for the management of waste oil as currently defined in N.J.A.C. 7:26-1.4. Under current State hazardous waste rules, N.J.A.C. 7:26-8.20, the following oils are classified as hazardous waste:

1. Waste automotive crankcase and lubricating oils from automotive service stations, truck terminals, garages, and used oil collection centers defined at N.J.A.C. 7:26A-6.2 (X721);
2. Waste oil and bottom sludge generated from tank cleanouts from residential/commercial fuel oil tanks (X722);
3. Waste oil and bottom sludge generated by gasoline stations when gasoline and oil tanks are tested, cleaned, or replaced (X723);
4. Waste petroleum oil generated when tank trucks or other vehicles or mobile vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships or other vessels (X724);
5. Oil spill cleanup residue which: A. is contaminated beyond saturation; or B. the generator fails to demonstrate that the spill material was not one of the listed hazardous waste oils (X725);
6. The following used and unused waste oils: metal working oils; turbine lubricating oils; diesel lubricating oils; and quenching oils (X726);
7. Bottom sludge generated from the processing, blending, and treatment of waste in waste oil processing facilities (X728).

Due to the volume and frequency of its generation, the management of waste oil is a national issue. Major industrial and commercial sectors which generate waste oil include oil refineries, heavy industry, and automobile oil changing businesses. Furthermore, research has indicated that waste oils can be carcinogenic or toxic to human health, and may cause environmental degradation to air, soil, and water. (See 56 FR 48000, September 23, 1991.) It is important, therefore, that governing regulations be designed to protect the public health and the environment from these threats, to be effectively attuned to current practices in the various sectors of the regulated community, and to permit efficient administration and encourage compliance. For these reasons, the United States Environmental Protection Agency (USEPA) has been charged with researching the issue of waste oil regulation and recently published several rules addressing both the identification and recycling of used oil. (See 57 FR 21524, May 20, 1992 and 57 FR 41566, September 10, 1992.)

In light of the recent adoptions by the USEPA and New Jersey's adoption of N.J.A.C. 7:26A-6 (which addresses the recycling of used motor oil, not other waste oils), the Department is reviewing its regulation and management of waste oil. During such review, the Department anticipates re-examining the current classification of waste oils (N.J.A.C. 7:26) since that list is not equivalent to the universe of "used oils" regulated by USEPA. The following table is provided to illustrate the universe of regulated oils:

Examples	Waste Oils Listed at N.J.A.C. 7:26-8.20(a)	Characteristic Waste Oils	USEPA "Used" Oils
1. X726 (unused)	X		
2. X722	X		X
3. X728	X	X	
4. Unused oil contaminated in storage		X	
5. Non-characteristic used hydraulic oil			X
6. X721	X	X	X
7. Characteristic hydraulic oil		X	X

It should be noted that though the Department periodically undertakes reviews of its regulations as it is doing now with respect to waste oil to insure that any necessary improvement, or streamlining is undertaken, such action does not affect current regulations, or does it obligate the Department to propose any changes to existing regulations or procedures.

In reviewing the waste oil management program, the Department is open to comments ranging from support for the current regulations to calls for major improvements. The Department's objective is to find the best mechanisms to advance the continued goals of protection human health and the environment, improving efficiency, and promoting and encouraging recycling. The Department is soliciting comments on the following issues, as well as on any other issues identified by commentors to determine if current regulations, or procedures should be changed to facilitate the meeting of these goals.

1. How should the collection, transportation and storage of waste oil be managed in order to encourage and ensure environmentally protective recycling practices?

2. What monthly generation quantities and/or accumulation quantities, if any, should be subject to hazardous waste regulations? What regulatory requirements should govern this accumulation? For example:

- How long should the generator be allowed to accumulate the waste on site?
- What labelling and container requirement should apply?
- Should there be closure and/or financial responsibility requirements?
- Should there be a limit on storage time at transfer facilities?
- What type of record keeping or tracking requirements are necessary?

3. Should recycled waste oil other than used motor oil be handled differently than used motor oils? What universe of used oil should be regulated and to what extent? Should mixtures of used oils and other materials be regulated differently than used oils?

4. Should the management of contaminated oil that is unsuitable for recycling be regulated differently from the recycling of used oil? Is there validity to a presumption that all waste/used oil is recyclable? If such a presumption is used, when are there sufficient facts to indicate that the oil is being disposed of rather than recycled? What facts are sufficient to rebut the presumption?

5. How should determinations that a waste oil is hazardous be made? Should all or some waste oils automatically be listed as hazardous, or should waste oils be tested to determine the presence of hazardous constituents and characteristics? What contaminants and what concentrations of these contaminants cause environmental or health concerns when present in waste oil? Should there be any presumptions of mixing? If so, how should such presumptions be rebutted? Which waste oils pose the greatest potential environmental and health hazards and why?

6. Should the recycling of hazardous waste oil be mandatory? (Currently only used motor oil is required to be recycled.) What standards should recycled hazardous waste oil be required to meet? What regulatory requirements should govern the burning of waste oils so as to ensure public safety?

7. How should the management of spilled oils be regulated? What, if any, distinction should be made between response to a spill versus a catastrophic release?

(a)

OFFICE OF AIR QUALITY MANAGEMENT
Low Emission Vehicles Program
Reproposed New Rules: N.J.A.C. 7:27-26

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1B-3(e); 13:1D-9; 26:2C-8 et seq., specifically 26:2C-8, 8.1 through 8.5, and P.L. 1993, c.69.
Proposal Number: PRN 1994-211.
DEPE Docket Number: 18-94-03/99.

A **public hearing** concerning this proposal will be held on:
Wednesday, September 21, 1994, at 10:00 A.M.
New Jersey Department of Environmental Protection and Energy
Hearing Room, 1st Floor
401 East State Street
Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given above, by September 27, 1994, to:
Janis E. Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

Several documents are cited in this notice as references or as documents being incorporated by reference. Copies of these documents may be requested from:
David West, Chief
Bureau of Transportation Control
Office of Air Quality Management
Department of Environmental Protection and Energy
CN 411
Trenton, New Jersey 08625

These new rules will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal is set forth below. It contains six major components: a "Summary" section which describes the purpose and scope of the proposed rules, a "Social Impact" section which describes the anticipated social effects of the proposed rules, an "Economic Impact" section which sets forth the anticipated costs and benefits of the proposed rules, an "Environmental Impact" section which sets forth the anticipated emission reductions to be obtained, a "Regulatory Flexibility" analysis which examines the effect of the proposed rules on small businesses and the full text of the proposed new rules.

Summary

The purpose of this rulemaking is to reduce emissions of air pollutants from new motor vehicles as part of New Jersey's overall effort to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide (CO). This action is one part of a comprehensive program to control motor vehicle emissions. Other components include use of cleaner fuels, enhanced vehicle inspection and maintenance, and actions to reduce motor vehicle use.

Since the 1960's, the Federal Clean Air Act (CAA), 42 U.S.C.A. section 7401 et seq., and the regulations promulgated thereunder by the Environmental Protection Agency (EPA) have established standards for the emissions of contaminants from new motor vehicles. See 42 U.S.C.A. section 7521. In general, these standards preempt individual states from adopting their own emission standards. However, the CAA authorizes the states to set emissions standards for new motor vehicles if certain conditions are met. See 42 U.S.C.A. sections 7507 and 7543. The State

of California has had a vehicle emissions control program in place since the 1950's, and is the only state authorized under the CAA to set its own vehicle emission standards which may differ from the Federal standards. California's emissions standards can be different from, and will supplant, the Federal standards provided EPA determines that the California standards are at least as protective of public health and welfare in the aggregate as the Federal limits. See 42 U.S.C.A. Section 7543(b).

As set forth in the CAA, states that have not attained the NAAQS for ozone or CO are designated by EPA as "non-attainment" areas and as such must submit a plan to the EPA demonstrating how the state will attain the NAAQS by prescribed attainment deadlines. This plan, known as the State Implementation Plan (SIP) is submitted by the state to EPA for approval. States with approved State Implementation Plans, such as New Jersey, are authorized to adopt emissions standards, provided that such standards are identical to California's. See 42 U.S.C.A. Section 7507. However, if these "non-attainment" states elect not to adopt the California standards, then vehicles sold or leased in those states are still subject to recently adopted Federal emission standards. 42 U.S.C.A. section 7521(g). These standards, commonly referred to as the "Tier I" standards, are applicable to all 1994 and subsequent model year vehicles.

The Department is herein proposing rules to adopt the California standards for new 1999 model year and subsequent model year vehicles sold or leased within the State. The new rules will establish New Jersey's Low Emission Vehicles program (hereinafter referred to as the LEV program). The LEV program is based on California's Low Emission Vehicles program and has vehicle emission standards identical to those established for passenger cars and light-duty trucks sold or leased in California. The Department is proposing to implement the LEV program at the start of the 1999 model year. Therefore, in this reproposal, the Department is replacing the wording "effective model year" with 1999. Specifically, this replacement occurs in the following sections: N.J.A.C. 7:27-26.2, 26.3(a) and (b), 26.4(a), (b), (b)1, (c), (d) and (e) and 26.7(a).

Procedural History

On April 6, 1992, the New Jersey Department of Environmental Protection and Energy (Department) proposed new rules at N.J.A.C. 7:27-26 (Subchapter 26) see 24 N.J.R. 1315(a). The Department proposed that all new 1996 and subsequent model year passenger cars and light-duty trucks sold or leased for registration in New Jersey must meet strict standards for the emission of air contaminants, identical to the standards that have been established for such vehicles in the State of California. The department published a summary of public comments and agency responses on the April 6, 1992 proposal beginning at 25 N.J.R. 1387 as part of the 1993 reproposal of N.J.A.C. 7:27-26 discussed below.

The New Jersey Legislature passed P.L. 1993, c.69, which was approved on March 10, 1993. The statute required the Department, pursuant to section 9 thereof, to review and consider a written report that was to be prepared by the New Jersey Institute of Technology (NJIT) before it adopted any rules establishing a Low Emission Vehicles (LEV) program in New Jersey. The rules of the Office of Administrative Law (OAL) regarding agency rulemaking, N.J.A.C. 1:30, provide that if a proposal is not adopted and filed with the OAL within one year from the date the proposed rule is published in the New Jersey Register, the proposal will expire. N.J.A.C. 1:30-4.2(c). With respect to the Department's April 6, 1992, LEV proposal, compliance with both the P.L. 1993, c.69 requirement to review and consider the NJIT report and OAL's requirement for timely adoption of proposals would have been impossible. Accordingly, the Department published a reproposal of the LEV rules in the New Jersey Register on April 5, 1993. See 25 N.J.R. 1381.

In addition, P.L. 1993, c.69, allows implementation of the LEV program during or after the 1998 motor vehicle model year commencing with the model year for which those jurisdictions within the Ozone Transport Region (OTR) comprising no less than 40 percent of the total number of registrations of new motor vehicles in the OTR, excluding New Jersey, have enacted legislation or adopted rules and regulations establishing and implementing an LEV program. The OTR is defined at section 2 of P.L. 1993, c.69, to encompass the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and the District of Columbia.

The NJIT Low Emission Vehicles report, required by P.L. 1993, c.69, section 9, was released to the public on January 27, 1994. The report recommended delaying the implementation of the LEV program for no more than two years. The report concluded that this delay would have a minor impact on emission reductions in 2005 and 2007, years identified by the CAA as years in which New Jersey must attain the NAAQS for ozone. However, the report stated that in waiting for the development of the 1994 SIP revision the delay would allow for a better definition of the costs and benefits of the LEV program and would enable a comparison to other available emission reduction strategies.

On January 27, 1994, Senator McNamara and Assemblywoman Ogden, the chairpersons of the State legislative environmental committees, after reviewing the NJIT LEV report, recommended delaying adoption of the LEV program for no more than two years. Governor Whitman concurred with their recommendation.

In August 1993, three OTR states petitioned the Ozone Transport Commission (OTC) to formally consider developing and recommending to EPA, pursuant to Section 184(c) of the CAA, OTR-wide implementation of the LEV program. In response to this petition, the OTC held a series of public forums to solicit public comment on the OTC-LEV proposal and any potentially equally effective alternative proposals.

As part of the OTC public participation process, the American Automobile Manufacturers Association (AAMA), representing domestic automobile manufacturers, submitted an alternative to the OTC-LEV program, known as the "Federal Low Emission Vehicle" (Fed-LEV) proposal. The Fed-LEV, as proposed, would require certification of new motor vehicles to emission standards more stringent than those of the Tier I federal vehicle, but less stringent than those of California's LEV program. The Fed-LEV would be introduced in the non-California U.S. market, regardless of air quality status, during a three year phase-in period, beginning with model year 2001. The AAMA proposal also would require all affected northeastern states to accept the program, prohibit new state legislative LEV initiatives, and would require EPA's cooperation and support of the program.

After analyzing the AAMA alternative proposal, the OTC found that "while an improvement over Tier I Federal vehicles, [it] would require programmatic and timing enhancements and the addition of an electric vehicle component to ensure that enforceable vehicle emission reductions comparable to those achieved by the OTC-LEV program could be achieved in a more timely manner."

On February 1, 1994, OTC voted to submit a recommendation for an OTR-wide LEV program (known as the OTC-LEV) to the EPA under section 184(c). The OTC-LEV program provisions are identical to the provisions of the California LEV program which the Department is proposing herein. The OTC-LEV program would begin with model year 1999. The OTC stated in its recommendation to EPA that it expected EPA, during its review of the OTC-LEV proposal, to evaluate alternatives (including the Fed-LEV proposal with enhancements) which are comparable in terms of enforceability, timeliness, and quantity of emission reductions to those achieved by the OTC-LEV program, which are consistent with the CAA, and which advance technology. The EPA has nine months from the submittal date, February 10, 1994, to act upon the OTC recommendation. If EPA approves the OTC recommendation, the OTC-LEV program would become an OTR-wide requirement for implementation beginning with model year 1999.

Based on the recommendation of Senator McNamara and Assemblywoman Ogden and the concurrence of Governor Whitman to delay implementation of the LEV program for no more than two years, and consistent with the potential OTR-wide OTC-LEV program requiring implementation with model year 1999, the Department is again reproposing these LEV program rules—this time commencing with model year 1999. This rulemaking action will enable New Jersey to comply with OTC-LEV, if the OTC recommendation is approved by EPA.

Timing

The public hearing for this reproposal is set for September 21, 1994, to allow the fullest possible development of information relating to the LEV program prior to the hearing. The EPA will have completed its public hearing on the OTC recommendation for a regional LEV program. The California Air Resources Board (CARB) (the state agency in California which administers the LEV program) will have completed its statutorily required technology review and public hearing, assessing California's LEV program to date. Finally, because of the rapid pace of technology development and research in this area, new information may come to light by the hearing date.

The Department is reproposing these new rules now with the delayed hearing date for several reasons. First, many Northeast states have statutes similar to New Jersey's, which authorize an LEV program only if a certain number of other states have laws authorizing such a program. The New Jersey LEV statute was specifically intended not to impede other states which have this type of statute from implementing LEV programs. Second, because of the legislative recommendation, and the Governor's decision to keep the LEV option open, the reproposal will maintain the continuity of a viable LEV proposal while a thorough evaluation is conducted.

Previously, the Department proposed to begin the LEV program with model 1998. This reproposal would delay implementation for one year, from 1998 until 1999. This will result in a loss of emission reduction benefits beginning with operation of 1998 model year vehicles. However, the loss of reduction benefits is small in the "attainment" years of 2005 and 2007, years in which New Jersey is required by the CAA to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for ozone.

The Department is confident that the conditions set forth in section 3a of P.L. 1993, c.69, governing when the Department is allowed to implement the LEV program, will be met prior to "rules and regulations establishing and implementing a low emission vehicles program in New Jersey but shall implement that program only if the combined number of registrations of new motor vehicles in those states and the District of Columbia, excluding New Jersey, within the Ozone Transport Region that have enacted legislation or adopted rules and regulations establishing and implementing a low emission vehicle program for a motor vehicle model year not later than that proposed for implementation by the department, is equal to or greater than 40 percent of the total number of registrations of new motor vehicles in all of the states and the District of Columbia within the Ozone Transport Region."

The states of New York and Massachusetts have adopted LEV rules establishing LEV programs beginning in model year 1995. The states of Maine and Maryland have passed legislation enabling them to proceed with implementation as early as model year 1998. Consistent with their affirmative votes on the OTC-LEV recommendation to EPA, the Department is confident that Maine and Maryland and a number of other jurisdictions within the OTR, will have enacted legislation or adopted rules and regulations establishing and implementing LEV programs not later than the 1999 model year.

According to data provided by the AAMA for calendar year 1991, New York, Massachusetts, Maryland and Maine represent the following percentages of new car market share in the OTR for calendar year 1991:

New York	23.5%
Massachusetts	9.2%
Maryland	11.2%
Maine	1.3%

Collectively, in 1991 these four states represent 45.2 percent of the new car market share in the OTR and, therefore, the Department remains confident that the 40 percent requirement contained in P.L. 1993, c.69, will be met for the 1999 model year.

This reproposal serves as a notice to automobile manufacturers that New Jersey intends to adopt during 1995 an LEV program identical to that of California with implementation to commence with model year 1999. The CAA requires states adopting the California emission standards to provide at least two model years lead time prior to the commencement of the first model year of implementation. Since the current model year is 1995, the Department would be providing at least three full model years of lead time to the automobile industry. The Department will provide notice in the New Jersey Register no later than January 1, 1996 as to when the conditions set forth in Section 3a of P.L. 1993, c.69 for model year 1999 implementation have been met.

The Department is also inviting comment on the feasibility and air quality impact of a one or two year delay from model year 1998 in implementation of the program.

The April 6, 1992, proposal included several provisions that were to take effect as early as model year 1996, which would become more stringent in succeeding years. The April 5, 1993, reproposal continued this practice even though it is highly unlikely that program implementation would occur as early as the 1996 model year. The April 4, 1994 reproposal continues this practice. Delaying implementation of the LEV program until 1999 will, therefore, be accompanied by a loss of certain such "phase-in" provisions. This loss is essential to maintain "identicality" with California's program as required by the CAA. Thus, a provision may include a particular requirement applicable to model year 1996, a more stringent one for model year 1997, and an even more stringent one for model year 1998 and thereafter. If implementation is to begin with the 1999 model year as proposed herein, the requirement applicable to model years 1996 through 1998 would not go into effect, the requirement applicable to model year 1999 would be the first to go into effect, and the requirement for model year 2000 and thereafter would be in effect for all subsequent model years.

Recent Federal Decision

The New York Department of Environmental Conservation adopted California's LEV program on May 28, 1992. On July 9, 1992, two automobile manufacturers associations brought an action in the U.S. District Court for the Northern District of New York challenging New York's adoption of the California LEV program, alleging violation of CAA Section 177 on six counts. See *Motor Vehicle Mfrs. Ass'n v. New York State Dep't of Envtl. Conservation,* 810 *F. Supp.* 1331, *modified,* 831 *F. Supp.* 57 (N.D.N.Y. 1993). The court granted summary judgement for New York on the manufacturers' claims that New York's failure to adopt the California fuels component of California's LEV program violates the "identicality" requirement and that New York's adoption of the California LEV program before California had received a waiver of federal preemption also violates Section 177. The court granted summary judgement for the manufacturers on their claim that New York's adoption did not comply with the two-year lead time requirement, that the Zero Emission Vehicle (ZEV) sales quota contravenes the prohibition on all actions that limit the sales of other California-certified vehicles, and that the ZEV sales quota contravenes the prohibition against a "third vehicle," that is, a motor vehicle different from one that is certified by EPA or CARB. The court denied summary judgement to both sides, and ordered a trial, on the manufacturers' claim that New York's failure to adopt California's clean fuels requirements contravenes the prohibition against a "third vehicle." The manufacturers argued, essentially, that New York's failure to adopt the California clean fuels requirement would damage emission control equipment, necessitating a different design.

The parties cross-appealed to the U.S. Court of Appeals for the Second Circuit. On February 9. 1994, the Court of Appeals handed down its decision. See *Motor Vehicle Mfrs. Ass'n v. New York State Dep't of Envtl. Conservation,* Dkt. Nos. 93-7938, 93-7974 (2d Cir. Feb. 9, 1994). The Court of Appeals generally upheld the validity of New York's adoption of the California LEV program, in affirming those portions of the lower court's ruling in favor of New York and, with one exception, reversing those portions in favor of the manufacturers. The court held that New York may not implement its LEV program beginning with the 1995 model year, but must wait until the 1996 model year.

The manufacturers' claim, that New York's failure to adopt California's clean fuels requirements contravenes the prohibition against a "third vehicle," remains with the district court for trial. Section 5 of P.L. 1993, c.69 prohibits the Department from requiring the sale and use of reformulated gasoline other than that certified pursuant to Section 211(k) of the CAA and further provides that should such sale or use be required by court order because of the implementation of the LEV Program, the LEV Program must expire 180 days from the date of such law or order. Accordingly, should the manufacturers prevail on this issue before a court with jurisdiction over New Jersey, for example, the U.S. District Court for the District of New Jersey or the U.S. Court of Appeals for the Third Circuit, the Department would be unable to adopt or continue the LEV Program under P.L. 1993, c.69.

Meeting Air Quality Standards

The Federal Clean Air Act sets forth five different classifications of the severity of an area's non-attainment with the NAAQS for ozone. These designations relate to how far an area's ambient air quality deviates from the national standard. The non-attainment classifications for ozone range from "marginal" to "extreme," with an area classified as "extreme" having the worst ambient air quality. Eighteen of New Jersey's 21 counties have been classified by the EPA as being in the "severe" non-attainment category for ozone (ozone levels which are more than 50 percent above the NAAQS). Six of these eighteen counties are part of the Greater Philadelphia Consolidated Metropolitan Statistical Area (CMSA), and 12 of these 18 counties are part of the New York/New Jersey/Connecticut CMSA. The Clean Air Act mandates that the Greater Philadelphia CMSA must attain the ozone standard by 2005, and the New York/New Jersey/Connecticut CMSA must attain the ozone standard by 2007. Both CMSAs must thereafter remain in attainment.

The non-attainment classifications for carbon monoxide (CO) range from "moderate" to "serious." Five counties in New Jersey have been classified as "moderate" non-attainment for CO (greater than the NAAQS). In addition, 12 cities within 10 other New Jersey counties are designated non-attainment but are currently not classified as to degree of non-attainment. The Clean Air Act mandates that both classified and non-classified non-attainment areas must be brought into attainment by December 31, 1995, and must maintain the attainment standards thereafter.

The Department has finalized the 1990 base year inventory. The emission inventory, prepared by the Department using EPA procedures and the MOBILE5a emission factor model, indicates that motor vehicles contributed 28 percent of the State's volatile organic compound (VOC) emissions and 36 percent of the oxides of nitrogen (NO_x) emissions during the ozone season in 1990. VOC and NO_x are precursors of ozone. The inventory during the period when carbon monoxide levels were elevated (primarily the winter months) indicates that motor vehicles contribute over 80 percent of the CO emissions in the five county non-attainment areas. The EPA has also published national data on the amount of VOC, NO_x and CO emissions attributable to mobile sources. In the National Air Quality and Emissions Trends Report for 1990, EPA found transportation sources accounted for 35, 38 and 63 percent of the national VOC, NO_x, and CO emissions respectively (1) (Note: Numbers in parentheses indicate references which are listed at the end of this summary).

To determine the emissions reductions needed to meet the NAAQS, photochemical air quality modelling is needed. This modelling determines the amount of emission reduction that will be required for the air quality in an area to reach the NAAQS. The EPA report entitled "Regional Ozone Modelling for Northeast Transport (ROMNET) Final Report" (2) documents such an effort. This report is generally recognized as a definitive and current assessment of urban ozone in the OTR. The OTR, which was established pursuant to the Clean Air Act (see 42 U.S.C.A. Section 7511c(a)), as mentioned above, includes the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, as well as the District of Columbia. The ROMNET report concludes that attainment of the ozone health standard will be extremely difficult to achieve throughout the OTR. The report further concludes that, within the OTR, future attainment of the ozone standard will be most difficult to achieve within the New York/New Jersey/Connecticut CMSA. The ROMNET report states that VOC reductions of more than 75 percent may be necessary for this area. For the Greater Philadelphia CMSA, the ROMNET study concludes, "The full complement of NO_x controls plus the maximum technology VOC measures may be necessary."

Recently, the Ozone Transport Commission (OTC) completed one phase of a regional air quality sensitivity analysis. This analysis is referred to as the Matrix Sensitivity Analysis. The OTC used the Regional Ozone Model (ROM). This analysis indicates that 50 to 75 percent reductions in NO_x emissions will result in large reductions in ozone. Where VOC emissions are reduced, the largest ozone reductions are predicted in the vicinity of major urban areas. The incremental benefits of reducing NO_x emissions appear to be greater than the corresponding benefits of reducing VOC emissions. Several cautions attach to the matrix sensitivity analysis, including the uncertainty in the estimates of biogenic emissions, the potential underestimation of the mobile source emissions, the grid size, vertical resolution of the model, and the fact that only one ozone exceedance episode was modeled. Given the contribution of motor vehicle emissions to the emissions inventory, it is evident that attainment of the NAAQS for ozone and maintenance of the CO standards cannot be realized in New Jersey unless substantial motor vehicle emission reductions are achieved.

The emission reductions expected to be achieved by this motor vehicle emission control program are also necessary to offset expected growth in vehicle miles travelled. Project: Clean Air, a group of private, public and government participants, was founded in 1988 to investigate and recommend motor vehicle and transportation control strategies to reduce air pollution. The Project: Clean Air study report (3), dated September 6, 1991, concluded that vehicular travel will grow in New Jersey by 25 percent by the year 2010 (1.7 percent per year through 1999 and 1.5 percent per year thereafter). Project: Clean air focused on State land use policy and specific transportation control measures (TCMs) to alleviate emission increases due to growth. The Steering Committee concluded that, even if all the TCMs it recommended were implemented, travel would still grow by 14 to 15 percent by the year 2000. Therefore, the Committee also endorsed the adoption of the California LEV standards as one of the measures essential to attaining the ozone NAAQS. Project: Clean Air found that unless significant reductions in vehicle emissions are achieved, New Jersey may be compelled to place further, more onerous restrictions upon vehicle use in order to attain the ozone NAAQS. Such restrictions could include prohibitions on driving, imposition of fees for parking, and increased tolls and gas taxes.

The ROMNET estimate of the emission reductions needed to comply with the Clean Air Act requirements, and the findings of Project: Clean Air, help demonstrate that New Jersey must, in the 1990's, adopt and implement the most aggressive mobile and stationary source controls available. New Jersey, as well as other states in the OTR, will need to consider all available control measures in developing the compliance strategies to be implemented over the next 15 years. The Department has determined that one of these available necessary measures is to adopt, as part of a comprehensive, regional strategy in LEV, a program which establishes strict vehicle emission standards identical to those adopted by the State of California.

In addition to the Clean Air Act's general requirements to attain the NAAQS for ozone, the Act requires that New Jersey reduce emissions of volatile organic compounds 15 percent by 1996 and three percent each year thereafter until attainment. Where ozone reduction benefit can be shown, the three percent reductions may include NO_x reductions as well as VOC reductions. Beginning in November 1992, the states were required to submit SIP revisions to EPA for review and approval. New Jersey submitted its SIP revision to EPA on November 13, 1992. The SIP revision specifying how the 1996 15 percent reduction will be achieved was submitted to EPA November 15, 1993. The SIP revision for the subsequent annual three percent reductions is due in November 1994. The California vehicle emission standards are a key component of the Department's overall plan for meeting the mandated emission reduction requirements—increasingly during the years after 1996, when New Jersey must show continuous reductions each year. The phase-in of the more stringent emission requirements over time in both the California and New Jersey LEV programs correlates with this need to show continuous reductions.

Under the CAA, a state's failure to submit and implement an approvable SIP results in the imposition of costly Federal sanctions. Potential sanctions include a prohibition of major industrial development, the revocation of certain Federal highway funds, and the preemption of New Jersey's air pollution control authority through the promulgation by EPA of a Federal Implementation Plan (FIP). If New Jersey fails to meet the emission reduction milestones discussed in the paragraph above, the State will be required to implement contingency measures. Such measures could include prohibitions on driving, imposition of fees for parking, and increased tolls and gasoline taxes.

To enable New Jersey to attain and maintain the NAAQS for ozone and CO, the Department plans to institute a comprehensive mobile source emission control program, of which this proposed LEV program is one part, to address many aspects of the motor vehicle pollution problem. This comprehensive program consists of the following three components: (1) implementing Federal reformulated gasoline requirements, (2) enhancing vehicle inspection and maintenance (I/M), and (3) reducing vehicle miles traveled. These components will work in concert to reduce mobile source emissions. These proposed LEV program rules address only one of these components of the Department's comprehensive mobile source emissions control program, controlling new vehicle emissions. The other components will be implemented through separate State and Federal regulatory actions in accordance with the schedule developed by EPA in accordance with the CAA.

The CAA does include contingent emissions standards which are similar to the LEV program standards. See 42 U.S.C.A. Section 7521(h). However, the imposition of these standards, which are commonly referred to as the "Tier II" standards, is dependent upon several factors, including the results of air quality and technological feasibility studies to be conducted by the EPA and the Federal Office of Technology Assessment, and the results of rulemaking activities to be conducted thereafter. Based upon the results of such studies, the EPA may determine that national standards more stringent than the Tier I standards are not necessary and, therefore, EPA may not promulgate the Tier II standards.

Even if EPA does promulgate Tier II emission standards, it could do so as late as 2006 which would provide emission reduction benefits later than necessary for New Jersey. EPA's decision will be based upon a

national analysis, which might not take into account specific emission reduction requirements of New Jersey or the OTR. If the EPA determines that more stringent standards are necessary, EPA may promulgate either the Tier II standards, or alternate standards, which must still be more stringent than the Tier I standards. In the event EPA determines that the more stringent standards are necessary, the new standards would take effect, at the earliest, for model year 2003 and might not take effect until model year 2006, one year after parts of New Jersey and most of the OTR must reach attainment of the NAAQS for ozone. Therefore, imposition of Tier II standards would not enable New Jersey to timely attain the NAAQS for ozone. If New Jersey were to rely on the Tier II standards, it would be compelled to implement more onerous, and less desirable, alternatives such as further reductions in vehicle miles traveled and less cost effective small source controls for industrial and commercial facilities.

Since the imposition of national standards more stringent than the Tier I standards is highly speculative, the Department, in planning its comprehensive motor vehicle emissions control program, could not rely on emission reductions associated with such standards and realized the need to move forward with the LEV program.

The Department has collected and analyzed data regarding VOC emissions from mobile sources, including exhaust emissions, and the estimated effect the LEV program would have on these emissions.

Volatile organic compounds emitted into the air are precursors to ozone formation. For this reason, Federal and state efforts to attain and maintain the NAAQS for ozone have focused on reducing VOC emissions. In 1990, VOC emissions in New Jersey totalled 2028 tons per summer weekday with 673 tons attributed to emissions from all mobile sources, not just exhaust emissions. The Department's emission reduction calculations show that if implemented in model year 1999, in comparison with the Tier I standard, the LEV program provides a benefit in reduced emissions of 8.9 tons of VOC per day in 1999, increasing to 34.4 tons/day in 2005, 40.5 tons/day in 2007 and 57.4 tons/day in 2020.

Oxides of nitrogen (NO_x) are also precursors to ozone formation. In 1990 NO_x emissions in New Jersey totalled 1950 tons per summer weekday, with 761 tons per summer weekday attributed to emissions from all mobile sources.

The Department's emission reduction calculations show that if implemented in model year 1999, in comparison with the Tier I standards, the LEV program provides a benefit in reduced emissions of 15.7 tons of NO_x per day in 1999, increasing to 83.2 tons/day in 2005, 101.6 tons/day in 2007 and 146.7 tons/day in 2020.

In summary, the LEV program can provide substantial reductions in VOCs and NO_x relative to the Federal Tier I program. These benefits are most pronounced in the years during which the Department must demonstrate attainment of the ozone NAAQS, that is, 2005 and 2007, and in the years beyond, during which the Department must demonstrate maintenance of the ozone NAAQS.

The LEV program is also expected to reduce emissions of toxic air contaminants. Appendix #1 of the Pechan Report states that "based on modeling conducted for this study, by the year 2015, 1,3-butadiene emissions from light-duty motor vehicles are expected to decrease by 23 percent to 66 percent, benzene emissions by 21 percent to 54 percent and formaldehyde emissions by 19 percent to 62 percent as a result of implementing the LEV Program."

The proposed new rules include the adoption of the California vehicle emission standards, including the adoption of exhaust emissions standards for formaldehyde, and a zero emission vehicle (ZEV) sales mandate. The Department's adoption of these LEV standards will supplant the application of federal vehicle emission standards in New Jersey. However, even the adoption of the California vehicle standards will not obviate the need for other mobile source control programs mandated by the Clean Air Act, such as enhanced inspection and maintenance, and reducing motor vehicle use.

The LEV program allows vehicle manufacturers greater flexibility in how they may achieve conformance with the standards than does the Federal emissions standards program. Under the federal Tier I standards, all vehicles of the same general type (for example, all passenger cars and light-duty trucks up to 5750 pounds loaded vehicle weight) must comply with a single set of tailpipe emission standards for non-methane hydrocarbons (NMHC), carbon monoxide (CO), and nitrogen oxides (NO_x). However, in the LEV program the Department is proposing five different categories of emission standards to which vehicle manufacturers may choose to certify particular model year engine classes. These categories include: standard vehicle (SV) which is equivalent to the Federal Tier I standards, transitional low emission vehicle (TLEV), low emission vehicle (LEV), ultra-low emission vehicle (ULEV), and zero emission vehicle (ZEV). The categories are defined based on the allowable exhaust emissions which are set forth in Tables 1, 2 and 3 of N.J.A.C. 7:27-26.4. The exhaust emission components specified are for CO, NO_x, non-methane organic gases (NMOG), and formaldehyde. The standards become increasingly stringent as the vehicle type goes from standard to transitional to low to ultra-low to zero. Manufacturers would be allowed to market new vehicles with engines certified to any of these five categories, provided that average NMOG emissions of the mix of vehicles sold does not exceed specified annual limits that grow more stringent each year. Thus, each manufacturer is allowed to take into consideration its production and distribution costs, consumer demand for its vehicles, and to elect to pursue a marketing strategy which the manufacturer determines to be the most cost effective means of achieving the standard.

In addition, in order to ensure continued progress toward a cleaner fleet, the LEV Program would require, beginning in model year 1998, that at least two percent of the manufacturers' annual sales be vehicles certified as ZEVs, which emit no regulated air contaminants. This minimum would grow to five percent in 2001 and to 10 percent in 2003. Of course, manufacturers are free to elect to sell a higher percentage of ZEVs than the specified amounts if they decide that it would be beneficial to do so.

Fuels

It is the intent of these proposed new rules to achieve motor vehicle emission reductions primarily through the establishment of vehicle emission standards. It is not the intent of these proposed rules to establish any particular fuel requirements. Automobile manufacturers may, however, in order to meet the proposed standards, elect to manufacture vehicles designed to use alternative fuels such as compressed natural gas (CNG), methanol, ethanol, liquid petroleum gas (LPG), or hydrogen. The Department does intend at a later date to propose rules that set forth market incentives to encourage the use of these alternative fuels in centrally-fueled fleet vehicles.

These proposed new rules, as required by P.L.1993, c.69, Section 5, do not include California's reformulated fuel requirements. This is consistent with the approach of New York and Massachusetts. The Department seeks comments from the public on the advisability of encouraging the use of alternative fuels in New Jersey and means for doing so. The Department seeks to encourage manufacturers to market at least a small but significant number of dedicated alternatively fueled vehicles. The Department requests comments suggesting approaches to encourage the production of such vehicles for use in vehicle fleets where central fueling locations are accessible.

Significant Provisions of the Proposed New Rules

Definitions: N.J.A.C. 7:27-26.1 sets forth definitions for the proposed new rules. The April 5, 1993 reproposal included some defined terms not included in the April 6, 1992 proposal including "effective model year" (the first model year affected by the implementation of New Jersey's LEV Program), "Ozone Transport Region (OTR)," and "low emission vehicle program." This April 4, 1994 reproposal includes modifications to terms defined in the April 5, 1993 reproposal. The definition of "effective model year" has been deleted and the definition of ZEV is modified to be consistent with the CARB's definition.

Applicability: At N.J.A.C. 7:27-26.2, these proposed rules set forth the model year and types of motor vehicles that would be subject to the proposed LEV Program. In this rulemaking, LEV standards are not being proposed for all types of motor vehicle classifications. Rather, at the present time, the Department is limiting the applicability of the LEV Program to all new 1999 and subsequent model year passenger cars and light-duty trucks, as defined at proposed N.J.A.C. 7:27-26.1, up to 5750 pounds loaded vehicle weight. Passenger cars are defined as motor vehicles designed primarily for transportation of persons and having a design capacity of up to 12 persons. Light-duty trucks are defined as motor vehicles rated at up to 5750 pounds gross vehicle weight, which are designed primarily for transporting property or which are available with special features for off-highway operation.

The California LEV program standards also apply to vehicles over 5750 pounds loaded vehicle weight. However, the New Jersey proposed LEV program would not apply to medium-duty vehicles, heavy-duty trucks, motorcycles or off-highway equipment of any type. Heavy-duty vehicles are defined to include motor vehicles other than passenger cars, with a gross vehicle weight rating of more than 8500 pounds. Medium-

duty vehicles are defined as heavy-duty vehicles with a gross vehicle rating of between 5750 and 8500 pounds. This part of the California LEV program is scheduled for implementation in California beginning in model year 1998. Prior to such implementation in California, the Department will evaluate the incremental benefit of including these vehicles in the LEV program. This approach is consistent with actions taken by New York and Massachusetts.

Prohibitions: N.J.A.C. 7:27-26.3 generally prohibits the sale, registration, importation, purchase, leasing, gift acquisition or receipt of any 1999 or subsequent model year automobile which is not in compliance with the proposed new rules. However, the Department has proposed several exceptions to this prohibition in order to recognize the nature of dealer to dealer transfers and other transactions which make application of the prohibition inappropriate:

- Transfers to dealers;
- Transfers for the purpose of wrecking or dismantling;
- Transfers for registration outside New Jersey;
- Transfers for use exclusively off-highway;
- Rental of vehicles in possession of a rental agency in New Jersey; however, if more than 30 days has passed since the vehicle was delivered to a New Jersey rental car agency from a non-New Jersey origination point, the exception shall only apply if the vehicle is next rented with a final destination outside New Jersey;
- Passenger cars or light-duty trucks acquired outside New Jersey by a New Jersey resident for the purpose of replacing a vehicle which, outside New Jersey, was damaged beyond reasonable repair, became inoperative beyond reasonable repair, or was stolen;
- Vehicles transferred by inheritance or court decree;
- Vehicles transferred after the operative date of the proposed new rules, if the vehicles were registered before the effective date; and
- Vehicles certified by EPA and originally registered in another state by a resident of that state, who subsequently establishes residence in New Jersey.

In order to solicit additional comment on rental vehicles, the April 5, 1993 and April 4, 1994 reproposals included a partial exemption from the general prohibition at N.J.A.C. 7:27-26.3 against new motor vehicles that have not been certified after 1998 and 1999 respectively. This proposed exemption would allow the vehicle to be rented to a final destination within New Jersey only if 30 days have not elapsed since its delivery to New Jersey rental car agency from a non-New Jersey origination point. Otherwise, the vehicle may not be rented except with a final destination outside of New Jersey. The Department still reserves the right in the adoption of these rules not to include this partial exception for rental vehicles.

Emissions Standards: Manufacturers electing to sell vehicles in New Jersey must submit an application for certification for each vehicle/engine combination. If a vehicle has been certified by the Executive Officer of the CARB, duplicative certification testing and procedures for New Jersey will not be required. Where a manufacturer produces a vehicle for sale in New Jersey which will not be sold in California, the application for certification shall be submitted to the Commissioner of the Department. The application must demonstrate the vehicle's compliance with all provisions of "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles." The applicant must submit data which demonstrates that the manufacturer's candidate vehicle complies with exhaust and evaporative emission standards applicable to the vehicle type and model year at zero miles and over a prescribed number of accumulated miles (also referred to as the durability vehicle basis). The vehicle must also comply with hardware requirements such as emission control labeling and onboard-diagnostics. If the application for certification demonstrates compliance with the applicable standards and requirements, the Executive Officer of CARB or the Commissioner of the Department may grant a certificate of conformity for the vehicle which allows the vehicle to be sold in the respective states.

N.J.A.C. 7:27-26.4 sets forth five different categories of emissions standards to which vehicle manufacturers may choose to certify particular model year engine classes. Certification of new vehicles includes the testing of the manufacturer's prototype motor vehicles by engine family according to certain test procedures which have been formulated by the California Air Resources Board. These categories include: standard vehicles (SVs); transitional low emission vehicles (TLEVs); low emission vehicles (LEVs); ultra-low emission vehicles (ULEVs); and zero emission vehicles (ZEVs). The exhaust emission standards for each of these categories apply to carbon monoxide (CO), nitrogen oxides (NO_x) and formaldehyde (HCHO), and non-methane hydrocarbons (NMHC) or non-methane organic gases (NMOG). The specific vehicle category standards have been established by the CARB. The Clean Air Act requires that states which choose to adopt a motor vehicle emissions program other than the Federal Tier I program must adopt emission standards that are identical to the California program.

In-Use Compliance Standards: N.J.A.C. 7:27-26.4 sets forth emission standards which must be met by vehicles after accumulation of mileage in-use. Generally, the manufacturer, upon submitting an application for certification, must demonstrate that the candidate vehicle will comply with the certification standard over a 50,000 mile or 100,000 mile period depending on the vehicle type and model year. In the case of the Low Emission Vehicle standards set forth in N.J.A.C. 7:27-26.4, in-use compliance standards, in effect until model year 1998, are proposed which are somewhat less stringent than the certification standards. These "intermediate in-use compliance standards" are intended to ease the burden of compliance on manufacturers marketing California-certified vehicles prior to the 1999 model year.

Reactivity Adjustment Factors: N.J.A.C. 7:27-26.4 sets forth the emission standards for TLEVs, LEVs, and ULEVs. Although the proposed new rules do not require the use of alternate fuels, if a manufacturer elects to meet the certification standards by using a fuel other than gasoline, the test procedures for demonstrating compliance with these standards will allow for emissions to be "adjusted" to reflect the different ozone forming potential of emissions from vehicles using the alternate fuel. In this way, manufacturers have an incentive to produce alternatively fueled vehicles which are "inherently low emitting," that is, vehicles whose in-use control of emissions is less vulnerable to the deterioration of emission control hardware. The reactivity adjustment factor is an inherent part of a LEV program.

Fleet Emission Average Requirement: At N.J.A.C. 7:27-26.6, these proposed rules allow each vehicle manufacturer to market any combination of new vehicles with engines certified to any of the five categories of emission standards, provided that the average NMOG emissions of the mix of vehicles sold and leased annually by that manufacturer does not exceed a specified fleet average requirement that grows more stringent each year. Small volume manufacturers (those with sales in California of less than or equal to 3000 new vehicles per model year) are given flexibility for how they meet the fleet average and the time frame in which they must meet this average.

Enforcement: The Department intends to propose a penalty schedule and any other enforcement provisions necessary for the LEV program prior to its implementation. These provisions will be promulgated through the rulemaking process, and a public hearing and the opportunity for public comment will be provided. To accommodate these future provisions, this reproposal reserves N.J.A.C. 7:27-26.9 for Enforcement, and retitles the "Enforcement" section (N.J.A.C. 7:27-26.7) of the April 1993 reproposal, so that it is now entitled "Compliance."

The Department is proposing to allow for consumer choice to determine the combination of vehicles sold or leased in New Jersey, and not to bring an enforcement action if the fleet average is exceeded. This approach is being taken in order to maximize program effectiveness while minimizing administrative burden, and in order to develop regional consistency. This approach is consistent with rules adopted by New York and Massachusetts.

ZEV Sales Mandate: At N.J.A.C. 7:27-26.6, the proposed new rules will require that beginning in model year 1998 a certain percentage of the vehicles marketed and sold by each manufacturer will be zero emission vehicles (ZEVs). Starting with model year 1998, two percent of each manufacturer's fleet would be required to be ZEVs. This requirement would increase to five percent in model year 2001 and to 10 percent in model year 2003 and thereafter. The ZEV sales mandate will, in the long run, provide a greater assurance of achieving the maximum emission reduction benefit, particularly because, unlike gasoline-fueled vehicles, emissions from these vehicles will not increase as the vehicle ages. In addition, the ZEV is ideally suited for urban environments, where the State's worse air quality exists. Urban driving, characterized by slow speeds and stop-and-go traffic, strains the ability of the emissions control systems on conventionally-fueled vehicles to maintain low emission levels.

The ZEV, however, maintains zero emissions under these driving conditions and, in fact, gains a considerable advantage in overall efficiency due to battery recharging during frequent braking conditions.

Intermediate volume manufacturers (those with sales in California of between 3,001 and 35,000 new light-duty and medium-duty vehicles) would be exempt from the ZEV sales requirement until the model year

2003. Small volume manufacturers (those with California sales of fewer than 3001 new light-duty and medium-duty vehicles) would be completely exempt from the ZEV sales mandate.

The Department expects that specialized electric vehicle manufacturers may enter the marketplace. At present, only battery-powered electric vehicles appear capable of meeting the ZEV requirements. However, solar and fuel cell-powered vehicles may also be developed to provide zero emission mobility in the future.

The Department recognizes that significant electric vehicle technological developments are underway that may impact the potential for manufacturers to achieve the ZEV sales mandate. The Department, consistent with action planned by New York, Massachusetts and Maine, will undertake a technology review of ZEVs in 1994 to examine ZEV technology developments and issues relating to ZEV performance in New Jersey. This review will include an opportunity for public participation.

Quality Control Testing: No quality control provisions for assembly line testing are included in the proposed rules. The Department will consider proposing such provisions in the future and, in doing so, the Department will consider the need for consistency within the OTR. At the present time, the Massachusetts and New York rules include assembly line testing procedures identical to California's. However, the California Air Resources Board intends to revise these procedures. The Department, therefore, has decided not to propose a quality control testing provision at this time.

Onboard Diagnostic System: At N.J.A.C. 7:27-26.8, these proposed new rules require all vehicles sold or leased pursuant to the LEV Program to be equipped with advanced onboard diagnostic (OBD) systems. These standards are identical to those adopted by California and are consistent with the Massachusetts and New York rules. These systems would alert the vehicle operator if the emission system is malfunctioning and monitor additional parameters than those covered by recently proposed Federal OBD standards.

Fill Pipes and Openings of Motor Vehicle Fuel Tanks: At N.J.A.C. 7:27-26.8, these proposed new rules set forth the specifications for fill pipes and the openings of motor vehicle fuel tanks. This section prescribes the specifications for the fuel tank opening and the pipe leading from the fuel tank to the fueling inlet. The specifications are designed to prevent the introduction of a leaded fuel nozzle into the fuel tank opening to prevent misfueling of the vehicle and to assure compatibility of Stage-II refueling vapor control apparatus on gasoline fuel pumps with the fuel opening. Stage-II apparatus is designed to minimize refueling vapor loss during vehicle refueling.

Recall, Warranty and Aftermarket Parts Programs: Although no recall, warranty or aftermarket parts provisions are included in these proposed new rules, the Department does intend to propose such provisions in the future. The recall and warranty programs would have important regional implications. For this reason, the Department will consult and coordinate with other states in the OTR prior to developing and proposing the recall and warranty provisions of its LEV program. The aftermarket parts program has significant implications for the aftermarket parts industry in New Jersey.

Penalties: The proposed rules provide that persons subject to this Subchapter who fail to conform with its requirements, including the sales, reporting and registration requirements for LEVs in New Jersey, may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3. These new rules do not propose amendments to N.J.A.C. 7:27A-3 that would establish penalties specific to the requirements of these rules. However, the Department is considering whether the proposed amendments establishing penalties, and will solicit public input on this issue in the future.

Incorporation by Reference: The proposed new rules incorporate provisions of the California Code of Regulations together with several specification documents and test procedures. The Department and other State agencies commonly incorporate other laws and regulations, including test procedures, by reference. See, for example, the Department's Safe Drinking Water regulations, specifically, N.J.A.C. 7:10-1.3, and the New Jersey Pollutant Discharge Elimination System regulations, specifically, N.J.A.C. 7:14A-1.9. The rules of the Office of Administrative Law specifically allow incorporation by reference, N.J.A.C. 1:30-2.2. This incorporation includes all amendments and supplements to those regulations, specification documents, and test procedures. The Department will publish notices of all such amendments and supplements in the New Jersey Register, which will become operative no earlier than 30 days following publication. The operative date will be stated in the publication. In addition, the Department will provide public notice of California's proposed amendments and supplements, including how copies of such proposals may be obtained and where comments may be submitted. If the Department determines that a particular amendment or supplement may not be appropriate to New Jersey's LEV program, the Department will propose an amendment to these rules.

In any event, under the Clean Air Act New Jersey is required to provide two years notice of its adoption of the LEV standards or revisions to such standards.

Social Impact

These proposed new rules will have a positive social impact. They are designed to help New Jersey achieve and maintain the NAAQS for ozone and carbon monoxide by reducing the emission of air contaminants from new motor vehicles. These air contaminants include volatile organic compounds, carbon monoxide, oxides of nitrogen and various toxic air pollutants. Volatile organic compounds and oxides of nitrogen contribute to the formation of photochemical smog, of which ground level ozone is a primary constituent. By reducing these emissions, these new rules would have the effect of helping to deter or prevent the exposure of persons who reside or work in New Jersey to elevated unhealthy concentrations of these substances. Reducing these emissions will also help to deter or prevent the degradation of plant life and various human-made materials which is caused by increased ozone concentrations. The effects would be protective of public health and the environment, and would be of significant societal benefit.

The frequent and widespread violations of the health-based NAAQS for ozone in New Jersey constitutes a serious public health problem in the State. In 1978 based on ozone's then known health effects, the national ambient air quality standard was established at 0.12 parts per million by EPA. However, adverse health effects have been observed at lower levels of ozone, and as a result of a lawsuit filed by the American Lung Association and several states against EPA, EPA agreed to review the ozone standard in light of recent scientific findings in order to ensure that the national ozone standard is protective of public health (9).

The Department maintains a comprehensive air pollution monitoring system throughout the State and provides a daily forecast and an annual report for each calendar year (10). The total number of exceedances of the ozone health standard for 1990-1993 in New Jersey are listed below in Table 1:

Table 1

New Jersey Air Quality Data
Exceedances of the Ozone Standard

Year	# of N.J. Monitoring Sites	# Site-Days Above Ozone Health Standard
1990	15	58
1991	15	75
1992	14	19
1993	15	24

Short-term effects on healthy exercising adults and children from exposure to elevated ozone concentrations include coughing, painful breathing and loss of certain lung functions. The connection between respiratory disease and high levels of ozone has been reported by the University of Medicine and Dentistry of New Jersey (UMDNJ). After studying data from nine central New Jersey hospitals, UMDNJ researchers found that the incidence of asthma attacks rose from seven to 10 percent when elevated levels of ozone were reported by the Department (12). These effects are exacerbated in sensitive populations, particularly the elderly, those with preexisting respiratory diseases and children who play outdoors. Long-term effects are also of concern, because much of New Jersey's population has been exposed to unhealthful levels of ozone throughout their lifetime. Although chronic effects have not been conclusively determined, repeated exposure to ozone over a lifetime causes biochemical and structural changes in the lung and may be a causal factor in development of chronic respiratory diseases.

Increased ozone levels also cause damage to foliage. One of the earliest and most obvious manifestations of ozone impact on the environment is this impact on sensitive plants. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in ambient ozone concentrations will mitigate damage to foliage, fruits, vegetables, and grains.

The oxidizing properties of ozone lead to accelerated degradation of various man-made materials such as rubber, plastics, dyes, and paints. Attainment of the NAAQS for ozone will reduce the rate of degradation of both natural and synthetic materials.

Carbon monoxide reduces the oxygen carried in the blood and also may be fatal at high concentrations. Reducing the emissions of CO from motor vehicles is expected to help avoid exceedances of the CO NAAQS.

In addition to the contributions to ozone and CO levels, the EPA estimates that motor vehicle emissions account for 60 percent of the total cancer incidence from outdoor exposure to air toxics nationwide (13). Therefore, reducing the motor vehicle emissions is also expected to significantly reduce the total cancer incidence attributable to motor vehicle emissions.

Most New Jersey residents who wish to purchase new vehicles would be impacted by the LEV program. Only vehicles that are certified to LEV Program standards would be allowed for sale in New Jersey beginning with model year 1999. Therefore, new car buyers would be restricted to purchasing only vehicles that conform with these proposed standards. New Jersey residents would not be able to register in New Jersey new vehicles purchased from an out-of-state automotive dealership, except for vehicles certified to the LEV Program standards. However, the Department believes that the adoption of these new rules would not materially limit either the availability of motor vehicles for New Jersey car buyers, or the availability of various makes or models of such motor vehicles. First, the LEV standards and any sales prohibitions would not apply to used vehicles. Second, past experience in California has shown that manufacturers certify the great majority of their product line to the more stringent California emission standards, resulting in little effect on the availability of particular makes or models. Third, the Department is proposing to adopt an "offset vehicle provision" similar to California's whereby manufacturers can choose to sell in New Jersey a limited number of vehicles certified to Federal standards to increase model availability. The emissions from these higher emitting vehicles would be required to be "offset" through the sale of lower emitting vehicles. Lastly, the proposed LEV Program allows the manufacturers to certify cars to any one of five different categories of emission standards, and allows them to sell any mix of such vehicles the manufacturer decides, provided that the average emissions of NMOG do not exceed a certain level.

Another significant factor is the OTC-LEV proposal, previously discussed in this summary section, which would, if approved by EPA, result in regional implementation of the LEV program beginning with model year 1999. According to national vehicle registration statistics, these northeast states, together with California, constitute approximately 35 percent of the market for new cars in the United States. The size of the demand for cars that meet the LEV Program standards, once the program has been adopted throughout the northeast, will provide a substantial incentive for vehicle manufacturers to make such vehicles available. Therefore, the Department anticipates that under the LEV Program, a full range of vehicle models would be available to New Jersey residents.

Some New Jersey businesses are expected to be affected, namely new and used automotive dealeships and wholesalers, automotive parts dealers and distributors, and possibly gasoline retailers. Overall, as discussed in the Economic Impact and Regulatory Flexibility Analysis below, these new rules are expected to minimally affect the operations of New Jersey businesses and are not expected to affect the absolute sales or profits of such businesses.

Economic Impact

The Department expects that the proposed new rules will result in both positive and negative economic impacts. While compliance with the proposed new rules will bring associated costs, such compliance will also result in improved air quality, avoiding some of the substantial costs associated with air pollution.

The actual costs and other economic impacts associated with reducing air pollutants by implementing the LEV program are speculative and difficult to accurately quantify, as they are a function of several different parameters. These parameters include vehicle cost and consumer demand, relative cost effectiveness of the emission reductions, impacts on vehicle dealerships, impacts on Department resources, costs inflicted by air pollution (including health costs), and impacts on affected industries. Each of these are discussed below.

Added Vehicle Cost: The proposed new rules will increase the cost of producing complying vehicles. Manufacturers may add to the base price of each new vehicle produced in order to reflect any increase in costs necessary to certify vehicles to the more stringent LEV Program standards; however, for the reasons discussed below (see "Impacts Upon Affected Industries"), the increased cost will not necessarily be passed along to New Jersey purchasers in full.

The California Air Resources Board (CARB) has predicted the following incremental cost increases for the LEV Program over current-technology gasoline-fueled vehicles (20):

Table 2

Added Cost of Light-Duty Low Emission Vehicles (est. 1990 $)

TLEV	$ 19
LEV	$ 60
ULEV	$128
ZEV	$894

Recent information from the CARB indicates that vehicle manufacturers are meeting the LEV standards ahead of schedule and at a lower cost than previously predicted. In his May 5, 1993 presentation before the Society of Automotive Engineers (SAE) Government/Industry meeting entitled "Progress in Implementing California's Low Emission Vehicle Program," Thomas Cackette, Chief Deputy Executive Officer of CARB, announced that for the 1993 model year, seven vehicles had been certified to TLEV standards and for the 1994 model year, fifteen additional certifications have been projected. In addition, Mr. Cackette stated that LEV technology forecasts indicate refinements of current emission control technology that serve to reduce projected costs of compliance with the LEV standards. Mr. Cackette, therefore, concluded that: (1) the program remains technologically feasible; (2) development of low emission strategies has exceeded CARB's original projections; and (3) cost of compliance has decreased. For example, in 1990 CARB predicted that manufacturers may need to use sequential fuel injection and air injection to meet transitional low emission vehicle (TLEV) standards. By 1993, it appeared that these technologies would not be required to meet TLEV standards. In addition, projected costs for electrically heated catalysts (EHCs), which CARB predicts may be required for ultra-low emission vehicles (ULEVs), were projected in 1990 at $170.00, but were revised downward in 1993 to $65.00. As such, the projected incremental costs of a TLEV compared to a Tier I federal vehicle has been reduced from $70.00 per vehicle to $19.00 per vehicle. Similarly, projections for the incremental cost of LEVs has dropped from $170.00 to $60.00 and for ULEVs, from $170.00 to $128.00. Whether the manufacturers actually increase the price to consumers to reflect these possible increased costs is dependent in large part upon consumer demand for the vehicles.

A report prepared by DRI/McGraw-Hill for the American Petroleum Institute (API) (15) contested CARB's original cost estimates (referenced above). The report estimates that the incremental cost differences will exceed those estimated by CARB and Pechan for the LEV, ULEV, and ZEV categories. The DRI/McGraw-Hill report assumes some uncertainty in cost increases and provides a range for the estimated incremental costs which at the high end exceed the CARB estimates by $930.00 per LEV or ULEV. The CARB estimate assumed the LEV and ULEV standards would be met by the addition of an electrically heated catalytic converter. Documentation supporting the DRI/McGraw-Hill report estimate has not been made available. It is the opinion of NESCAUM in responding to the DRI/McGraw-Hill report in a January 3, 1992 letter to API that manufacturers will pursue the most cost effective measures to comply (16). According to NESCAUM, recent information from EPA, CARB and motor vehicle representatives "indicate that only a limited number of LEV engine families may use electrically heated catalysts while the majority of LEV engine families will rely on less costly emission control program modifications."

While CNG and electric vehicles are predicted to be more expensive to purchase, CARB predicts that once marketed, the higher purchase costs of alternative fuel vehicles will be largely offset by their lower fuel prices and maintenance costs.

Cost Effectiveness: By allowing manufacturers to market a mix of vehicles, the LEV Program combines the economic efficiency of market-based averaging schemes with the enforceability of traditional vehicle emission standards. Instead of having to certify all vehicles to one strict standard, as would be required by the Federal standards, each manufacturer can choose to certify vehicle types to the different standards and to produce the various vehicle types in whatever combination is most cost-effective, given that manufacturer's production capabilities, as long as the required fleet emissions average is met.

Historically, pollution control measures have focused on stationary sources. Therefore, the cost of such controls have become the basis of comparison for other proposed control measures. The proposed LEV Program would be more cost effective, in terms of dollars required to reduce a ton of pollutant, when compared to most stationary source VOC and NO_x emission reduction costs.

The Department's most recent calculations, using the MOBILE5a emission model, show the overall cost-effectiveness of the LEV program at $1,380 per ton of VOC and NO_x reduced. This calculation was made based on a "per vehicle" methodology and utilizes the following criteria and assumptions:

1. Emission factors and deterioration rates from MOBILE5a for Tier I and LEV vehicles, maximum I/M for LEVs, Enhanced I/M for Tier I (EPA has not yet set specifications for defining maximum I/M; however it could employ tighter emission standards set at 1.5 times the certification standards, with the anticipated effect of ensuring that vehicles meet their original emission standards over their entire useful life);
2. The most recent CARB estimates for the incremental cost of LEV vehicles: $18.75 for TLEVs, $59.50 for LEVs, and $127.75 for ULEVs;
3. E.H. Pechan's estimate for the incremental cost of ZEVs contained in the MARAMA report, at $894.00 over the conventional car (ZEVs are assumed to have zero emissions);
4. VOC and NO_x emission reductions benefits are treated equally; and
5. Cost-effectiveness ratios for each class of LEV are weighted for their expected proportion in the sales mix for 2003 as per CARB: 75 percent LEV, 15 percent ULEV, and 10 percent ZEV.

The CARB, as indicated in 2 above, has recently revised downward their estimates for the cost of compliance with the LEV standards. Using these revised cost estimates, and CARB's emission model, EMFAC7, CARB's updated cost-effectiveness calculations for the program are as follows: $200.00/ton NMOG and NO_x reduced for TLEVs, $340.00/ton for LEVs, and $680.00/ton for ULEVs.

Relative to the proposed LEV program, emission control strategies for reducing emissions from stationary sources are, generally speaking, more expensive to implement on a cost per ton basis. For example, the CARB has estimated the cost-effectiveness of rules regulating NO_x emissions from electric power generation between $6,600 and $24,800 per ton of NO_x. The proposed LEV program, with an estimated cost effectiveness of $1,380 per ton of VOC and NO_x reduced is therefore, significantly more cost effective.

The DRI/McGraw-Hill report also disputed the Pechan report cost effectiveness estimates. The DRI/McGraw-Hill report assumes a potentially higher increased cost per vehicle, uses a different means to calculate the effectiveness values for the LEV program than used by Pechan and questions the benefits to be gained. The DRI/McGraw-Hill report also emphasizes the technological uncertainties of the LEV program and concludes that until the technology to meet the LEV program is demonstrated, the cost per vehicle and effectiveness values can not be accurately estimated. The Department and NESCAUM agree with CARB that, for gasoline powered vehicles, the technology to meet the LEV Program standards is known and the costs can be estimated.

In an economic study conducted by Urbanomics for Project: Clean Air, the VOC emission reductions, congestion reductions, and costs were compared for 21 transportation and mobile source strategies. Using this data, the Project Clean Air steering committee ranked the LEV Program among the first-priority strategies, along with growth management, enhanced I/M, traffic flow improvement, mandatory employee trip reduction, and capital improvement for public transportation (3).

Impact on Vehicle Dealerships: The proposed new rules are expected to have little impact on vehicle dealerships. Provisions have been made to permit dealers to handle non-LEV Program vehicles for sale to another dealer, for the purpose of wrecking or dismantling, for off-highway use and for out-of-State registration. In addition, as more states enter the program, as anticipated, any dislocations in interstate trading of dealership stock will be mitigated. Finally, the proposed rules do not restrict the sale of used vehicles.

Impact on State Government Resources: The LEV Program by its nature will rely heavily on the staff and facilities of the California Air Resources Board (CARB), as CARB already regularly performs the background work necessary to implement its LEV Program. Since New Jersey's program would be based on California's, and since the emission standards are required by the Clean Air Act to be identical to California's, a minimum of additional resources will be required by the Department. The Department estimates that some additional staff members will be needed by the Department and the Division of Motor Vehicle Services (MVS) to audit registration, dealer compliance, certification and reporting, and to perform field enforcement.

Although the State intends to rely heavily on California's resources initially, it may become necessary for a regional recall investigation facility to exist in the Northeast. Such a facility could be of minimal additional cost to the State if jointly operated by all OTR member states participating in the LEV program or if funding is available from another source, such as the EPA.

Cost of Air Pollution: The impact on the general public of not improving the air quality is very significant. The American Lung Association (ALA) has recently estimated the cost of health problems attributed to air pollution including the loss of worker productivity, to be in the range of $4.43 to $93.49 billion dollars per year, nationally (9). New Jersey has an extremely high density of motor vehicles as compared to other states. Motor vehicles contribute almost half of the pollutants that result in air quality problems in New Jersey. For this reason, taking all prudent measures to limit the emission of air pollutants from motor vehicles is an essential step in reducing these pollutants.

Impacts Upon Affected Industries: The Department has made every effort to minimize the burdens borne by the motor vehicle manufacturing industry and vehicle dealers. By proposing to adopt emission standards identical to those in California, the Department ensures that the vehicle industry will have to comply with only two sets of pollution control standards (the federal standards and the LEV Program standards). The Department does not anticipate that the estimated increased costs associated with the LEV Program will result in an appreciable reduction in the number of new vehicles sold in the State. While the additional costs of the cleaner cars mandated by the LEV Program would eventually be passed along to consumers, the full additional cost may not be added to purchase prices, because factors other than production costs influence prices. Therefore, it is unclear whether the cleaner cars would be priced to reflect the higher cost of their emission controls. The Department does not anticipate that the relatively small additional cost of LEV vehicles (about a one percent increase in the total cost) would materially reduce the number of new vehicles sold in New Jersey.

In addition, the Department is working closely with the OTR to ensure that there are no state specific programs which may negatively impact the distribution or sale of vehicles in the region.

Further, the Department has proposed exempting small and intermediate volume manufacturers from compliance with the LEV emission standards and requirements until model year 2000, and has proposed exempting small volume manufacturers from the ZEV sales mandate entirely. These provisions are intended to minimize the economic impact of the proposed new rules on those manufacturers which are generally least able to absorb increased costs.

Environmental Impact

The implementation of the proposed new rules will have a positive impact on the environment. The additional exhaust emission benefits from New Jersey's adoption of the proposed LEV Program as opposed to the Tier I standards were estimated in the Pechan report and were tabulated in Table 4a of the April 5, 1993 proposal at 25 N.J.R. 1416.

The emission benefit analysis has been updated by the Department using MOBILE 5a and revised emission inventory calculations. The analyses were also expanded to include the effects of delaying implementation from model year 1998 to 1999 and to 2000.

Tables 3 and 4 show the results of the Department's revised emission benefit analysis for VOC and NO_x. The benefits of the LEV program relative to the Federal Tier I program (in tons per summer day) are listed for calendar years 1998 through 2020, for each of three implementation years for the LEV program: 1998, 1999, and 2000.

Table 3
New Jersey VOC Emissions Inventory
From Mobile Sources
(tons per summer weekday)
PROPOSED LEV PROGRAM VS. FEDERAL TIER I PROGRAM
FOR IMPLEMENTATION YEARS 1998, 1999, AND 2000

		1998 Implem.		1999 Implem.		2000 Implem.	
Year	Tier I	LEV	Benefit	LEV	Benefit	LEV	Benefit
1998	228.13	222.77	5.36	na	na	na	na
1999	214.89	204.99	9.90	206.01	8.88	na	na
2000	184.27	170.70	13.57	171.59	12.68	172.99	11.28
2003	162.99	136.36	26.63	136.56	26.43	138.22	24.77
2005	154.16	119.35	34.81	119.81	34.35	121.02	33.14
2006	151.89	113.99	37.90	114.40	37.49	115.26	36.63
2007	150.40	109.64	40.76	109.90	40.50	110.69	39.71
2010	147.26	99.91	47.35	100.11	47.15	100.75	46.51
2020	158.41	100.99	57.42	101.01	57.40	101.02	57.39

Volatile organic compounds emissions are precursors to ozone formation. For this reason, efforts to attain and maintain the NAAQS for ozone have focused on reducing VOC emissions. In 1990, VOC emissions in New Jersey totalled 2028 tons per summer weekday with 673 tons attributed to emissions from all mobile sources, not just exhaust emissions.

The emission reduction calculations in Table 3 show that if implemented in model year 1998, relative to the Tier I program, the LEV program provides a benefit of 5.4 tons of VOC per day in 1998, increasing to 38 tons/day in 2006, 41 tons/day in 2007 and 57 tons/day in 2020.

If LEV implementation is delayed one year to 1999, the loss of VOC benefit relative to implementing in 1998 is as follows: 5.4 tons/day in 1998, 1.0 tons/day in 1999, 0.9 tons/day in 2000, 0.2 tons/day in 2003, 0.3 tons/day in 2007 and 0.02 tons/day by 2020.

Delaying implementation further until 2000, would result in the following losses of VOC benefits, relative to implementing in 1998: 5.4 tons/day in 1998, 9.9 tons/day in 1999, 2.3 tons/day in 2000, 1.8 tons/day in 2003, 1.1 tons/day in 2007 and 0.03 tons/day in 2020.

Oxides of nitrogen (NO_x) are also precursors to ozone formation. In 1990, NO_x emissions in New Jersey totalled 1950 tons per summer weekday with 761 tons per summer weekday attributed to emissions from all mobile sources.

Table 4
New Jersey NO_x Emissions Inventory
From Mobile Sources
(tons per summer weekday)
PROPOSED LEV PROGRAM VS. FEDERAL TIER I PROGRAM
FOR IMPLEMENTATION YEARS 1998, 1999, AND 2000

		1998 Implem.		1999 Implem.		2000 Implem.	
Year	Tier I	LEV	Benefit	LEV	Benefit	LEV	Benefit
1998	446.12	437.21	8.91	na	na	na	na
1999	430.04	413.00	17.04	414.36	15.68	na	na
2000	418.36	390.87	27.49	392.54	25.82	396.15	22.21
2003	395.82	333.82	62.00	335.33	60.49	339.31	56.51
2005	392.88	308.41	84.47	309.68	83.20	313.36	79.52
2006	392.67	298.97	93.70	299.76	92.91	302.93	89.74
2007	393.64	291.26	102.38	292.02	101.62	294.85	98.79
2010	397.49	276.94	120.55	277.30	120.19	279.47	118.02
2020	443.15	296.29	146.86	296.42	146.73	296.60	146.55

The emission reduction calculations in Table 4 show that if implemented in model year 1998, relative to the Tier I program, the LEV program provides a benefit of 8.9 tons of NO_x per day in 1998, increasing to 93.7 tons/day in 2006, 102.4 tons/day in 2007 and 146.9 tons/day in 2020.

If LEV implementation is delayed one year to 1999, the loss of NO_x benefit relative to implementing in 1998 is as follows: 8.9 tons/day in 1998, 1.4 tons/day in 1999, 1.7 tons/day in 2000, 1.5 tons/day in 2003, 0.8 tons/day in 2007 and 0.1 tons/day by 2020.

Delaying implementation further until 2000, would result in the following losses of NO_x benefits, relative to implementing in 1988: 8.9 tons/day in 1998, 17.0 tons/day in 1999, 5.3 tons/day in 2000, 5.5 tons/day in 2003, 3.6 tons/day in 2007 and 0.3 tons/day in 2020.

In conclusion, the LEV program can provide substantial reductions in VOCs and NO_x relative to the federal Tier I program. These benefits are most pronounced in the years during which the Department must demonstrate attainment of the ozone NAAQS, i.e., 2005 and 2007, and in the years beyond, during which the Department must demonstrate maintenance of the ozone NAAQS.

For example, if implemented in 1998, relative to Tier I, the LEV program would result in additional benefits of 38 tons/day of VOC in 2006, 41 tons/day in 2007 and 57 tons/day in 2020. This represents additional NO_x reductions of 25 percent, 27 percent, and 36 percent over those expected from the federal Tier I program.

Correspondingly, if implemented in 1998, relative to Tier I, the LEV program would result in additional benefits of 93.7 tons/day of NO_x in 2006, 102.4 tons/day in 2007 and 146.9 tons/day in 2020. This represents additional NO_x reductions of 24 percent, 26 percent and 33 percent additional NO_x reductions over those expected from the federal Tier I program.

If implementation of the LEV program is delayed to model year 1999, as proposed in this reproposal, there is some loss in VOC and NO_x benefits (relative to Tier I) compared to a 1998 implementation year. The loss in benefit caused by a one year delay is most evident in the first years of implementation, however, in the later years, most notably in the attainment years of 2005 and 2007, the loss in benefit due to delaying implementation is very small at 0.2 to 0.3 tons/day of VOCs and 0.8 to 1.5 tons/day of NO_x.

The result of delaying implementation from 1998 to 1999, is a loss in VOC and NO_x benefits, primarily during the 1998-2000 timeframe. These lost benefits will need to be compensated for through additional air pollution control programs that the Department will need to implement in order to meet the section 182 VOC emission reduction milestones. The Department believes that the loss of VOC and NO_x benefits resulting from delaying implementation until 1999 can be reclaimed through additional air quality programs so that it will not have an adverse impact on ambient ozone concentrations in the State.

"A recently released report by the National Academy of Sciences (NAS) entitled "Rethinking the Ozone Problem in Urban and Regional

Air Pollution" criticized the SIP process and EPA for not verifying emission reductions.[18] In particular the NAS found that the SIPs underestimated mobile source VOC emissions by a factor of two to four. This underestimation along with underestimation of naturally occurring (biogenic) VOCs in many cases has led to erroneous estimates of the relation of VOC to NO_x emissions or VOC/NO_x ratio. At higher VOC/NO_x ratios, NO_x emission control is more effective in reducing ozone concentrations. Thus, NAS believes that in many areas fuller control of NO_x or controls on both VOC and NO_x will optimize the reduction of ozone formation. The LEV Program clearly leads to greater reductions of both VOC and NO_x. It should also be noted that OTC ROM results support this conclusion.

The proposed new rules would require that beginning in 1999, certain percentages of new passenger cars and light-duty trucks sold be ZEVs. Currently, only battery-powered electric vehicles are capable of meeting the ZEV requirements. Solar and fuel cell-powered vehicles may also be developed to provide zero emission mobility in the future. Electrically powered vehicles are not truly zero emission vehicles because the off-site generation of electricity required for the electric vehicles can result in additional stationary source emissions. However, modern electrical generation facilities emit far less pollution per unit of energy generated than gasoline-powered vehicles. Moreover, unlike the vehicles themselves, electrical generating facilities are often located outside of the areas most in need of emission reductions. And, in contrast to conventional vehicles, ZEVs are expected to maintain their emissions standards as they age and operate in congested traffic situations. In addition, gasoline-powered vehicles are likewise responsible for additional stationary and mobile source emissions, which result from fuel refining and fuel distribution.

Analyses by CARB and the Electric Power Research Institute (EPRI) demonstrate that, even taking into account the emissions from the generation of electricity, present technology ZEVs will have extremely low emissions of VOCs and CO and substantially lower emissions of NO_x and carbon dioxide (CO_2) relative to gasoline-powered vehicles.[17] According to EPRI's analysis, which was based upon the power demand for the Chrysler electric "T" Van, VOC emissions will be 100 times lower, CO emissions will be 200 times lower, and NO_x emissions will be six times lower than conventionally fueled minivans.[14] It is expected that the benefits of electric vehicles will rise even further as more efficient battery and drive-train technologies become available.

The LEV Program standards set forth in the proposed rules set explicit emission limits for formaldehyde, whereas the federal standards do not address formaldehyde emissions. The LEV standards also achieve substantial reductions in emissions of other toxic species that are included in generic hydrocarbon and non-methane organic gas (NMOG) classifications. When a vehicle is operated, toxic pollutants such as benzene, acetaldehyde, formaldehyde, and 1,3-butadiene are present in the exhaust. Vehicle technology designed to meet LEV standards and reduce the NMOG emissions will thus reduce toxic emissions as well. For instance, emissions of benzene from gasoline-fueled vehicles that meet the LEV standards are expected to decline in roughly the same proportion as hydrocarbon emissions. Benzene is the toxic pollutant with the highest potential carcinogenic risk among the exhaust pollutants. If other fuels are used, the reductions in benzene will be even greater. The correlation between emissions of 1,3-butadiene and hydrocarbons is not as well understood. However, the vast majority of 1,3-butadiene emissions occur during start-up emissions, which the LEV standards are expected to reduce substantially.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed rules will not impose additional reporting or recordkeeping requirements on small business (as defined in the Regulatory Flexibility Act). The proposed rules would apply to vehicle manufacturers, dealers, and rental car agencies. Since no known vehicle manufacturers meet the definition of a small business, as they are not New Jersey based and employ more than 100 people, the proposed rules' impact upon small businesses will be upon vehicle dealerships and the smaller rental car agencies.

The additional reporting and recordkeeping requirements imposed by the new rules apply to vehicle manufacturers, which are not small businesses and rental car agencies, some of which are small businesses. The compliance requirements imposed upon small businesses are the prohibition against the sale or leasing of new vehicles which have not been certified by the manufacturer as meeting the stringent LEV Program standards, and a pre-delivery check for performance requirements related to emissions control systems. Since it is expected that the estimated additional costs associated with the LEV Program ($60 and $128 per vehicle, respectively, for LEVs and ULEVs) may be passed on to the ultimate consumer, and that such increased cost will not result in an appreciable reduction in new vehicle sales, the costs to small business in this regard should be minimal. Further, the proposed rules impose the fleet average and ZEV sales requirement only on vehicle manufacturers, which are not small businesses.

In developing these rules, the Department has balanced the need to protect human health and the environment against the economic impact of the rules as proposed. As a result, allowances have been made for small and intermediate volume manufacturers. These rules allow these manufacturers extended time for compliance and in some cases (ZEV sales for small volume manufacturers) exempt them entirely. Additionally, allowances have been made for car rental agencies, some of which are small businesses. The proposal would allow the rental of non-certified vehicles within the State, but if more than 30 days have passed since delivery of the vehicle to a New Jersey rental car agency from a non-New Jersey origination point, the non-certified vehicle shall next be rented with a final destination outside of New Jersey.

Public Participation

The Department has worked with business and industry, environmental groups, and interested citizens in the deveopment of this proposal. On November 7, 1991, the Department held a public workshop to provide interested parties the opportunity to discuss a conceptual version of this rule proposal.[4] On December 10, 1991, the Department held a follow-up work group meeting to focus on the concerns of the regulated community identified at the public workshop. Persons representing vehicle manufacturers, automotive dealers, the petroleum industry, and public interest groups participated. Written comments were also forwarded to the Department following the work group session. The Department held formal public hearings concerning the April 6, 1992 proposal on May 19, 1992 and June 3, 1992 and held a formal public hearing concerning the April 5, 1993 reproposal on May 5, 1993 at the Department of Environmental Protection and Energy hearing room in Trenton, New Jersey. The hearing was held to provide interested parties the opportunity to comment on the reproposed new rules. After the hearing, the hearing officer made no recommendation to the Department regarding the reproposal. Four commenters submitted oral comments at the hearing as well as written comments. The Department also received written comments from an additional three commenters. The seven commenters are listed below:

1. Joseph Santo, Public Service Electric and Gas (PSE&G)
2. James Benton, New Jersey Petroleum Council
3. Albert Hockhauser, New Jersey Petroleum Council
4. Gary Herwick, GM, also representing (AAMA)
5. Marcel Halberstadt of American Automobile Manufacturers Association (AAMA)
6. Michael Faigen, Issues Management Inc.
7. D.L. Mitchell, Exxon Company, U.S.A.

In developing this reproposal, the Department has considered the comments received on the April 5, 1993 reproposal during the informal public consultation process and the formal public hearings. Because significant information relevant to the final policy determinations is expected to be brought forward over the next several months, the Department has not finalized its response to the comments. Anticipated relevant information will include the testimony to be submitted at the hearings the EPA will hold on the petition submitted by the OTC asking that all states in the Ozone Transport Region be mandated to adopt OTC-LEV, the findings of the technical audit being conducted by the California Air Resources Board of the California LEV program and comments in response to this reproposal. The Department will finalize and publish its response to the comments received concurrently with adoption of this reproposal.

The Department was also working in cooperation with the other states in the OTR to implement regional strategies to control motor vehicle emissions. New Jersey's persistent ozone air quality problem is in part generated by emissions transported into the State as well as emissions generated within the State. This reality dictates that New Jersey will need emission reductions regionally as well as emission reductions within its own borders, if the State is to achieve timely attainment of the ozone standard. Eleven OTR states and the District of Columbia, signed a memorandum of understanding to proceed with the adoption of the LEV program in their respective states.[5] Already New York and Massachusetts

have taken action on rules which would adopt the LEV Program in their states.[6,7] Massachusetts adopted its LEV rules on January 31, 1992 and New York adopted its rule on May 20, 1992. The Department views this regional interstate cooperation as significant in respect not only to achieving emission reductions, but also to precluding any potential resultant economic inequities among OTR states. P.L. 1993, c.69, further addresses this concern by conditioning implementation of the LEV program on similar adoptions by other members.

Additionally, interaction between the California Air Resources Board (CARB) and air pollution control staff in New Jersey and other participating OTR states in support of the development of the LEV program in the northeast is on-going. This interaction, which will continue throughout the course of implementing and maintaining the LEV program, is essential to ensure that issues specific to New Jersey and the OTR are considered and addressed. Further, the Department has encouraged New Jersey business and industry leaders to consult their counterparts in California and draw on the experience that has been gained with the LEV program in California.

References

(1) United States Environmental Protection Agency, "National Air Quality Trends Report, 1990," November 1991.

(2) "Regional Ozone Modelling for Northeast Transport (ROMNET) Final Report," USEPA, 1991.

(3) Regional Plan Association/New Jersey, "Final Report of Project: Clean Air," Newark, New Jersey, September 6, 1991.

(4) "Summary of Comments made at the November 7, 1991 Public Workshop on Mobile Source Rules Under Development Pursuant to the 1990 Clean Air Act Amendments (CAAA)," NJDEPE, 1992.

(5) Memorandum of Understanding, Ozone Transport Commission, signed by the District of Columbia and 11 members, 1991.

(6) Proposal to amend 6 NYCRR, Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," July 30, 1991.

(7) Proposal to amend 310 CMR 7.00, et seq., September, 1991.

(8) New Jersey Institute of Technology (NJIT), "Adoption of the California Low Emission Vehicle: An analysis of the Environmental Impact and Cost, A Study for the New Jersey Legislature", December 1993.

(9) *American Lung Association et al. v. EPA,* Case No. 91 Civ. No. 4114, Second Circuit Federal U.S. District Court, October 22, 1991.

(10) "1990 Air Quality Report," New Jersey Department of Environmental Protection, July 1991.

(11) Environmental Protection Agency, Region II, "Ozone Air Quality 1990 New Jersey and New York," New York, Regional Air Quality Report.

(12) Cody, R.P., Weisel, C.P., Birnbaum, G., and Lioy, P.J., "The Effect of Ozone Associated with Summertime Photochemical Smog on the Frequency of Asthma Visits to Hospital Emergency Departments," Environmental Research, 1992.

(13) "Cancer Risk from Outdoor Exposure to Air Toxics: Final Report," USEPA, Office of Air Quality Planning and Standards, September, 1990.

(14) "Proposed Regulations for Low Emission Vehicles and Clean Fuels, Technical Support Document," State of California Air Resources Board, August 13, 1990.

(15) DRI/McGraw-Hill, "Assessing the Economic Effects of Eastern States Adopting California's Low Emission Vehicle Program," American Petroleum Institute, Washington, D.C., October 1991.

(16) Letter dated January 3, 1992, from Michael J. Bradley, Executive Director, Northeast States for Coordinated Air Use Management, to Terry F. Yosie, Vice President, American Petroleum Institute.

(17) Electric Power Research Institute Journal, April/May 1991, pp. 5-19.

(18) "Rethinking the Ozone Problem in Urban and Regional Air Pollution," National Academy of Sciences (NAS), 1991.

(19) E.H. Pechan & Associates, Inc., "Adopting the California Low Emission Vehicle Program in Mid-Atlantic States," Pechan Report No. 92.10.006/271 prepared for Mid-Atlantic Regional Air Management Association, Harrisburg, PA, 1992.

(20) Thomas Cackette, CARB, "Progress in Implementing California's Low Emission Vehicle Program," 1993.

Full text of reproposal follows:

SUBCHAPTER 26. LOW EMISSION VEHICLES PROGRAM

7:27-26.1 Definitions

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

"Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.

"Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; a profit-seeking enterprise or concern.

"California Air Resources Board" or "CARB" means the agency established and empowered to regulate sources of air pollution in the state of California, including motor vehicles, pursuant to California Health & Safety Code Sections 39500 et seq.

"California standards" means those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States Environmental Protection Agency pursuant to the authority of 42 U.S.C.A. Section 7543 and which other states are permitted to adopt pursuant to 42 U.S.C.A. Section 7507.

"CCR" shall mean the California Code of Regulations (Barclays, 1991).

"Certificate of conformity" means that document issued by the Executive Officer of the California Air Resources Board, the United States Environmental Protection Agency, or the Commissioner of the Department certifying that a vehicle conforms to all applicable emission certification standards.

"Certification application" means the application and associated information that a motor vehicle manufacturer, a motor vehicle engine manufacturer or an air contaminant emission control system manufacturer submits to the California Air Resources Board, or the Department, in the process of applying for certification of a motor vehicle, motor vehicle engine, engine family or air contaminant emission control system.

"Certified" means the finding by the California Air Resources Board, or the Department, that a motor vehicle, motor vehicle engine or engine family, or air contaminant emission control system has satisfied the criteria adopted by the California Air Resources Board or the Department for the control of specified air contaminants from motor vehicles.

"Dealer" includes every person actively engaged in the business of buying, transferring, leasing, selling or exchanging motor vehicles and who has an established place of business.

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

"Diesel" means powered by an engine where the primary means of controlling power output is by limiting the amount of fuel that is injected into the combustion chambers of the engine.

"Dual fueled" means a motor vehicle that is engineered and designed to be capable of operating on a petroleum fuel and on another fuel which is stored separately on-board the vehicle.

"Durability vehicle basis" means the number of miles during which the test vehicle used by a motor vehicle manufacturer to certify to the prescribed exhaust emission standards must maintain those specified standards.

"Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

"Engine family" means the basic classification unit comprised of the engine and drive-train configuration selected by a manufacturer and used for the purpose of certification testing.

"Established place of business" means a place actually occupied either continuously or at regular periods for business use.

"Evaporative emissions" means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

"Field fixes" means modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer's authorized service representative, and that are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Fleet average" means a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this subchapter which are sold in the State of New Jersey in any model year, beginning with model year 1996, based on the calculation in N.J.A.C. 7:27-26.6(a).

"Fuel flexible" means a methanol-fueled motor vehicle that is engineered and designed to be operated using any gasoline-methanol fuel mixture or blend.

"Fuel system" means the combination of fuel tank(s), fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.

"G/mi" means grams per mile.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heavy-duty vehicle" means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 6,000 pounds, except passenger cars.

"HEV contribution factor" means the NMOG emission contribution of HEVs to the fleet average NMOG value.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, and also includes any limited-access highway designated as a "freeway" or "parkway" by authority of law, and any semi-public or private way to which the provisions of Subtitle 1 of Title 39 of the Revised Statutes, N.J.S.A. 39:1-1 et seq., have been made applicable pursuant to the provisions of N.J.S.A. 39:5A-1.

"Hybrid electric vehicle" or "HEV" means a motor vehicle which allows power to be delivered to the driver wheels solely by a battery powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery, or any vehicle which allows power to be delivered to the driver wheels by either a combustion engine and/or by a powered electric motor.

"Intermediate compliance standards" means in-use compliance standards that are effective prior to the effective date of the final in-use compliance standards.

"Intermediate volume manufacturer" means any vehicle manufacturer with sales between 3,001 and 35,000 new light-duty and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1993; provided that, for manufacturers certifying for the first time in California, model year sales shall be based on projected California sales.

"In-use compliance" means the adherence of a motor vehicle to specified exhaust emission standards while the motor vehicle is used and properly maintained within the guidelines of the motor vehicle manufacturer.

"Light-duty truck" means any motor vehicle, rated at 6000 pounds gross vehicle weight or less and a loaded vehicle weight of 5,750 pounds or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with specal features enabling off-street or off-highway operation and use.

"Light-duty vehicle" means light-duty trucks and passenger cars.

"Loaded vehicle weight" or "LVW" means vehicle curb weight plus 300 pounds.

"Low emission vehicle" or "LEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Low Emission Vehicles Program" means a low emission vehicle program based upon emission control standards for new motor vehicles or new motor vehicle engines that are identical to those adopted by the State of California in accordance with authority granted therefore pursuant to the Federal Clean Air Act.

"Manufacturer's sales fleet" means all passenger cars and light-duty trucks a manufacturer sells or offers for sale in New Jersey.

"Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 and subsequent model year heavy-duty low emission vehicle or ultra-low emission vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less, or any 1995 and subsequent model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less.

"Mg/mi" means milligrams per mile.

"Model-year" or "MY" means the manufacturer's annual production period for each motor vehicle which includes January 1 of such calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices as run only upon rails or tracks and motorized bicycles.

"Motor vehicle engine" means an engine that is used to propel a motor vehicle.

"New motor vehicle" or "new vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

"New motor vehicle dealer" means the agent, distributor or authorized dealer of the manufacturer of a new motor vehicle who has an established place of business.

"New motor vehicle engine" means a new engine in a motor vehicle.

"Non-methane organic gas" or "NMOG" shall mean the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

"Off-highway" means any place other than a highway.

"Offset vehicle" means a Federally-certified light-duty vehicle that has been certified by the California Air Resources Board or the Department as meeting the standards and procedures set forth in the "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California", adopted July 20, 1982, as last amended July 12, 1991.

"Organic material hydrocarbon equivalent" or "OMHCE" means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, methanol and formaldehyde as contained in an exhaust gas sample, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrocarbon-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot-soak emissions, the hydrocarbon-to-carbon ratios of the equivalent hydrocarbons are 2.33:1, respectively.

"Ozone Transport Region" or "OTR" means the ozone transport region established pursuant to 42 U.S.C. 7511c(a), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Pennsylvania, Vermont, Virginia, and the District of Columbia, which together form the membership of the Ozone Transport Commission for the northeastern and mid-Atlantic states established pursuant to 42 U.S.C. 7506a.

"Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any Board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

"Reactivity adjustment factor" means a fraction applied to the NMOG emissions from a vehicle powered by a fuel other than conventional gasoline for the purpose of determining a gasoline-equivalent NMOG level.The reactivity adjustment factor means the ozone-forming potential of clean fuel vehicle exhaust divided by the ozone-forming potential of gasoline vehicle exhaust.

"Rental agency" means a business engaged in renting motor vehicles for temporary use.

"Running changes" means modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer during vehicle production, and which are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate or subsequent purchaser.

"Small volume manufacturer" means any vehicle manufacturer with sales less than or equal to 3000 new light-duty vehicles and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1991; provided that, for manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales.

"Standard vehicle" or "SV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"State" means the State of New Jersey, unless otherwise specified.

"Transitional low emission vehicle" or "TLEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Type A HEV" means an HEV which achieves a minimum range of 60 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 C.F.R. Part 600 Subpart B) without the use of the engine, and in which the use of vehicle accessories does not lower the battery-only range below 60 miles. This definition shall also apply to vehicles which have no tailpipe emissions, but use fuel fired heaters, regardless of the operating range of the vehicle.

"Type B HEV" means an HEV which achieves a range of 40 to 59 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 C.F.R. Part 600 Subpart B) without the use of the engine, and in which the use of vehicle accessories does not lower the battery-only range below 40 miles.

"Type C HEV" means an HEV which achieves a range of 0 to 39 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 C.F.R. Part 600 Subpart B) without the use of the engine, an HEV which enables the vehicle operator to control the engine time and modes of operation solely through the use of the engine, and all other HEVs excluding Type A and Type B HEVs.

"Ultra low emission vehicle" or "ULEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

"Useful life" means a period of use denoted by the emission standards to which a given vehicle is certifying. For those light-duty vehicles certified to optional 100,000 mile standards and those 1996 and subsequent model year vehicles certified to 100,000 emission standards, and for those transitional low-emission, low-emission, and ultra-low emission vehicles certified to 100,000 emission standards, the useful life shall mean 10 years or 100,000 miles, whichever first occurs. For light-duty vehicles certified only to 50,000 mile standards useful life shall mean five years or 50,000 miles, whichever first occurs.

"Vehicle curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with 40 C.F.R. §86.082-24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Zero emission vehicle" or "ZEV" means any vehicle which is certified by the Executive Officer of the California Air Resources Board to produce zero emissions of any criteria pollutants under any and all possible operational modes and conditions. Incorporation of a fuel-fired heater shall not preclude a vehicle from being certified as a ZEV provided the fuel-fired heater cannot be operated at ambient temperatures above 40 degrees fahrenheit and the heater is demonstrated to have zero evaporative emissions under any and all possible operational modes and conditions.

7:27-26.2 Applicability

This subchapter applies to all 1999 model year and subsequent model year motor vehicles which are passenger cars and light-duty trucks, motor vehicle engines in such motor vehicles, and air contaminant emission control systems for such motor vehicles and motor vehicle engines.

7:27-26.3 Prohibitions

(a) No person who is a resident of or who operates an established place of business within this State shall sell, register, import, deliver, purchase, lease, give, acquire, receive or otherwise transfer a 1999 model year or subsequent model-year new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine, for use, registration or resale within this State, unless such new motor vehicle or new motor vehicle engine has been certified in accordance with this subchapter. No person shall attempt or assist in any such action.

(b) No person who is a resident of or who operates an established place of business within this State shall rent a 1999 model year or subsequent model year motor vehicle for use within this State unless such motor vehicle has been certified in accordance with this subchapter.

1. If a vehicle which is delivered to a New Jersey rental car agency from a non-New Jersey origination point is not rented to a final destination outside of New Jersey within 30 days from such delivery to the New Jersey rental car agency, it shall remain idle until it is next rented with a final destination outside of New Jersey.

(c) The prohibitions contained in (a) above shall not apply to the following passenger cars or light-duty trucks:

1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged, or became inoperative, beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of State at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

2. A vehicle transferred by inheritance;

3. A vehicle transferred by court decree;

4. A vehicle transferred after the effective date of this subchapter if the vehicle was registered in this State before such effective date;

5. A vehicle having a certificate of conformity issued pursuant to the Federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State;

6. A vehicle which is an offset vehicle;

7. A vehicle transferred by a dealer to another dealer;

8. A vehicle transferred for the purpose of being wrecked or dismantled;

9. A vehicle transferred for use exclusively off-highway; or

10. A vehicle transferred for registration out of State.

(d) To register any vehicle exempted under (b) above, the person seeking registration must provide satisfactory evidence, as determined by the New Jersey Division of Motor Vehicles, demonstrating that the exemption is applicable.

(e) For the purposes of this subchapter, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser, and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

7:27-26.4 Emission certification standards

(a) Except as otherwise provided in N.J.A.C. 7:27-26.3(b), all 1999 model year and subsequent model year motor vehicles subject to this subchapter must be certified as not exceeding the following emission standards for standard vehicles, low emission vehicles, transitional low emission vehicles, ultra-low emission vehicles, zero

emission vehicles or hybrid electric vehicles. Vehicles must be certified as meeting the applicable emission certification standards for one of such categories of vehicles.

(b) The exhaust emission certification standards for 1999 model year and subsequent model year passenger cars and light duty trucks which are certified as standard vehicles are as follows:

1. The exhaust emission certification standards for non-methane hydrocarbons, carbon monoxide and oxides of nitrogen are set forth in Table 1.

Table 1

1999 MODEL YEAR AND SUBSEQUENT MODEL YEAR PASSENGER CAR AND LIGHT-DUTY TRUCK STANDARD VEHICLE EXHAUST EMISSION CERTIFICATION STANDARDS

Vehicle Type(1)	Loaded Vehicle Weight (lbs)	Durability Vehicle Basis (mi)	Non-Methane Hydrocarbons (g/mi)(2)	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC	All	50,000	0.25	3.4	0.4
PC	All	100,000	0.31	4.2	n/a
Diesel PC (Option 2)	All	100,000	0.31	4.2	1.0
LDT	0-3750	50,000	0.25	3.4	0.4
LDT	0-3750	100,000	0.31	4.2	n/a
Diesel LDT (Option 2)	0-3750	100,000	0.31	4.2	1.0
LDT	3751-5750	50,000	0.32	4.4	0.7
LDT	3751-5750	100,000	0.40	5.5	n/a
Diesel LDT (Option 1)	3751-5750	100,000	0.40	5.5	1.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks, "n/a" means not applicable.

(2) For methanol-fueled vehicles certifying in these standards, including flexible-fueled vehicles, "Non-Methane Hydrocarbons" shall mean "Organic Material Hydrocarbon Equivalent" (or "OMHCE").

2. Methanol fueled passenger cars, and methanol-fueled light-duty trucks up to 3750 pounds loaded vehicle weight, certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 15 mg/mi., determined on a 50,000 mile durability vehicle basis. Methanol fueled light-duty trucks from 3751 to 5750 pounds loaded vehicle weight certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 18 mg/mi., determined on a 50,000 mile durability vehicle basis.

3. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR Part 600 Subpart B) shall be not greater than 1.33 times the applicable passenger car standards and 2.00 times the applicable light-duty truck standards shown in Table I. Both the projected emissions and the HWFET standard shall be rounded in accordance with American Society for Testing Materials (ASTM) Standard Practice E29-88 to the nearest 0.1 g/mi before being compared.

4. Diesel passenger cars and light-duty trucks certifying to these standards are subject to a particulate exhaust emission standard of 0.08 g/mi., determined on a 50,000 mile durability vehicle basis.

5. For all vehicles, except those certifying to optional diesel standards, in-use compliance with the exhaust emission standards shall be limited to vehicles with less than 75,000 miles.

6. For the 1996 model year, all manufacturers, except those certifying to optional diesel standards, are permitted alternative in-use compliance as set forth below. Alternative in-use compliance is permitted for 20 percent of a manufacturer's vehicles in the 1996 model-year. For the 1996 model year small volume manufacturers only are permitted alternative in-use compliance for 100 percent of the fleet. The percentages shall be applied to the manufacturers, total projected sales for California-certified passenger cars and light-duty trucks for the model-year. Alternative in-use compliance standards for the 1996 model year shall consist of the following.

i. For all passenger cars and those light-duty trucks from 0 to 3750 pounds, loaded vehicle weight, except those diesel vehicles certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.32 g/mi non-methane hydrocarbon and 5.2 g/mi carbon monoxide for 50,000 miles.

ii. For light-duty trucks from 3751 to 5750 pounds, loaded vehicle weight, except those diesel light-duty trucks certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.41 g/mi non-methane hydrocarbon and 6.7 g/mi carbon monoxide for 50,000 miles.

iii. In-use compliance standards shall be waived beyond 50,000 miles.

7. All passenger cars and light-duty trucks, except those diesel vehicles certifying to optional standards, are subject to non-methane hydrocarbon, carbon monoxide and oxides of nitrogen standards determined on a 50,000 mile durability basis and non-methane hydrocarbon and carbon monoxide standards determined on a 100,000 mile durability basis.

(c) The exhaust emission certification standards and test procedures for non-methane organic gases (NMOG), oxides of nitrogen (NO_x), carbon monoxide (CO) and particulates for 1999 model year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles are as follows:

1. The exhaust emission certification standards for NMOG, CO and NO_x are set forth in Table 2.

Table 2
EXHAUST EMISSION CERTIFICATION STANDARDS
FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES
AND ULTRA-LOW EMISSION VEHICLES IN PASSENGER CAR
AND LIGHT-DUTY TRUCK VEHICLE CLASSES[3]

Vehicle Type[1]	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category[2]	Non-Methane Organic Gases (g/mi)	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC and LDT	All 0-3750	50,000	TLEV	0.125 (0.188)	3.4 (3.4)	0.4 (0.4)
			LEV	0.075 (0.100)	3.4 (3.4)	0.2 (0.3)
			ULEV	0.040 (0.058)	1.7 (2.6)	0.2 (0.3)
		100,000	TLEV	0.156	4.2	0.6
			LEV	0.090	4.2	0.3
			ULEV	0.055	2.1	0.3
LDT	3751-5750	50,000	TLEV	0.160 (0.238)	4.4 (4.4)	0.7 (0.7)
			LEV	0.100 (0.128)	4.4 (4.4)	0.4 (0.5)
			ULEV	0.050 (0.075)	2.2 (3.3)	0.4 (0.5)
		100,000	TLEV	0.200	5.5	0.9
			LEV	0.130	5.5	0.5
			ULEV	0.070	2.8	0.5

(1) "PC" means passenger car, "LDT" means light-duty trucks.
(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.
(3) The standards in parentheses are intermediate compliance standards for 50,000 miles, applicable under (c)5 below.

2. To demonstrate compliance with an NMOG standard, NMOG emissions shall be measured in accordance with the "California Non-Methane Organic Gas Test Procedures" as adopted July 12, 1991. For TLEVs, LEVs and ULEVs designed to operate exclusively on any fuel other than conventional gasoline, manufacturers shall multiply the measured NMOG mass emissions at 50,000 and 100,000 miles by the reactivity adjustment factor established for the particular vehicle emission category and fuel combination in the application for certification. The reactivity adjustment factor shall be that which has been determined by CARB according to the procedure described in Appendix VIII of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991.

3. Fuel-flexible and dual-fuel PCs and LDTs from 0 to 5750 pounds loaded vehicle weight shall be certified to exhaust mass emission standards for NMOG established for the operation of the vehicle on any available fuel other than conventional gasoline, and conventional gasoline.

i. For TLEVs, LEVs, and ULEVs, when certifying for operation on a fuel other than conventional gasoline, manufacturers shall multiply the measured NMOG emissions by the applicable reactivity adjustment factor in the application for certification at 50,000 and 100,000 miles.

ii. For PCs and LDTs from 0 to 3750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

(1) For TLEVs, 0.25 g/mi and 0.31 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs, 0.125 g/mi and 0.156 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEV, 0.075 g/mi and 0.090 g/mi for 50,000 and 100,000 miles, respectively.

iii. For LDTs from 3751 to 5750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

(1) For TLEVs, 0.32 g/mi and 0.40 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs, 0.160 g/mi and 0.200 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEVs, 0.100 g/mi and 0.130 g/mi for 50,000 and 100,000 miles, respectively.

4. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR 600 Subpart B) shall be not greater than 1.33 times the applicable light-duty vehicle standards shown in Table 2. Both the projected emissions and the HWFET standard shall be rounded in accordance with ASTM E29-88 to the nearest 0.1 g/mi before being compared.

5. For PCs and LDTs from 0 to 5750 pounds loaded vehicle weight, including fuel-flexible and dual-fuel vehicles when operating on any available fuel other than conventional gasoline, intermediate compliance standards shall apply to LEVs and ULEVs through the 1998 model-year. Compliance with standards beyond 50,000 miles shall be waived through the 1998 model-year for LEVs and ULEVs.

i. For TLEVs, LEVs, and ULEVs designed to operate on any fuel other than conventional gasoline, including fuel-flexible and dual-fuel vehicles when operating on any fuel other than conventional gasoline, measured NMOG emissions shall be multiplied by the reactivity adjustment factor to determine compliance with intermediate compliance standards for NMOG.

ii. For fuel-flexible and dual-fuel PCs and LDTs from 0 to 3750 pounds LVW, intermediate compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on conventional gasoline, shall be 0.32 g/mi, 0.188 g/mi, and 0.100 g/mi for TLEVs, LEVs, and ULEVs, respectively.

iii. For fuel-flexible and dual-fuel PCs and LDTs from 3751 to 5750 pounds LVW, intermediate compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on conventional gasoline, shall be 0.41 g/mi, 0.238 g/mi, and 0.128 g/mi for TLEVs, LEVs and ULEVs, respectively.

6. Manufacturers of diesel vehicles must also certify to particulate standards for 100,000 miles. For all PCs and LDTs from 0-5750 lbs loaded vehicle weight, the particulate standard is 0.08 g/mi, 0.08 g/mi and 0.04 g/mi for TLEVs, LEVs and ULEVs, respectively.

7. Manufacturers shall demonstrate compliance with the above standards for NMOG, CO, and NO_x at 50 degrees Fahrenheit according to the procedure specified in Section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991. For diesel vehicles, manufacturers shall demonstrate compliance with the particulate standard as specified in section 11k of the foregoing test procedures.

8. In-use compliance testing shall be limited to vehicles with fewer than 75,000 miles.

(d) Formaldehyde exhaust emission standards apply to vehicles designed to operate on any available fuel, including fuel-flexible and dual-fuel vehicles. The exhaust emission certification standards for formaldehyde, for 1999 model year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles, are as follows:

1. The exhaust emission certification standards for formaldehyde are set forth in Table 3.

Table 3

FORMALDEHYDE EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES, AND ULTRA-LOW EMISSION VEHICLES IN THE LIGHT-DUTY VEHICLES WEIGHT CLASS

Vehicle Type[1]	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category[2]	Formaldehyde (mg/mi)[3]
PC and LDT	All 0-3750	50,000	TLEV	15 (23)
			LEV	15 (15)
			ULEV	8 (12)
		100,000	TLEV	18
			LEV	18
			ULEV	11
LDT	3751-5750	50,000	TLEV	18 (27)
			LEV	18 (18)
			ULEV	9 (14)
		100,000	TLEV	23
			LEV	23
			ULEV	13

(1) "PC" means passenger car, "LDT" means light-duty trucks.

(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.

(3) The standards in parentheses are intermediate compliance standards for 50,000 miles, applicable under (d)2 below.

2. For PCs and LDTs from 0 to 5750 pounds LVW, including fuel-flexible and dual-fuel vehicles, intermediate compliance standards shall apply to LEVs and ULEVs through the 1998 model-year. Compliance with standards beyond 50,000 miles shall be waived through 1998 for LEVs and ULEVs.

3. Manufacturers shall demonstrate compliance with the above standards for formaldehyde at 50 degrees Fahrenheit according to the procedures specified in section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991.

4. In-use compliance testing shall be limited to passenger cars and light-duty trucks with fewer than 75,000 miles.

(e) The evaporative emissions certification standards for all 1999 model year and subsequent model-year gasoline-fueled, liquified petroleum gas-fueled and methanol fueled motor vehicles, except petroleum-fueled diesel vehicles, are as follows:

1. The evaporative emission certification standards for hydrocarbons and OMHCE are set forth in Table 4.

Table 4

Vehicle Type	Model Year	Hydrocarbons or OMHCE[1] Hot Soak + Diurnal (grams per test) Useful Life	Hydrocarbons or OMHCE[1] Running Loss (grams/mile) Useful Life
Passenger Car Light-Duty Trucks	implementation model year and subsequent	2.0	0.05

(1) The applicable evaporative emission standards for methanol vehicles are expressed as organic material hydrocarbon equivalent (OMHCE).

2. Evaporative emission standards shall be tested in accordance with the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles", adopted April 16, 1975, as last amended November 20, 1991.

3. The running loss and hot soak plus diurnal useful life standards shall be phased-in beginning with the 1996 model year (if the LEV Program is effective for the 1996 model year) and continuing with model year 1997 (if the LEV Program is effective for the 1997 model year). Each manufacturer, except small volume manufacturers, must certify the following percent of passenger cars and light-duty trucks to the running loss and hot soak plus diurnal evaporative emission standards according to the following schedule.

Model Year Standards	Number of Vehicles Certified to Running Loss and Hot Soak + Diurnal Useful Life
1996	30 percent
1997	50 percent
1998 and subsequent model year	100 percent

i. The number of motor vehicles in each vehicle type required to be certified to the running loss and hot soak plus diurnal useful life standards shall be determined by applying the specified percentage to the manufacturer's projected New Jersey model-year sales of passenger cars and light-duty trucks.

ii. Beginning with the 1998 model-year, all motor vehicles subject to the running loss and hot soak plus diurnal useful life standards, including those produced by small volume manufacturers, must be certified to the specified standards.

iii. All 1996 and 1997 model-year motor vehicles which are not subject to the running loss and hot soak plus diurnal useful life standards pursuant to the phase-in schedule must be certified to a 2.0 grams per test hot soak plus diurnal standard for 50,000 miles

7:27-26.5 Certification

(a) Any person seeking certification from the Department for a new motor vehicle or new motor vehicle engine subject to this subchapter shall submit a certification application to the Department. The applicant shall provide the information regarding certification required by Title 40, Code of Federal Regulations, as amended by the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," section (4)(a).

(b) Certification applications shall be submitted to the New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Transportation Control, CN411, 380 Scotch Road, Trenton, N.J. 08625.

(c) The requirements set forth in (a) and (b) above shall not apply to a new motor vehicle or new motor vehicle engine subject to this subchapter which has been certified by CARB as meeting the California standards. Vehicle manufacturers shall submit one copy of all certification materials submitted to California to the Department at the address in (b) above, or, at the Department's discretion, to the Department's designee.

7:27-26.6 Fleet average

(a) The fleet average non-methane organic gas exhaust emissions from a manufacturer's sales of passenger cars and light-duty trucks shall not exceed the values set forth in Table 5.

Table 5

FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS FOR LIGHT-DUTY VEHICLE WEIGHT CLASSES[5]

Vehicle Type	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Model Year	Fleet Average Non-Methane Organic Gases (g/mi)[1,2,3,4]
PC and LDT	All 0-3750	50,000	1996	0.225
			1997	0.202
			1998	0.157
			1999	0.113
			2000	0.073
			2001	0.070
			2002	0.068
			2003 and subsequent	0.062
LDT	3751-5750	50,000	1996	0.287
			1997	0.260
			1998	0.205
			1999	0.150
			2000	0.099
			2001	0.098
			2002	0.095
			2003 and subsequent	0.093

(1) For the purpose of calculating fleet average NMOG values, a manufacturer may adjust the certification levels of hybrid electric vehicles (or "HEVs") based on the range of the HEV without the use of the engine.

(2) Each manufacturer's fleet average NMOG value for the total number of PCs and LDTs from 0 to 3750 pounds loaded vehicle weight sold in New Jersey shall be calculated in units of g/mi NMOG as: {[(No. of standard vehicles sold × (0.25)] + [(No. of transitional low emission vehicles, excluding HEVs, sold) × (0.125)] + [(No. of low emission vehicles, excluding HEVs, sold) × (0.075)] + [(No. of ultra-low emission vehicles, excluding HEVs, sold) × (0.040)] + (HEV contribution factor)}/(Total No. of vehicles sold, including Zero-emission vehicles and HEVs):

(i) The HEV contribution factor shall be calculated in units of g/mi as follows:

(ii) HEV contribution factor = {[No. of "Type A HEV" TLEVs sold] × (0.100) + [No. of "Type B HEV" TLEVs sold] × (0.113) + [No. of "Type C HEV" TLEVs sold] × (0.125)]} + {[No. of "Type A HEV" LEVs sold] × (0.057) + [No. of "Type B HEV" LEVs sold] × (0.066) + [No. of "Type C HEV" LEVs sold] × (0.075)} + ([No. of "Type A HEV" ULEVs sold] × (0.020) + [No. of "Type B HEV" ULEVs sold] × (0.030) + [No. of "Type C HEV" ULEVs sold] × (0.040)}

(iii) Zero-emission vehicles classified as medium-duty vehicles by weight may be designated by the manufacturer as light-duty vehicles for the purposes of calculating fleet average NMOG values.

(3) Manufacturers that certify LDTs from 3751-5750 lbs. LVW, shall calculate a fleet average NMOG value in units of g/mi NMOG as: {[No. of standard vehicles sold × (0.32)] + [(No. of TLEVs sold excluding HEVs) × (0.160)] + [(No. of LEVs sold excluding HEVs) × (0.100) + [(No. of ULEVs sold excluding HEVs) × (0.050)] + (HEV contribution factor)}/Total No. of vehicles sold, including ZEVs and HEVs).

(i) The HEV contribution factor shall be calculated in units of g/mi as follows:

(ii) HEV contribution factor = {[No. of "Type A HEV" TLEVs sold] × (0.130) + [No. of "Type B HEV" TLEVs sold] × (0.145) + [No. of "Type C HEV" TLEVs sold] × (0.160)} + {[No. of "Type A HEV" LEVs sold] × (0.075) + [No. of "Type B HEV" LEVs sold] × (0.087) + [No. of "Type C HEV" LEVs sold] × (0.100)} + {[No. of "Type A HEV" ULEVs sold] × (0.025) + [No. of "Type B HEV" ULEVs sold] × (0.037) + [No. of "Type C HEV" ULEVs sold] × (0.050)}

(4) In 2000 and subsequent model-years, small volume manufacturers shall comply with fleet average NMOG requirements.

(i) Prior to the year 2000, compliance with the specified fleet average NMOG requirements shall be waived for small volume manufacturers.

(ii) In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.075 g/mi for PCs and LDTs from 0 to 3750 pounds LVW for 50,000 miles.

(iii) In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.100 g/mi for LDTs from 3751 to 5750 pounds LVW for 50,000 miles.

(b) While meeting the fleet average requirements, each manufacturer's New Jersey sales fleet of passenger cars and light-duty trucks from 0 to 3750 pounds LVW shall be composed of at least two percent ZEVs in the 1998 through 2000 model years, five percent ZEVS in 2001 and 2002, and 10 percent ZEVs in 2003 and subsequent model years.

1. Small volume manufacturers shall not be required to meet the percentage ZEV requirements.

2. Intermediate volume manufacturers shall not be required to meet the percentage ZEV requirements before the 2003 model year.

7:27-26.7 Compliance

(a) Commencing with the 1999 model year, each manufacturer shall report to the Department the average NMOG emissions of its fleet sold in New Jersey for that particular model year. Such reports shall be submitted within 60 days after the end of each model year, and shall be submitted in a form and manner to be determined by the Department. Fleet average reports shall, at a minimum, identify the total number of vehicles including offset vehicles sold in New Jersey and California, respectively, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in New Jersey and California in relation to total fleet sales in the respective states.

(b) Commencing with the 1999 model year, each manufacturer shall submit annually to the Department, within 60 days after the end of each model year, a report on a form provided by the Department, calculating compliance with the zero emission vehicle requirements set forth in N.J.A.C. 7:27-26.6(b).

(c) In addition to all other requirements contained in this subchapter, new motor vehicle dealers shall comply with the following requirements.

1. No dealer shall sell or offer or deliver for sale a new passenger car or light-duty truck subject to this subchapter unless such vehicle conforms to the following standards and requirements:

i. Ignition timing is set to manufacturer's specification with an allowable tolerance of ± three degrees;

ii. Idle speed is set to manufacturer's specification with an allowable tolerance of ±100 revolutions per minute:

iii. Required exhaust and evaporative emission controls, such as exhaust gas recirculation (EGR) valves, are operating properly;

iv. Vacuum hoses and electrical wiring for emission controls are correctly routed and connected, and operating properly; and

v. Idle mixture is set to manufacturer's specification or according to manufacturer's recommended service procedure.

2. The requirements set forth in this subsection shall also apply to a dealer when servicing emission related components. However, only that requirement(s) appropriate to the service performed shall apply.

(d) The Department and its representatives shall have the right to enter and inspect any site, building, equipment, or vehicle, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., this subchapter, any exemption, or any order, consent order, agreement, or remedial action plan issued, approved or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials, motor vehicles or motor vehicle engines or any emissions therefrom, at the facility, to sketch or photograph any portion of the site, building, vehicles or motor vehicle engines, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(e) Except with respect to the fleet average requirements set forth in N.J.A.C. 7:27-26.6(a), failure to comply with any of the obligations or requirements of this subchapter shall subject the violator to an enforcement action pursuant to the provisions of N.J.S.A. 26:2C-19.

7:27-26.8 Additional requirements

(a) In addition to all other requirements set forth in this subchapter, new motor vehicles and new motor vehicle engines which are certified to the emission certification standards contained in N.J.A.C. 7:27-26.4 shall comply with the following requirements:

1. Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, shall be equipped with emission control labels which conform to the requirements contained in the "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978 as last amended July 12, 1991.

2. Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, shall be equipped with emission control malfunction and diagnostic systems which conform to the requirements contained in the California Code of Regulations, Title-13, Section 1968.1.

3. Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, which are gasoline-fueled or methanol-fueled shall comply with the requirements set forth in California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," dated March 26, 1976 and last amended February 21, 1990.

7:27-26.9 Enforcement (Reserved)

7:27-26.10 through 26.15 (Reserved)

7:27-26.16 Incorporation by reference

(a) Any reference in this subchapter to any of the documents or sources listed below shall be deemed to incorporate such document or source by reference, together with any future supplements or amendments thereto.

(b) If the entity which promulgated a document or source incorporated by reference into this subchapter proposes to amend or supplement the document or source, the Department will publish a notice of the proposed amendment or supplement in the New Jersey Register. The notice shall state how to obtain a copy of the proposal, and to whom comments on the proposal can be submitted. The Department will publish the notice within 60 days after publication of the proposed amendment or supplement.

(c) The adoption of any proposed amendment or supplement described in (b) above shall become operative in New Jersey no earlier than 30 days after publication by the Department of a notice of such adoption in the New Jersey Register.

(d) If the Department proposes to not incorporate any future supplements or amendments to any of the documents or sources incorporated by reference into this subchapter, the Department will propose an amendment to this subchapter, and will provide opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedures Act, N.J.S.A., 52:14B-1 et seq.

(e) The following documents and sources are incorporated by reference within this subchapter:

1. California Code of Regulations, Title-13, Section 1968.1;

2. "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991, CARB;

3. "California Non-Methane Organic Gas Test Procedures" adopted July 12, 1991, CARB;

4. "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted May 20, 1987, as last amended July 12, 1991, CARB;

5. "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," adopted April 16, 1975, as last amended November 20, 1991, CARB;

6. "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978, as last amended July 12, 1991; CARB;

7. California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," adopted March 26, 1976, as last amended February 21, 1990, CARB;

8. American Society for Testing Materials Standard Practice E29-88;

9. "Federal Highway Fuel Economy Test Procedure" 40 C.F.R. Part 600 Subpart B; and

10. 40 C.F.R. §86.082-24;

11. "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86, Subparts A and B.

(f) Any of the documents in (e) above may be obtained by contacting the Office of Administrative Law or by contacting:

Department of Environmental Protection and Energy
Office of Air Quality Management
Bureau of Transportation Control
CN 411 (380 Scotch Road)
Trenton, New Jersey 08625

7:27-26.17 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Rules Implementing the Higher Education Facilities Trust Fund Act

Proposed New Rules: N.J.A.C. 9:18

Authorized By: Board of Higher Education,
Edward D. Goldberg, Chancellor and Secretary.
Authority: N.J.S.A. 18A:3-15 and P.L. 1993, c.375.
Proposal Number: PRN 1994-200.

Submit written comments by May 4, 1994 to:

Dr. Jeanne Oswald
Administrative Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

On January 10, 1994, P.L. 1993, c.375 was enacted. The law establishes a higher education facilities trust fund in the New Jersey Educational Facilities Authority. The Act authorizes the Authority to issue bonds in a total outstanding principal amount of $220,000,000 to finance the cost, or portion of the cost, of the construction, reconstruction, development, extension or improvement of instructional, laboratory, communication and research facilities related to future industry and workforce needs at New Jersey public and private institutions of higher education. The Board of Higher Education is required to approve all projects financed through the trust fund. N.J.A.C. 9:18 is being proposed to implement the Higher Education Facilities Trust Fund Act. A brief summary of each proposed section follows:

N.J.A.C. 9:18-1.1 delineates that the proposed rules implement and are authorized by the Higher Education Facilities Trust Fund Act.

N.J.A.C. 9:18-1.2 consists of definitions pertinent to the rules.

N.J.A.C. 9:18-1.3 delineates the process for application for grants from the Higher Education Facilities Trust Fund and specifies the information that must be included in proposals to the Board of Higher Education.

N.J.A.C. 9:18-1.4 delineates how the principal and interest on bonds will be paid.

N.J.A.C. 9:18-1.5 delineates the allocation of the first $220 million among the sectors and specifies how future allocations and reallocations will be determined.

N.J.A.C. 9:18-1.6 delineates the composition and responsibilities of the Higher Education Facilities Trust Fund Board.

Social Impact

In order to be prepared for careers in a world of rapidly changing technology, it is critically important that New Jersey students be educated and do research in state-of-the-art facilities. The higher education facilities trust fund will be used to support instructional, laboratory, communication and research facilities. All public colleges and universities and private institutions eligible to receive public funds under the Independent Colleges and Universities Assistance Act are eligible to apply for grants from the trust fund.

Economic Impact

Higher education plays a vital role in the economic development of the nation and of the State by providing the education and training of the workforce of the future and by advancing science and technology through research; over 340,000 students are enrolled in New Jersey colleges and universities. New Jersey has an intense concentration of high technology industries and research facilities and the headquarters of some of the world's most productive corporations. As the State enters the last decade of the 20th century, it has become obvious that New Jersey's institutions of higher education will have to improve their facilities in order to not only prepare students to secure jobs in a "high-tech" world, but to create additional jobs as well. The Higher Education Facilities Trust Fund will provide a stable, ongoing mechanism to ensure that the need to upgrade facilities in response to technological advancements is met. The rules reflect the initial allocation of the authorized total outstanding principal amount of $220,000,000. Reallocation can be made if grants using this, or future, allocations are not approved within 18 months of the effective date of this Act. As bonds are retired, additional allocations may be made by the Board of Higher Education up to the total outstanding balance of $220,000,000.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply only to colleges and universities.

Full text of the proposed new rules follows:

CHAPTER 18
RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION FACILITIES TRUST FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9:18-1.1 Purpose and authority

The following rules and procedures are established to implement the Higher Education Facilities Trust Fund Act, P.L. 1993, c.375, an act supplementing the New Jersey Educational Facilities Authority Act, Chapter 72A of Title 18A of the New Jersey Statutes.

9:18-1.2 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 New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.

"Amending Act" means the Higher Education Facilities Trust Fund Act, P.L. 1993, c.375.

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.

"Board" means State Board of Higher Education.

"Bond" or "bonds" means bonds or notes of the Authority issued pursuant to the authority granted by the Amending Act.

"Chancellor" means the Chancellor of Higher Education.

"Institution" means a public or private institution of higher education which is eligible to receive State aid.

"Project" means a capital construction project to construct, reconstruct, develop, extend, or improve instructional, laboratory, communication, or research facilities.

"South Jersey multi-institutional economic development facilities" means facilities which whould promote economic development in the eight southernmost counties of the State including Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem; which involve more than one public and/or private institution of higher education.

"Trust fund" means the Higher Education Facilities Trust Fund as created by chapter 375, P.L. 1993.

9:18-1.3 Process for application for grant

(a) The Board shall consider for approval grant requests from institutions for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities. The grants shall be used exclusively for those purposes.

(b) Upon approval by its governing board at a duly authorized meeting, a participating institution shall apply to the Board for a grant from the trust fund. Proposals shall include the following information:

1. A copy of the institutional governing board resolution approving the institution's application that includes an institutional commitment to support the annual operating costs and maintenance requirements for any new space to be constructed or acquired as a result of the project;
2. A brief description of the process used to generate the request;
3. A statement describing how the proposed project relates to the current institutional mission, plans, and priorities;
4. The program(s) or function(s) to be served by the project, including specific educational objectives to be met;
5. A complete description of the project, including design information if appropriate for the project;
6. The estimated schedule for the completion of the project;
7. Cost data for the project along with the identification of all sources of revenue to be used to pay any costs not funded by the grant;
8. Certification by the institution that the project would be in compliance with existing codes, statutes and government guidelines;
9. Space justification for any new space to be constructed or acquired as a result of the project; and
10. Other information as may be required by the Chancellor on a case by case basis and relating to a specific proposal.

(c) The grant request shall be submitted in a format provided by the Chancellor.

(d) Grant applications shall be approved at a public meeting of the Board.

(e) The total dollar amount of a grant approved for any institution shall not exceed the institution's allocation as approved by the Board.

(f) The Board shall forward to the Authority a copy of the resolution approved by the Board including the amount of the grant.

(g) The Board shall submit to the Legislature a copy of the resolution approving the grant along with the amount of the grant. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 60 days, the grant shall be deemed to be authorized.

(h) Each grant awarded shall be contingent upon the recipient governing board entering into a contract or contracts for the commencement of the construction, reconstruction, development, extension, or improvement of the facility no later than one year from the date on which the grant funds are made available. The funds shall be considered available on the date of issuance by the Authority of the corresponding bond.

(i) No bonds shall be issued by the Authority without the prior written consent of the State Treasurer.

(j) Proceeds from the sale of bonds shall cover the cost of bond issuance and administrative costs of the program.

(k) The term of any bond issued shall not exceed 10 years.

9:18-1.4 Payment of principal and interest

The State Treasurer shall contract with the Authority to pay to the Authority the amount necessary to pay the principal and interest on all bonds subject to the appropriation of State Lottery Funds.

9:18-1.5 Allocation of funds

(a) The money deposited into the fund created pursuant to section 3 of the Amending Act shall initially be allocated in the following manner:

1. $48,000,000 for facilities at the State colleges;
2. $38,880,000 for facilities at Rutgers, the State University;
3. $20,160,000 for facilities at the University of Medicine and Dentistry of New Jersey;
4. $12,960,000 for facilities at the New Jersey Institute of Technology;
5. $44,000,000 for facilities at the county colleges;
6. $21,000,000 for facilities at private institutions of higher education; and
7. $15,000,000 for South Jersey multi-institutional economic development facilities.
8. $20,000,000 for a new facility for Rutgers, the State University, School of Law, Newark.

(b) The Board shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.

(c) The Board may reallocate to any institution or to the "South Jersey multi-institutional economic development facilities" any balance in the amounts authorized if the amounts are not approved by the Board for a grant within 18 months of the effective date of the Amending Act (January 10, 1994) or within 18 months of subsequent allocations by the Board.

(d) No reallocation shall be made pursuant to (c) above if:

1. The grant application has been received by the Board within 15 months of January 10, 1994 or within 18 months with respect to any amounts that are subsequently allocated by the Board; or
2. Delays are the result of Federal, State, or local governmental approvals or regulatory requirements not attributable to the institution; or
3. In the sole determination of the Board there are other compelling and documentable reasons.

(e) The Chancellor shall contact all institutions to which funds have been allocated 15 months following such allocation to determine what, if any, funds will become available for reallocation after 18 months.

(f) The Board shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority.

9:18-1.6 Higher Education Facilities Trust Fund Board

(a) The Higher Education Facilities Trust Fund Board shall consist of six members, as follows:

1. The Chair and Vice Chair of the Board;
2. The State Treasurer or a designee;
3. The President of the Senate or a designee;
4. The Speaker of the General Assembly or a designee; and
5. The Chancellor who shall serve ex officio without vote.

(b) The Higher Education Facilities Trust Fund Board shall ensure that the revenue provided to the trust fund is adequate to support the grants approved by the Board.

(c) At the end of each three-year period following the effective date of the Amending Act (January 10, 1994), the Higher Education Facilities Trust Fund Board shall review, in consultation with the Board, the physical plant needs of public and private institutions in the State and shall recommend to the Governor and Legislature a plan to increase, if necessary, the availability and uses of grants made from the trust fund.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Identifying Marks

Proposed Amendments: N.J.A.C. 13:20-34.2 and 34.3

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-33.3 et seq., 39:3-33, 39:3-19, 39:3-19.2, 39:3-24, 39:3-25, 39:3-27.4, 39:3-27.45, 39:3-27.46, 39:3-27.48, 39:3-27.55 and 39:3-33.10.

Proposal Number: PRN 1994-193.

Submit written comments by May 4, 1994 to:
Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
225 East State Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The proposal amends N.J.A.C. 13:20-34.2 regarding the combinations of alphabetic and numeric characters which are reserved for use on various types of license plates issued by the Division.

N.J.A.C. 13:20-34.2(a)9 is amended to set forth the various alpha/numeric combinations which are reserved for use on license plates issued by the Division of Motor Vehicles for use on "historic" motorcycles registered pursuant to N.J.S.A. 39:3-27.3 et seq. This amendment accommodates the Division's issuance of license plates which contain such alpha/numeric combinations and conforms the rule to existing Division procedures.

The proposal adds a new provision at N.J.A.C. 13:20-34.2(a)26 (the previous provision at paragraph (a)26 having been recodified to paragraph (a)30 by the proposal) to set forth various alpha/numeric combinations which are reserved for use on Coastal Protection license plates issued by the Division pursuant to N.J.S.A. 39:3-27.48.

The proposal adds a new provision at N.J.A.C. 13:20-34.2(a)27 to set forth various alpha/numeric combinations which are reserved for use on Animal Welfare license plates issued by the Division pursuant to N.J.S.A. 39:3-27.55.

The proposal adds a new provision at N.J.A.C. 13:20-34.2(a)28 to set forth various alpha/numeric combinations which are reserved for use on Wildlife Conservation license plates issued by the Division pursuant to N.J.S.A. 39:3-33.10.

The proposal adds a new provision at N.J.A.C. 13:20-34.2(a)29 to reserve certain six character alpha/numeric combinations for future use.

The proposal amends N.J.A.C. 13:20-34.3 to set forth various registration numbers excluded from issuance on license plates denoted as "particular identifying marks" and the combinations of alphabetic and numeric characters which are permitted to be utilized on various types of license plates as specified by the rule.

The proposal amends N.J.A.C. 13:20-34.3(a)1 to specify additional six character alpha/numeric combinations for use on license plates designated for general issue by the Division of Motor Vehicles. This amendment accommodates the Division's issuance of license plates which contain such six character alpha/numeric combinations and conforms the rule to existing Division procedures.

The proposal amends N.J.A.C. 13:20-34.3(a)4 by adding a second exception (license plate combinations issued pursuant to N.J.A.C. 13:20-34.2(a)9) to the rule's prohibition against the issuance of a "particular identifying mark" which contains any combination consisting of less than three characters or more than seven characters. This amendment accommodates the Division's issuance of certain two character alpha/numeric combinations on license plates issued for "historic" motorcycles in accordance with N.J.A.C. 13:20-34.2(a)9 as amended by the proposal.

The proposal amends N.J.A.C. 13:20-34.3(a)8 with regard to the alpha/numeric combinations which are designed for use on license plates issued by the Division for "farm use" vehicles registered pursuant to N.J.S.A. 39:3-24(b) (that is, farm machinery or farm implements). This amendment accommodates the Division's issuance of license plates which contain such alpha/numeric combinations and conforms the rule to existing Division procedures.

N.J.A.C. 13:20-34.3(a)13, which excluded the issuance of a "particular identifying mark" containing the letter "O" as a single character, and N.J.A.C. 13:20-34.3(a)14, which excluded the issuance of a "particular identifying mark" containing the letter "Q" as a single character, are each deleted by the proposal. As amended by the proposal, except as otherwise provided by N.J.A.C. 13:20-34.2(a)1 and 13:20-34.2(a)9, N.J.A.C. 13:20-34.3(a)4 precludes the issuance of a "particular identifying mark" which contains any combination consisting of less than three characters. Since the issuance of a "particular identifying mark" containing the letter "O" as a single character or the letter "Q" as a single character is proscribed by N.J.A.C. 13:20-34.3(a)4, the prohibitions set forth in N.J.A.C. 13:20-34.3(a)13 and 14 are redundant and unnecessary and are accordingly proposed for deletion.

N.J.A.C. 13:20-34.3(a)15 through 30 are recodified by the proposal to N.J.A.C. 13:20-34.3(a)13 through 28, and unnecessary quotation marks are deleted from said provisions.

The proposal amends N.J.A.C. 13:20-34.3(a)15 (recodified to paragraph (a)13 by the proposal) with regard to the alpha/numeric combinations which are designated for use on license plates issued by the Division for school buses. This amendment accommodates the Division's issuance of license plates which contain such alpha/numeric combinations and conforms the rule to existing Division procedures.

The proposal amends N.J.A.C. 13:20-34.3(a)19 (recodified to paragraph (a)17 by the proposal) with regard to the alpha/numeric combinations which are designated for use on license plates issued by the Division for vehicles owned by the New Jersey Turnpike Authority. This amendment accommodates the Division's issuance of license plates which contain such alpha/numeric combinations and conforms the rule to existing Division procedures.

The proposal amends N.J.A.C. 13:20-34.3(a)20 (recodified to paragraph (a)18 by the proposal) with regard to the alpha/numeric combinations which are designated for use on license plates issued by the Division for vehicles utilized as buses for hire. This amendment accommodates the Division's issuance of license plates which contain such alpha/numeric combinations and conforms the rule to existing Division procedures.

The proposal amends N.J.A.C. 13:20-34.3(a)21 (recodified to paragraph (a)19 by the proposal) with regard to the alpha/numeric combinations which are designated for use on license plates issued by the Division for vehicles utilized as farmer trucks. This amendment accommodates the Division's issuance of license plates which contain such alpha/numeric combinations and conforms the rule to existing Division procedures.

The proposal amends N.J.A.C. 13:20-34.3(a)27 (recodified to paragraph (a)25 by the proposal) to specify additional six character alpha/numeric combinations for use on license plates issued by the Division for vehicles utilized as pleasure vehicles. This amendment accommodates the Division's issuance of license plates which contain such six character alpha/numeric combinations and conforms the rule to existing Division procedures. The proposal also amends N.J.A.C. 13:20-34.3(a)27 (recodified to paragraph (a)25 by the proposal) to clarify that said provision does not apply to those license plate combinations which have been "hereinbefore reserved."

The proposal adds a new provision at N.J.A.C. 13:20-34.3(a)29 designating various alpha/numeric combinations for use on special Silver Star medal license plates issued by the Division for vehicles owned or leased by persons who have been awarded the Silver Star medal.

The proposal adds a new provision at N.J.A.C. 13:20-34.3(a)30 designating various alpha/numeric combinations for use on Combat Infantryman Badge license plates issued by the Division for vehicles owned or leased by persons who are holders of the Combat Infantryman Badge.

Social Impact

The proposal will have a beneficial social impact upon the public by informing the public of combinations of alphabetic and numeric characters which are designated for use on various license plates supplied by the Division; by informing the public of certain alpha/numeric combinations which are reserved for future use; and by eliminating redundant provisions from N.J.A.C. 13:20-34.3. The proposal has no social impact upon the Division of Motor Vehicles.

Economic Impact

The amendments in the proposal which set forth additional six character alpha/numeric combinations for use on general issue/pleasure vehicle license plates supplied by the Division of Motor Vehicles will not have an economic impact on the motoring public. Motorists who apply for passenger vehicle registrations will continue to pay the applicable statutory registration fees for their vehicles but will incur no additional costs as a result of the issuance of general issue/pleasure vehicle license plates which contain the new six character alpha/numeric combinations. Applicants for "historic" motorcycle license plates must pay the applicable statutory fee for such plates set forth in N.J.S.A. 39:3-27.4, and only those persons who choose to apply for such plates and qualify for same are impacted by said fee. Applicants for Coastal Protection, Animal Welfare, and Wildlife Conservation license plates must pay the applicable statutory fees for such plates set forth in N.J.S.A. 39:3-27.49, 39:3-27.55 and 39:3-33.10, respectively, and only those persons who choose to apply for such plates are impacted by such fees. Applicants for bus, school bus, "farm use" (that is, farm machinery/implement), and farmer truck registrations will continue to pay the applicable statutory registration fees for such vehicles but will incur no additional costs as a result of the

Division's issuance of license plates for said vehicles which contain the additional alpha/numeric combinations specified in this proposal. The amendments in the proposal which specify additional alpha/numeric combinations for use on license plates issued by the Division for vehicles owned by the New Jersey Turnpike Authority will not have an economic impact on either the Authority or the public; the Authority will continue to pay the applicable registration fees for its vehicles regardless of the alpha/numeric combination which appears on the plates. Pursuant to N.J.S.A. 39:3-27.45, no fee is charged for special Silver Star medal license plates issued to persons who have been awarded the Silver Star medal. Applicants for Combat Infantryman Badge license plates must pay the applicable statutory fee for such plates set forth in N.J.S.A. 39:3-27.46, and only those persons who choose to apply for such plates and qualify for same are impacted by said fee. The proposed amendments which reserve certain alpha/numeric combinations for future use and eliminate certain redundant provisions have no economic impact on the public. The Division incurs administrative costs in producing and issuing license plates regardless of the alpha/numeric combination which appears on the plates.

Regulatory Flexibility Statement

The proposal has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses; therefore, a regulatory flexibility analysis is not required. The proposal specifies alpha/numeric combinations for use on various license plates supplied by the Division; reserves certain alpha/numeric combinations for future use; and eliminates redundant provisions from N.J.A.C. 13:20-34.3.

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

13:20-34.2 Registration numbers reserved

(a) The following registration numbers are reserved as specified:

1.-8. (No change.)

9. QQA 1 through QQZ 999, 1 QQA through 999 QQZ, QQ1 A through QQ999 Z, 100 AQQ through 999 ZQQ, and QQ 1000 through QQ 99999 for "historic" vehicles registered pursuant to N.J.S.A. 39:3-27.3 et seq.; [QQ1 to QQ99 and Q 100] **Q1** through Q9999 for "historic" motorcycles;

10.-25. (No change.)

26. SA 1000 through SA 9999 and SA 100A through SZ 999Z, except that the letters I, O and Q shall not be utilized in such non-personalized plate combinations. Designated for use on Coastal Protection license plates issued by the Division pursuant to N.J.S.A. 39:3-27.48;

27. IM 1000 through IM 9999 and IM 100A through IM 999Z, except that the letters O and Q shall not be utilized in such non-personalized plate combinations. Designated for use on Animal Welfare license plates issued by the Division pursuant to N.J.S.A. 39:3-27.55;

28. CW 1000 through CW 9999, 1000 CW through 9999 CW, and CW 100A through CW 999Z, except that the letters I, O and Q shall not be utilized in such non-personalized plate combinations. Designated for use on Wildlife Conservation license plates issued by the Division pursuant to N.J.S.A. 39:3-33.10;

29. AA 100A through AZ 999Z are reserved for future use;

Recodify existing 26. as **30.** (No change in text.)

(b) (No change.)

13:20-34.3 Registration numbers excluded

(a) The following registration numbers shall be excluded from issuance as "particular identifying marks" and, where so indicated, shall be used for the purpose specified:

1. Any combination except those hereinbefore reserved having the following arrangements: three alphabetic followed by three numeric characters (for example ABC 123); three numeric followed by three alphabetic characters (for example 123 ABC); three alphabetic followed by two numeric and one alphabetic character (for example, ABC 12D); **two alphabetic followed by three numeric and one alphabetic character (for example, BA 123C), except that the letters I, O and Q shall not be utilized in this type of six character non-personalized plate combination;** three alphabetic followed by four numeric characters (for example, ABC 1234), except that the letters I, O and Q shall not be utilized in such seven character non-personalized plate combinations. Any combination herein excluded and not in a series designated for special classes of vehicles may be reissued as "personalized marks" if the registrant to whom the marks were previously issued has surrendered said marks and corresponding registration certificate. Designated for general issue;

2.-3. (No change.)

4. Except as otherwise provided by N.J.A.C. 13:20-34.2(a)1 **and 13:20-34.2(a)9,** any combination consisting of less than three characters or more than seven characters;

5.-7. (No change.)

8. ["]F 10000["] through ["]F 99999["], **FA 10000 through FA 99999,** and ["]FA 10A["] through ["]FZ 99Z["]. Designated for "farm use registrations" **issued pursuant to N.J.S.A. 39:3-24(b);**

9.-12. (No change.)

[13. "O" as a single character;]

[14. "Q" as a single character;]

[15.]**13.** ["S1100A"] **S1 100A** through ["S1999Z"] **S1 999Z**[,] **and** ["100AS1"] **100A S1** through ["999ZS1"] **9999Z S1** for School Vehicle Type I [and]; ["S2100A"] **S2 100A** through ["S2999Z"] **S2 999Z** [,] **and** ["100AS2"] **100A S2** through ["999ZS2"] **9999Z S2** for School Vehicle Type II;

[16.]**14.** ["]TA 100["] through ["]TZ 9999["], ["]TAA 100["] through ["]TZZ 9999["], ["]TA100A["] through ["]TZ999Z["], ["]100 TAA["] through ["]999 TZZ["], and ["]T100AA["] through ["]T999ZZ["] for commerial trailers and semitrailers; provided, however, that the letters I, O and Q shall not be utilized in seven character combinations issued for commercial trailers and semitrailers;

[17.]**15.** ["]XA 100["] through ["]XZ 9999["], ["]XAA 100["] through ["]XZZ 9999["], ["]XA1000["] through ["]XZ9999["], ["]X10000["] through ["]X99999["], ["]X1A100["] through ["]X9Z999["], ["]XAA10A["] through ["]XXZ99Z["], ["]XX10AA["] through ["]XX99ZZ["], and ["]X100AA["] through ["]X999ZZ["] for commercial motor vehicles; provided, however, that the letters I, O and Q shall not be utilized in seven character combinations issued for commercial motor vehicles;

Recodify existing 18. as **16.** (No change in text.)

[19.]**17.** ACE 21 through ACE 99 and 21 ACE through 99 ACE for vehicles owned by the New Jersey Expressway Authority; HAA 1 through HAZ 999 and 1 HAA through 999 HAZ for vehicles owned by the New Jersey Highway Authority; TPA 1 through [TPZ 999 and] **TPA 999,** 1 TPA through [999 TPZ] **999 TPA, and TPA 10A through TPA 99Z** for vehicles owned by the New Jersey Turnpike Authority.

[20.]**18.** OXV 100 through [OZZ 999] **OZZ 9999** for vehicles utilized as buses for hire;

[21.]**19.** XYA 10A through [XZA 99Z] **XZD 99Z** and XY 10AA through XZ99ZZ for vehicles utilized as farmer trucks;

Recodify existing 22.-26. as **20-24.** (No change in text.)

[27.]**25. Any combination except those hereinbefore reserved having the following arrangements:** AAA 100 through ZZZ 9999, 100 AAA through 999 ZZZ and AAA 10A through ZZZ 99Z for vehicles utilized as pleasure vehicles; provided, however, that the letters I, O and Q shall not be utilized in seven character non-personalized plate combinations issued for vehicles utilized as pleasure vehicles; **BA 100A through ZZ 999Z for vehicles utilized as pleasure vehicles, except that the letters I, O and Q shall not be utilized in this type of six character non-personalized plate combination issued for vehicles utilized as pleasure vehicles;**

Recodify existing 28.-30. as **26-28.** (No change in text.)

29. 1000 SS through 9999 SS for vehicles owned or leased by persons who have been awarded the Silver Star medal;

30. CI 1000 through CI 9999 and 1000 CI through 9999 CI for vehicles owned or leased by persons who are holders of the Combat Infantryman Badge;

31.-34. (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ARCHITECTS

Fees

Proposed Amendments: N.J.A.C. 13:27-5.8 and 8.15

Authorized By: State Board of Architects, Charles A. Spitz, President.
Authority: N.J.S.A. 45:3-3 and 7 and N.J.S.A. 45:1-3.2.
Proposal Number: PRN 1994-203.

Submit written comments by May 4, 1994 to:
Kevin Earle, Executive Director
State Board of Architects
Post Office Box 45001
Newark, New Jersey 07101

The agency proposal follows:

Summary

With the exception of a semi-annual offering of the New Jersey portion of the examination for certification of landscape architects, the Board of Architects will no longer provide services related to its licensure examinations. The Board is therefore proposing an amendment at N.J.A.C. 13:27-5.8 for the deletion of references to fees that the Board will no longer be collecting pursuant to the providing of administrative services for licensure examinations.

The Board is also proposing an amendment at N.J.A.C. 13:27-8.15 to increase from $5.00 to $35.00 the fee it charges when it administers the New Jersey portion of the Landscape Architect Registration Examination (LARE). This increase will cover the Board's costs for examination development and score reporting.

Social Impact

The proposed amendments will have an impact only on applicants for the licensure process. The licensing process itself enables only qualified individuals to service the public, thus protecting health and welfare. The proposed amendments will permit reallocation of staff within the Board office to offer increased and more efficient servicing of licensees.

Economic Impact

The proposed amendments reflect the board's decision to "outsource" not only the examinations themselves but now also the administrative services related to the examinations for licensure. The expected effect of these amendments is a decrease in fees charged to those candidates taking all sections of the examination because the fees to be charged by a vendor selected by the Board is expected to be lower than the fees presently charged by the Board. Because of the manner in which vendors structure their fees, candidates taking individual sections of the examination may be charged slightly increased fees to cover the costs of facilities, proctors and score-reporting. Any increase in fees should be offset by more efficient servicing of candidates.

The proposed fee increase from $5.00 to $35.00 is necessary because the Board must cover its administrative costs pursuant to N.J.S.A. 45:1-3.2.

Regulatory Flexibility Statement

The proposed amendments to the fee schedules for architects and landscape architects will affect only individual applicants; no regulatory flexibility analysis is, therefore, necessary.

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

13:27-5.8 Fees

(a) (No change.)

(b) [The fees for the licensing examination and any reexamination are as follows:

1. Graphic: the fee charged the Board by the National Council of Architectural Registration (NCARB), plus $25.00;

2. Written: the fee charged the Board by NCARB, plus $15.00.]

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

13:27-8.15 Fees

(a) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are nonrefundable.

1. (No change.)

2. [Examination fee: Such fee as is charged by the Council of Landscape Architectural Review boards (CLARB) for the Uniform National Examination.

i. The fee for the local portion of the examination, as established by the Board, shall be $5.00 for both New Jersey residents and individuals seeking reciprocity.]

Examination fee for the New Jersey portion of the Landscape Architect Registration Examination (LARE) when Board administered: $35.00

3.-11. (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF NURSING

Fees

Reproposed Amendment: N.J.A.C. 13:37-12.1

Authorized By: State Board of Nursing, Golden Bethune, President.
Authority: N.J.S.A. 45:11-24.
Proposal Number: PRN 1994-204.

Submit written comments by May 4, 1994 to:
Sister Teresa Harris, Executive Director
State Board of Nursing
Post Office Box 45010
Newark, New Jersey 07101

The agency proposal follows:

Summary

In the September 7, 1993 New Jersey Register (see 25 N.J.R. 3928(a)), the Board of Nursing proposed amendments to its existing fee schedule at N.J.A.C. 13:37-12.1, together with new certification fees for nurse practitioners at N.J.A.C. 13:37-12.1(c). On adoption (see 25 N.J.R. 5936(b)), final consideration of the proposed certification fees at N.J.A.C. 13:37-12.1(c) was deferred based upon public comment requesting the Board to reexamine the data upon which it based the $200.00 initial and renewal certification fee. The commenters stated that the Board's estimate of 250 applicants was too low and conservatively estimated that there will be 1,000 applicants for advanced practice certification.

Although no comments were received regarding N.J.A.C. 13:37-12.1(a)9 (change of name or address), the Board also deferred final consideration of the proposed $25.00 fee in order to reconsider whether a lower fee would more appropriately reflect processing costs for name and/or address changes.

After additional research, the Board believes the number of applicants for nurse-practitioner certification was originally underestimated and that a fee of $75.00 based upon 1,000 applicants should be implemented. The Board also determined that $15.00 more reasonably reflects Board costs in processing name or address changes. The proposed amendments at N.J.A.C. 13:37-12.1(a)9 and (c) will therefore supersede the outstanding proposal at 25 N.J.R. 5936(b) and implement these Board decisions.

Social Impact

The proposed amendments will enable the Board to meet its operating expenses and to fulfill its statutory responsibilities with regard to the certification of nurse-practitioners. Regulatory oversight of advanced practice nursing will benefit the public by ensuring professional competence and the maintenanc of high professional standards.

Economic Impact

The proposal will have an economic impact on the approximately 1,000 individuals expected to apply for nurse-practitioner certification. These individuals will be required to pay a $100.00 application fee and a $75.00 initial and renewal certification fee.

A professional and practical nurse who changes his or her name or address will be required to pay $15.00 to cover administrative processing costs.

The Board has endeavored to keep these fees as low as possible, as evidenced by the fact that they were previously proposed at a higher

level. In accordance with N.J.S.A. 45:1-3.2, the sums to be raised are estimated not to exceed the amount required to cover Board operating costs.

Regulatory Flexibility Analysis

The proposed fees affect only individual applicants for nurse-practitioner licensure and professional and practical nurses who change their names or addresses. Accordingly, a regulatory flexibility analysis pursuant to N.J.S.A. 52:14B-16 et seq. is not required.

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

13:37-12.1 Fee Schedule

(a) The following fees shall be charged by the Board in connection with licensure of professional and practical nurses.

1.-8. (No change.)

9. (Reserved) **Change of name or address** **15.00**

10.-14. (No change.)

(b) (No change.)

(c) [(Reserved)] **The following fees shall be charged by the Board in connection with certification of nurse practitioners:**

1. Application fee	**$100.00**
2. Initial certification fee	
i. If paid during the first year of a biennial renewal period	**75.00**
ii. If paid during the second year of a biennial renewal period	**37.50**
3. Renewal of certification (biennial)	**75.00**
4. Certification by endorsement	**75.00**
5. Late renewal of certificate (one to 30 days)	**50.00**
6. Reinstatement fee (after 30 days)	**100.00**
7. Duplicate certificate	**25.00**

(a)

VIOLENT CRIMES COMPENSATION BOARD

Rules Relating to Practice and Procedure

Proposed Readoption with Amendments: N.J.A.C. 13:75

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Esq., Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1994-195.

Submit comments by May 4, 1994 to:

Amedeo A. Gaglioti, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

N.J.A.C. 13:75 will expire on June 5, 1994, in accordance with Executive Order No. 66(1978). The Violent Crimes Compensation Board has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Board proposes to readopt these rules with amendments.

N.J.A.C. 13:75 pertains the rules relating to practice and procedure before the Violent Crimes Compensation Board. The rules have functioned well in allowing the public to become more aware of the Board's criteria in determining a victim's eligibility for compensation.

The proposed amendment at N.J.A.C. 13:75-1.7(b)2i will increase the maximum reimbursement for loss of earnings and for loss of support. As a direct result of the enactment of P.L.1991, c.329, §6, and P.L.1991, c.329, §3, the Violent Crimes Compensation Board claims continue to experience an increase in revenue.

The purpose of the proposed change is to improve benefit potential to innocent victims of crime.

The proposed new subsection at N.J.A.C. 13:75-1.7(m) will allow the Board to compensate victims for expenses incurred as a result of the relocation of the victim and/or victim's family due to the incident which forms the basis of the victim/claimant's petition before the Board.

A summary of each section follows:

N.J.A.C. 13:75-1.1 delineates the scope of the rules.

N.J.A.C. 13:75-1.2 provides that the rules shall be liberally construed by the Violent Crimes Compensation Board.

N.J.A.C. 13:75-1.3 provides that the Board may rescind, amend or expand the rules.

N.J.A.C. 13:75-1.4 incorporates by reference the definitions in N.J.S.A. 52:4B-2.

N.J.A.C. 13:75-1.5 provides criteria for filing claims before the Board.

N.J.A.C. 13:75-1.6 contains claims eligibility provisions.

N.J.A.C. 13:75-1.7 lists the types of damages which are compensable.

N.J.A.C. 13:75-1.8 requires claimants to cooperate with Board investigate.

N.J.A.C. 13:75-1.9 contains provisions for formal hearings, if requested by claimants.

N.J.A.C. 13:75-1.10 contains procedures to be followed at formal hearings.

N.J.A.C. 13:75-1.11 provides that claimants may be represented by an attorney.

N.J.A.C. 13:75-1.12 contains provisions regarding attorney's fees.

N.J.A.C. 13:75-1.13 allows the Board to issue subpoenas.

N.J.A.C. 13:75-1.14 provides a method by which the Board makes payments to claimants.

N.J.A.C. 13:75-1.15 provides a time period for final decisions made by the Board.

N.J.A.C. 13:75-1.16 provides for appeals of Board decisions to be taken to the Appellate Division.

N.J.A.C. 13:75-1.17 allows the Board to publish facts about certain claims.

N.J.A.C. 13:75-1.18 provides that the Board shall funish certain documents without cost.

N.J.A.C. 13:75-1.19 requires the Board to take into account moneys received from other sources.

N.J.A.C. 13:75-1.20 provides for the validity of the rules, should any portions of the rules be declared invalid.

N.J.A.C. 13:75-1.21 contains restrictions on the amounts awarded.

N.J.A.C. 13:75-1.22 provides for the reimbursement of expenses arising out of the hiring of domestic help.

N.J.A.C. 13:75-1.23 is reserved.

N.J.A.C. 13:75-1.24 provides for the reimbursement of transportation costs.

N.J.A.C. 13:75-1.25 provides that the Board may grant an emergency award under certain conditions.

N.J.A.C. 13:75-1.26 provides that the Board be subrogated to causes of action filed by the victim in relation to the criminal incident. This section also contains requirements to be followed by claimants when bringing a collateral action.

N.J.A.C. 13:75-1.27 provides for counseling and therapy expenses.

N.J.A.C. 13:75-1.28 defines secondary victim and eligibility.

N.J.A.C. 13:75-1.29 provides for procedure in requesting Board action to promulgate, amend or repeal rules.

N.J.A.C. 13:75-1.30 establishes the burden of proof as to eligibility of the claim filed and weight of evidence given conclusion of others.

N.J.A.C. 13:75-1.31 provides for eligibility of victim for personal injury resulting from the crime of burglary.

Social Impact

Once readopted, the rules will continue to provide awareness to the public of the criteria established by the Board in determining eligibility of claimants before the Board.

Failure to readopt these rules would cause the public to be at a loss in knowing how to present and be successful with their claims before the Board. The Board serves a great public service to victims of violent crimes. It is important for the public to be aware of their rights as crime victims and to know what is expected of them in their pursuit of compensation.

By permitting compensation for a greater number of victims and compensation in increased amounts, the Board hopes to more fully ameliorate the problems incurred by innocent victims of crime. No social impact on the Board or society in general is anticipated regarding the amendments.

Economic Impact

These rules are necessary so that the Board can maintain its obligations in order to receive funding from the State government. Without this funding, the agency would no longer be able to carry out its legislative mandate.

The proposed amendments will compensate innocent victims in accordance with statutory provisions of N.J.S.A. 52:4B-12 and N.J.S.A. 52:4B-18(d).

The proposed amendments will allow both increased amounts of compensation and compensation to a greater number of innocent victims.

Regulatory Flexibility Statement

The rules in this chapter govern the process by which victims of violent crimes, and their attorneys, may make claims for compensation from the Violent Crimes Compensation Board. The individual victims of violent crime would not be considered small businesses. The attorneys may be considered small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but are not required to keep any records or to engage in any other activities other than that which would ordinarily be done by a person in that occupation.

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crime and their attorneys, may make claims for compensation.

The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:75.

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

13:75-1.7 Compensable damages

(a) (No change.)

(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuinary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq. and these rules consisting of, but not limited to, work and earnings loss, dependents' loss of support, other reasonable pecuniary loss incurred by claimant due to victim's death. The Board may also award payment for such allowable expenses which the Board determines to be reimbursble within these rules, such as reasonable charges for reasonably needed products and services, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

1. (No change.)

2. In computing the earnings loss of the victim/claimant or in the case of death, the loss of support of the claimant/dependent, the Board shall only consider the victim's earnings and/or the amount of money the decedent was contributing to the household at the time of the injury or death of the victim. Where the dependents of a decedent have received or are receiving a greater sum of money from other sources by reason of the decedent's death than the sum contributed to their support by the decedent at the time of death, no compensation for loss of support shall be awarded to the dependents. The Board, however, reserves the right to review its determination should be claimant's dependency, marital or earnings status be altered, and to modify its award accordingly.

i. Notwithstanding the date of the incident, for any application filed as of April 6, 1992, the maximum reimbursement for loss of earnings shall not exceed a total of [52] **104** weeks. **For a victim who has been rendered permanently disabled as defined by 42 U.S.C. 1381 et seq., loss of earnings may be awarded for a period of 260 weeks (five years). In either case the victim shall enroll in a retraining or rehabilitation program or establish that the victim's disability prevents participation in such program or participation in gainful employment. Maximum reimbursement for loss of support in death claims shall not exceed that of 48 months.**

(c)-(l) (No change.)

(m) The Board shall award compensation for expenses incurred as a result of the relocation of a victim and/or his or her family with the victim due to the incident forming the basis of the victim's claim before the Board where the Board determines there is a need to protect the health and safety of the victim and/or their family and that all other statutory requirements for eligibility are met.

1. In determining this need, the Board shall take into consideration:

i. The nature of the crime;

ii. The amount of danger the offender poses to the victim and/or his or her family;

iii. The degree of injury the victim sustained;

iv. The criminal case history of the offender and the offender's record while incarcerated;

v. Prior acts of the offender;

vi. What efforts the victim and/or his or her family have undertaken in order to protect themselves from further harm;

vii. The offender's sentence and period of incarceration whether for the crime forming the basis of the claim filed with the Board or through a plea bargain on related or unrelated charges; and

viii. Any other relevant factors.

2. Compensation for moving expenses shall be paid for relocation of victim's family solely where the victim resided with the family at the time of the incident and, except where the crime resulted in the death of the victim, the victim relocated to the new premises with the family.

3. Maximum reimbursement for moving expenses shall be $1,000. Related moving expenses may include truck rental, moving services, and rental and mortgage cost differential between vacated and new premises.

4. A victim or claimant may only seek compensation for moving expenses once for each claim filed with the Board.

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Accelerated Proceedings

Adopted Amendment: N.J.A.C. 1:1-9.4

Proposed: January 25, 1994 at 26 N.J.R. 284(a).
Adopted: March 7, 1994 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: March 8, 1994 as R.1994 d.173, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: April 4, 1994.
Expiration Date: April 21, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
Editorial changes appear in N.J.A.C. 1:1-9.4(c).

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

1:1-9.4 Accelerated proceedings

(a) Any party may apply for accelerated disposition of a case. The application shall be in writing, on notice to all parties, and shall include the reasons for the request and a statement that all parties consent to acceleration.

(b) Applications for acceleration shall be filed as soon as circumstances meriting such action are discovered. Whenever possible, applications for acceleration by a transmitting agency shall be filed upon transmittal of the case and applications for acceleration by any other party shall be filed with the pleadings in the case.

(c) Applications for acceleration shall be made to the Director until such time as a party has appeared before *[the]* ***a*** judge in person, by telephone, or in writing for a motion, prehearing or hearing. The Director may decide the request for acceleration or may assign the motion to *[the]* ***a*** judge for determination. If a party has appeared before *[the]* ***a*** judge in person, by telephone, or in writing for a motion, prehearing, or hearing, applications for acceleration shall be made to the judge.

(d) If the transmitting agency is a party and the agency either requests accelerated proceedings or concurs in a request for acceleration, the agency will be deemed to have agreed to abide by the 15-day decision deadline in (e)8 below. If the transmitting agency is not a party, the party requesting acceleration must secure from the transmitting agency agreement to render its final decision within 15 days as provided in (e)8 below.

(e) If the transmitting agency agrees to the 15-day decision deadline, all parties consent and the Director or the judge assigned to the case then finds that there is good cause for accelerating the proceedings, the judge shall schedule an accelerated hearing date and the case shall proceed in the following manner:

1.-8. (No change.)

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Relocation Assistance and Eviction

Readoption with Amendments: N.J.A.C. 5:11

Proposed: January 18, 1994 at 26 N.J.R. 289(a).
Adopted: March 7, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: March 9, 1994 as R.1994 d.174, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 2A:18-61.1, 20:4-10 and 52:31B-10.

Effective Date: March 9, 1994, Readoption;
April 4, 1994, Amendments.
Expiration Date: March 9, 1999.

Summary of Public Comments and Agency Responses:

Comments were received from Matthew B. Shapiro, First Vice President of the New Jersey Tenants Association, and from David G. Sciarra, Esq., Senior Attorney, Legal Services of New Jersey.

COMMENT: A tenant may "fail to appear for payment when due" because of a long-term illness or other justifiable reason. Such a tenant should not lose the ability to reactivate payments.

RESPONSE: The Department agrees that there may be cases in which a person, for reasons of poor health or disability, is unable to refile a claim in person. The rule is therefore being amended at N.J.A.C. 5:11-3.5(c)2 to allow such a person to refile through an authorized representative.

COMMENT: There is no legal basis for the Department's exclusion from eligibility of persons displaced as a result of imminent hazards to life safety necessitating the issuance of a vacate order pursuant to the State Uniform Construction Code. Furthermore, an imminent hazard may be the consequence of a history of poor maintenance, in which case it is unreasonable to penalize the tenant.

RESPONSE: As was made clear in the proposal Summary, this exclusion only applies in a case such as when a code official tells people to get out of a building immediately because it has suddenly become unoccupiable or extremely unsafe. A person should not be eligible for assistance in such a case because the cause of the problem is a latent defect or unforeseeable occurrence (in contrast to a history of poor maintenance), but not be eligible if the cause is a fire, flood or earthquake. N.J.S.A. 20:4-14 provides for the eligibility of those who move "as the direct result of code enforcement activities." Telling a person to get out of a building that is about to collapse in order to avoid getting killed is no more construction "code enforcement activities" than removing a person from a burning building is fire "code enforcement activities," and it is as unreasonable to expect compensation to be paid in the one case as it is in the other. The text is being amended at N.J.A.C. 5:11-2.1(b), however, to make it clear that the exclusion is intended to apply in cases of latent defect or unforeseeable occurrence, not of poor maintenance.

COMMENT: State agencies and units of local government that undertake code enforcement programs that result in displacement of tenants should be required to provide notice of the availability of relocation assistance, just as the landlord is required to do in evictions under N.J.S.A. 2A:18-61.1(g).

RESPONSE: Notification concerning relocation assistance is already required by N.J.A.C. 5:11-4.2. However, the Department agrees that a cross-reference in N.J.A.C. 5:11-2.1 would be appropriate.

COMMENT: The two-step appeals process provided by N.J.A.C. 5:11-9.2, consisting of an appeal to the Housing Production and Community Development Element followed by an administrative hearing, fails to provide prompt review of adverse decisions by displacing agencies. There should just be an administrative hearing before the Office of Administrative Law, preferably on an expedited basis.

RESPONSE: The two-step process has resulted in over a third of all cases being resolved as a result of the Department's investigation.

Nonetheless, it is possible that immediate referral of appeals to the OAL would be more efficient overall and consideration will be given to the requested change. Furthermore, the Department will discuss the question of expediting appeals with the OAL and will consider proposing a rule or requesting legislation to require prompt adjudication in relocation assistance cases.

COMMENT: Rental assistance payments should be allowed regardless of any shelter assistance of any kind provided under emergency assistance to AFDC, GA or SSI households. Such emergency assistance is of a temporary or emergency nature and cannot be considered a permanent housing subsidy.

RESPONSE: Relocation rental assistance payments are intended to compensate eligible displaced tenants, for a limited period of time and subject to statutory limits as to amounts of money, for additional expenses that they may incur as a result of having to move to more expensive housing. It is not intended to be a "permanent housing subsidy." It is also not intended as a vehicle for double recovery for people who are getting compensation for the same purpose from another public source.

COMMENT: Relocation assistance should be paid pending appeal of any denial of benefits by a displacing agency.

RESPONSE: Payment should only be made once there is a final determination of eligibility. It is unfair to municipalities and other public agencies to require them to advance funds that they will probably be unable to get back if the person is found to be ineligible. In any event, such a change would require a new proposal and could not be made as part of an adoption.

Agency note: P.L. 1993, c.342, approved December 27, 1993, provides that a tenant who is evicted as a result of a housing or zoning code violation is eligible for relocation benefits, in the amount of six months rent, paid for by the owner of the building. The Department is requesting an opinion from the Attorney General concerning the effect of this statute upon the eligibility of such persons for relocation assistance under P.L. 1967, c.79 and P.L. 1970, c.392. Based upon that opinion, when received, the Department will propose such amendments to this chapter as may be appropriate.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:11.

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

5:11-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context or any definition set forth in P.L.1967, c.79 (N.J.S.A. 52:31B-1 et seq.) or P.L.1971, c.362 (N.J.S.A. 20:4-1 et seq.) clearly indicates otherwise.

...

"Person" means any individual or family, owner of a business concern or farm operation, partnership, corporation or association.

...

5:11-2.1 Building, housing, and health code enforcement

(a) Whenever a State Agency or unit of local government undertakes a program of building code enforcement, housing code enforcement or health code enforcement that causes the displacement of any person, the said State Agency or unit of local government shall provide relocation payments and assistance to all lawful occupants who are displaced, as provided in N.J.A.C. 5:11-3 and 4. The date of eligibility shall be the date occupants received formal written notice to vacate from the State Agency or unit of local government. ***Said written notice shall include the information required pursuant to N.J.A.C. 5:11-4.2.***

(b) *[Whenever the displacement occurs because of an]* ***An*** order to vacate issued by a State Agency or unit of local government***, pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and N.J.A.C. 5:23-2.32(b)1, because a building has become unsafe or uninhabitable*** as a direct result of a natural disaster, ***soil subsidence, fire, a latent defect or other sudden and unforeseeable occurrence*** *[an imminent hazard to life safety necessitating the issuance of a vacate order pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) or fire, there shall be, except as may otherwise be expressly provided by N.J.S.A. 20:4-3.1,]* ***is not displacement within the meaning of these rules and*** no relocation benefits ***shall be*** due *[the displacees]* ***any occupants or former occupants of such a building***. However, a municipality may***, pursuant to N.J.S.A. 20:4-3.1, voluntarily*** provide relocation benefits to such displacees but shall receive no reimbursement through any State grant-in-aid*[, except as may otherwise be expressly provided by statute,]* for the cost of doing so.

[1. For purposes of this subsection, only a condition that is a direct and immediate threat to the lives of persons within the building, and cited as such by the construction official under N.J.A.C. 5:23-2.32(b)1, shall be deemed to be an imminent hazard to life safety.]

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

5:11-2.3 Evictions under N.J.S.A. 2A:18-61.1(g)

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

(c) In cases where a landlord is to be cited for a violation pursuant to an illegal occupancy which could potentially result in a g(3) eviction, the following shall be included as an insert sent with the violation notice:

IF, IN SEEKING TO CORRECT THE ILLEGAL OCCUPANCY FOR WHICH YOU HAVE BEEN CITED, IT IS NECESSARY FOR YOU TO EVICT ONE OR MORE TENANTS TO COMPLY, YOU MUST NOTIFY THOSE TENANTS OF THEIR POTENTIAL ELIGIBILITY FOR RELOCATION ASSISTANCE. FURTHER INFORMATION REGARDING YOUR RESPONSIBILITIES AS OWNER PURSUANT TO REGULATIONS CONCERNING EVICTION AND RELOCATION MAY BE OBTAINED BY CONTACTING THE FOLLOWING:

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF HOUSING AND DEVELOPMENT
OFFICE OF LANDLORD-TENANT INFORMATION
CN 805
TRENTON, NEW JERSEY 08625-0805
TELEPHONE: 609-530-5423

5:11-3.2 Moving expenses; residential

(a) An eligible person who is displaced from a dwelling unit and moves his or her personal property therefrom shall receive either:

1. The actual reasonable moving expenses incurred; or

2. A fixed payment, based on the number of rooms in the unit, not to exceed $300.00 and a $200.00 dislocation allowance.

(b) Moving expenses shall not be considered unreasonable due to distance if the distance is 50 miles or less. For good cause, a move of more than 50 miles may be deemed reasonable by the displacing agency.

5:11-3.3 Emergency relocation

In the event a displacing agency causes a displacement that requires emergency relocation, the displacing agency shall provide a payment of such amount as may be needed so that the displacee may obtain living quarters until permanently relocated. This payment shall be available immediately upon the displacement and shall be charged against the total relocation assistance amount payable in accordance with the statute.

5:11-3.5 Rental assistance payments

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

(c) If the rental assistance payment exceeds $1,000, the displacing agency shall make the payment in three equal annual installments upon verification that the tenant remains in comparable standard housing and that rent payments are current, unless the relocation agency finds that there exists a reasonable cause for any nonpayment of rent.

1. (No change.)

2. If the rental assistance payments are not consecutive because the tenant moved into substandard housing or moved outside the authorized area or failed to appear for payment when due, the tenant, if he or she is no longer living in substandard housing or outside the authorized area, must reactivate his or her claim within one year of the last prior date on which he or she would have been eligible to receive the rental assistance payment. ***A person who is***

unable to come to the relocation assistance office because of long-term illness or disability may file his or her claim through a family member or other authorized agent.*

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

5:11-6.3 Relocation records and reports

(a) The displacing agency is responsible for keeping up-to-date records on the relocation of all site displacees. These records shall be retained for the Department's inspection and audit for a period of three years following completion of the project or program or the completion of the making of relocation payments, whichever is later.

1. (No change.)

5:11-7.2 Additional notice for proceedings under N.J.S.A. 2A:18-61.1(g)

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

(c) Landlords may obtain copies of this required statement from the Office of Landlord/Tenant Information, Department of Community Affairs, CN 805, Trenton, N.J. 08625-0805. Spanish speaking tenants shall be provided with this statement in Spanish, and such statement is also available at the same address.

5:11-8.2 Funding criteria

(a) A municipality meeting the following criteria may receive the total cost of relocation assistance and payments.

1.-3. (No change.)

4. A lack of other state or federal funding for the purpose of relocation assistance.

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

5:11-9.1 Administrative agency

These rules shall be administered by the Housing Production and Community Development Element of the Division of Housing and Development, Department of Community Affairs, CN-806, Trenton, New Jersey 08625-0806.

5:11-9.2 Right of hearing and time for filing

(a) Any person aggrieved by a final determination by a displacing agency other than a State agency may appeal such determination to the Housing Production and Community Development Element, which shall thoroughly review the matter and issue its findings as to the merits of the claim for relocation payments or benefits. Such appeals shall be made in writing within 15 calendar days of receipt of written notice of the determination.

(b) The Division of Housing and Development shall provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to any person aggrieved either by a final determination of a displacing agency which is a State agency or by findings issued by the Housing Production and Community Development Element pursuant to (a) above.

1. Such hearing shall be conducted under the auspices of the Office of Administrative Law and the final decision shall be made by the Commissioner.

2. Any request for a hearing shall be made in writing within 15 days of receipt of written notice of the State agency determination or the findings of the Housing Production and Community Development Element, as the case may be.

(c) The parties to any hearing before the Office of Administrative Law shall be the displacing agency and the person aggrieved by the final determination of such agency.

1. Representatives of the Housing Production and Community Development Element may appear at any such hearing to testify as to the findings of the Element.

2. In all cases which it has reviewed, the Element shall provide the Office of Administrative Law and the parties with a determination memorandum setting forth the claims of the parties, the facts as determined by the Element, the regulations, statutory provisions and case law which the Element deems to be applicable, and the Element's conclusions and the reason therefor.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction
Uniform Construction Code
Licensing of Code Enforcement Officials
General License Requirements
N.J.A.C. 5:23-5.5

Take notice that the Department of Community Affairs has discovered an error in the text of N.J.A.C. 5:23-5.5. In the incorporation of amendments to paragraph (d)2 in the 5-17-93 Code update, paragraph (c)2, concerning licensed electrical inspectors, was inadvertently deleted from the Code. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

5:23-5.5 General license requirements

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

(c) The following persons shall be exempt from the requirements of this section and shall be issued a license upon submission of an application and payment of the required fee.

1. (No change.)

2. Licensed electrical inspectors:

i. A license for electrical inspector I.C.S. shall be issued to any person holding or receiving, prior to January 1, 1978, an electrical inspector's license, issued by the New Jersey Public Utilities Commission, pursuant to Title 48, Revised Statutes.

ii. A person licensed by the Department under the above provision who subsequently loses his license as a result of revocation or of failure to renew within two years of lapsing must reapply for licensure under the requirements in effect at the time of reapplication without recourse to the above provision.

3. (No change.)

(d) (No change.)

EDUCATION

(b)

STATE BOARD OF EDUCATION

Special Education
Readoption with Amendments: N.J.A.C. 6:28

Proposed: December 20, 1993 at 25 N.J.R. 5734(a).

Adopted: February 10, 1994 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Authorized by: State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: February 10, 1994 as R.1994, d.127, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 101-476, 102-119 and 99-457.

Effective Date: February 10, 1994, Readoption, April 4, 1994, Amendments.

Expiration Date: February 10, 1999.

Summary of Public Comments and Agency Responses:

The New Jersey State School Board of Education held a public testimony session on January 19, 1994 at the State Board Conference Room, Department of Education, 225 East State Street, Trenton, New

Jersey, at which 18 individuals spoke regarding the proposed readoption of N.J.A.C. 6:28. The following is a list of those who spoke at the testimony session:

1. Kevin Murphy, New Jersey Center for Outreach and Services for the Autism Community
2. Ronee Groff, Co-President, Learning Disabilities Association, Administrator, Atlantic County (LDA)
3. Debbie Mancini, Parent
4. Fran Korman, New Jersey Education Association
5. Brenda Considine, Association for Retarded Citizens of New Jersey (ARC)
6. Mary J. Lovett, Parent and Member, New Jersey Coalition for Inclusive Education
7. Marilyn Arons, Parent Advocate
8. Ann Binetti, Parent
9. Ruth Watson, Parent Information Center
10. Carlos Oberti, Parent
11. Leonore Pellegrino-Sino, Parent
12. Diana Cuthbertson, Statewide Parent Advocacy Network (SPAN)
13. Timothy McGrail, Teacher, Wharton School District
14. Dr. Michael Beacem, Co-State President, Learning Disabilities Association of New Jersey
15. Jo Parrish, Assistant Director, Association of Schools and Agencies for the Handicapped
16. Richard Ebinger, Parent and Member, Down Syndrome Support Group of South Jersey
17. Arthur Ball, United Cerebral Palsy Association of New Jersey
18. Jeanne Oberti, Parent

Summary of Public Comments and Agency Responses:

The Department received written comments from 161 commenters during the proposal comment period ending January 19, 1994. The following is a list of people who made written comments directly related to the proposed readoption with amendments:

Ms. Marianne Caradonio, Wall, Ms. Maria Zdroik, Special Education Teacher, West Morris Central High School, Chester, Norman H. Rosen, Esq., Livingston, Joan Rosen, EDM., L.C., Englewood, Mr. and Mrs. Gregg Stafford-Smith, Lakewood, Ms. Michelle A. Mongey, West Morris Central High School, Chester, Mrs. Carolyn Kolb, Wall, Ms. Sue Balding, Executive Vice President/Treasurer, Chadd NJ State Council, Rumson, Mrs. Joan Shayrt, Resource Center Teacher, Closter, Mr. and Mrs. Brian K. Rieth, Wall, Mr. and Mrs. C. Waisher, Wall Township, Ms. Caria Gould, Special Education Teacher, Long Valley, Mr. Lou Ross, Hillsdale, Ms. Elaine Czarnecki, Morris Plains, Ms. Virginia Hatcher, Resource Room Teacher, Chatham Middle School, Chatham, Ms. Ellen W. McBride, Nutley, Mr. and Mrs. J. Evangelista, Cape May Court House, Mr. and Mrs. G. Pace, Wood-Ridge, Mr. and Mrs. Vito Saracino, Wood-Ridge, Mr. and Mrs. Jerome Josephs, Maplewood, Ms. Marge Modero, Rutherford, Ms. Brenda Considine, Director of Legislative and Advocacy Services, The ARC of New Jersey, North Brunswick, Mr. and Mrs. William Horan, Wood-Ridge, Ms. Ann Robinowitz, Executive Director, Learning and Computer Resource Academy, Randolph, Mae J. Balaban, Ed.D., Teaneck, April Mahnkopf, M.S., Teaneck, NJ, Ms. Charlotte Voight, Grade 5 Teacher, McKeown School, Newton, Mr. and Mrs. Edward Gaffney, Rutherford, Mr. and Mrs. D. Weir, Wall, Ms. Lisa Tonelli, Resource Center Teacher, Knowllwood School, Fair Haven, Ms. Cathy Myrhum, Resource Center Teacher, Special Service Office, Fair Haven, Ms. Diane LoPresto, Rumson, Ms. Eileen Grono, Glen Gardner, Ms. Jean Kraemer, Maplewood, Mr. and Mrs. G. DePanicis, Norwood, Donna Messer, Ed.M., Highland Park, Ms. Jaynie E. Coleman, Randolph, Ms. Nancy Hennessy, President, The Orton Dyslexia Society, Neptune, Ms. Dorothy Scardellette, Child Study Team, Logan Township Elementary School, Swedesboro, Ms. Andrea Blandy, Child Study Team, Logan Township Elementary School, Swedesboro, Ms. Patricia Meiluta, Child Study Team, Logan Township Elementary School, Swedesboro, Ms. Christina James, Child Study Team, Logan Township Elementary School, Swedesboro, Ms. Allison Nicholson, Child Study Team, Logan Township Elementary School, Swedesboro, John A. Caliso, Ph.D., Franklin Lakes Public Schools, Franklin Lakes, Ms. Suzanne Taylor, Franklin Lakes Public Schools, Franklin Lakes, Ms. Marlene Mosca, Franklin Lakes Public Schools, 490 Pulis Avenue, Franklin Lakes, Ms. Rosemarie F. Lopez, Franklin Lakes Public Schools, Franklin Lakes, Ms. Phyllis Scott, Franklin Lakes Public Schools, Franklin Lakes, Ms. Elaine M. Miller, Franklin Lakes Public Schools, Franklin Lakes, Ms. Ruth K. Pisane, Franklin Lakes Public Schools, Franklin Lakes, Mr. Al Manfredi, Franklin Lakes Public Schools, Franklin Lakes, Ms. Marie Warnke, Franklin Lakes Public Schools, Franklin Lakes, Mr. Noel Koulon Thray, Franklin Lakes Public Schools, Franklin Lakes, Susan Fleishman, Ph.D., Franklin Lakes Public Schools, Franklin Lakes, Ms. Isabel C. Colleen, Franklin Lakes Public Schools, Franklin Lakes, Ms. Jane TerLouco, Woodside Avenue School, Franklin Lakes, Ms. Barbara J. Callin, Franklin Lakes Public Schools, Franklin Lakes, Ms. Karen Andruska, Franklin Lakes Public Schools, Franklin Lakes, Ms. Johanna L. Prince, Franklin Lakes Public Schools, Franklin Lakes, Ms. Angela Davies, Franklin Lakes Public Schools, Franklin Lakes, Ms. Elaine Goed, Franklin Lakes Public Schools, Franklin Lakes, Mx. C. Lane, Wyckoff, Ms. Pamela A. Mason, ranklin Lakes Public Schools, Franklin Lakes, Ms. Denise Borgen, Franklin Lakes Public Schools, Franklin Lakes, Mr. Clarence A. Kryfd, Franklin Lakes Public Schools, Franklin Lakes, Mrs. Dennis P. Tappey, Franklin Lakes Public Schools, Franklin Lakes, Ms. Mary Jo Hoekstra, Franklin Lakes Public Schools, 490 Pulis Avenue, Franklin Lakes, Ms. Arleen Swift, Franklin Lakes Public Schools, Franklin Lakes, Ms. Victoria Winterhalter, Franklin Lakes Public Schools, Franklin Lakes, Mx. K. Lorez, Franklin Lakes Public Schools, Franklin Lakes, Mx. M. P. Sciortino, Franklin Lakes Public Schools, Franklin Lakes, Ms. Ann Varsona, The Orton Dyslexi Society, Neptune, Mx. Iskamerman, The Orton Dyslexi Society, Neptune, Mr. Robert Shapiro, The Orton Dyslexi Society, Neptune, Ms. Mildred Shapiro, The Orton Dyslexi Society, Neptune, Ms. Judy Shapiro, The Orton Dyslexi Society, 3297 Route 66, Neptune, Ms. Rose Barchi, The Orton Dyslexi Society, Neptune, Mr. and Mrs. Harry Holwitz, Wall, Ms. Linda D. Ulidulta, West Morris Central High School, Chester, Mrs. Philip Josephs, Springfield, Ms. Grace Vermeulen, Wyckoff, Mrs. Anna Selles, Mantoloking, Ms. Susan Morton, Wall, Ms. Valerie Mills, 2600 Monmouth Boulevard, Anthony Vodola, Ph.D., Wall, Ms. Margaret Duma, Spring Lake, Ms. Evelyn Berroyer, Jackson, Ms. Elizabeth Harris, Jackson, Ms. Mary Mills, Manasquan, Ms. Marianne D'Amore, Lakehurst, Ms. Carol A. Martin, Manasquan, Ms. Judith J. Easter, Brick, Mr. and Mrs. Seymour Mullman, Springfield, Ms. Barbara E. Stein, C.H.A.D.D., East Brunswick, Mr. and Mrs. Carlos Oberti, Clementon, Mr. and Mrs. Edward Galante, Wall Township, Ms. Christine A. Giblin, Wall Township, Ms. Sarah W. Mitchell, Director, Division of Advocacy for the Developmentally Disabled, Trenton, Nancy B. Cole-Hohn, Farmingdale, Mr. Edmund B. Furlong, Wall Parents for Children with Special Needs, Wall, Mrs. James H. Murphy, Executive Director, New Jersey Association of School Administrators, Trenton, Ms. Judith A. Conk, c/o New Jersey Association of School Administrators, Trenton, Ms. Merryl R. Kramer, Livingston Avenue School, Cranford, Ms. Anna Mills, Wall, Ms. Susan Evangelista, Cape May Court House, Ms. Susan Richmond, Assistant Director New Jersey Developmental Disabilities Council, Trenton, Mr. John F. Chatfield III, Ridgewood, Mrs. Beverly H. Chatfield, Ridgewood, Ms. Ann Marie Agnello, Ridgewood, Ms. Zoya L. Pugh, Cranbury, Ms. Gail P. Murray, The Orton Dyslexi Society, Neptune, Mr. and Mrs. Stuart Mirowitz, Paramus, Dr. and Mrs. Philip Affuso, Ridgewood, Ms. Kira M. Semler, Ridgewood, Ms. Kathryn A. Bright, Sergeantsville, Ms. Veronica Parker Lamb, Brick, Ms. Liz Griffin, Wall, Ms. Sheile Fenies, Ridgewood, Ms. Angela Griefere, Maplewood, Mr. Hampton P. Abney, Short Hills, Dr. and Mrs. Jesse A. Bayer, South Orange, Mr. and Mrs. James O'Brien, Ridgewood, Mr. Robert E. Boose, Executive Director, NJ School Boards Association, Trenton, Ms. Teresa Krawec, Rahway, Ms. Ellen Spano, Maplewood, Ms. Robin Singer, River Vale, Ms. Rosalind Mala, Ridgewood, Ms. Maria R. Faralli, North Wildwood, Ms. Cynthia P. Rhoades, Mayville, Ms. Harriet Klein, Maplewood, Mr. Marshall E. Behr, Jr., Chief School Administrator, Dorothy, Mr. Frederick Keating, Pennsauken Public Schools, Special Services Department, Pennsauken, Mr. and Mrs. Ross Giumara, Ridgewood, Mr. and Mrs. Fred Ardito, Matawan, Mr. and Mrs. Manfrede Zerbe, Holmdel, Mr. and Mrs. James Kiley, Freehold, Mr. George Wilhelm, Superintendent of Schools, Washington Township Board of Education, Long Valley, Mr. and Mrs. Michael Constantino, Maplewood, Ms. Judyth Goldstein, South Orange, Mr. and Mrs. J. Sullivan, Wood-Ridge, Ms. Diane McGough, Cinnaminson High School, Cinnaminson, Ms. Margaret Ferraioli, Parent Advisory Board, Morris-Union Jointure Commission Board of Education, New Providence, Mr. Fred Rummel, Wall Township, Ms. Holly L. Blumentsyk, M.Ed., LDTC Learning Associates, Morristown, Mr. James A. Durante, Ed.D., Director of Special Services, Wayne Township Public Schools, Wayne, Ms. Lois H. Rothschild, MA, Educational Therapist, Randolph, Ms. Karen A. Kaiser, Resource Center Teacher, Carlstadt, Ms. Lois W. Mishkin, M.A., CCC/LDT-C, Mountainside, Ms. Janice G. Dennis, Director of Special Services, Ocean City Public Schools, Ocean City, Ms. Miriam Kohler-

Pogash, Millington, Ms. Beverly A. Riley, Bradley Beach, Mr. and Mrs. Robert Markel, Maplewood, Ms. Susan L. Preston, Supervisor of Special Education, East Brunswick Public Schools, East Brunswick, Andrew Kimmel, Esq., Cedar Knolls, Ms. Veronica Kelly, Spotswood, Ms. Margaret Meade, M.S., C.C.C. Sp., New Jersey Speech-Language-Hearing Association, Marlton, Mrs. Maureen Rohrs, Manasquan, Mr. George A. Kreoll, Clifton, Ms. Elaine Russo, Randolph, Ms. Mary Louise Simmons, Ridgewood, Mrs. Gerald B. McNish, Plainfield.

The following are the comments received and the Department's responses thereto:

COMMENT 1: Two commenters felt that N.J.A.C. 6:28-1.1(b)1 should be amended to specify that each special education pupil receive services which will enable him or her to "best achieve success in learning."

RESPONSE 1: The current regulations at N.J.A.C. 6:28-1.1(b)1 reflect the Federal requirements which set the standard for the provision of services to pupils with disabilities as a free, appropriate public education. The Federal standard of "appropriate" assures that a program is provided which meets the needs of the pupil as described in the individualized education program. The term "best" is not possible to define. Therefore, the Department has determined not to make any changes to this regulation.

COMMENT 2: One commenter felt that N.J.A.C. 6:28 does not reflect recent statutory changes in that the pupil's district of residence should be responsible for home instruction for eligible for day training pupils.

RESPONSE 2: There is a transition period for the above mentioned statutory provisions. In 1994-95, the Department of Human Services will receive all the State funding for pupils in day training centers and should therefore continue to be responsible for providing home instruction when it is needed. In 1995-96, however, school districts will pay tuition for day training placements and will receive the State aid directly. The Department will propose amendments to make districts responsible for home instruction in 1995-96.

COMMENT 3: One commenter felt that there was not enough time given to respond to the proposal and that the proposed changes will be more costly in the long run.

RESPONSE 3: The Department disagrees. After publication of the proposed amendments in the New Jersey Register, the normal thirty (30) day public comment period (December 20, 1993-January 19, 1994) was provided, along with an opportunity for public testimony before the State Board (January 19, 1994). The Department disagrees that the proposed changes will be more costly. There are many changes (e.g., elimination of a separate instructional guide) that have potential cost savings.

COMMENT 4: One commenter supported the opposition of code revisions as articulated by the New Jersey Education Association (NJEA), Parent Information Center (PIC), the Orton Society, Learning Disabilities Association (LDA) and other state organizations involved with special education. The commenter did not support the inclusion position of Statewide Parents Advocacy Network (SPAN). The commenter requested a copy of the State Board by-laws. Also, the commenter raised questions related specifically to the State Board of Education's responsibility to make changes to the Special Education code as a result of public comment during the thirty (30) day public comment period and at the State Board's two public testimony sessions.

RESPONSE 4: All proposed amendments to N.J.A.C. 6:28 fully comply with Federal mandates. A copy of the State Board by-laws, N.J.A.C. 6:1-1, was provided to commenter, under separate cover, along with a copy of N.J.A.C. 6:2-3.1, which delineates the role of the State Board of Education's Legal Committee.

The commenter has the right to oppose the position of SPAN regarding inclusion. The Department believes to the maximum extent appropriate, pupils with educational disabilities should be educated with children who are not educationally disabled. The commenter was also provided with a copy of N.J.S.A. 52:14B-4 and N.J.A.C. 1:30-3.3 which pertains specifically to public input in agency rulemaking and requires that public comments, written and oral, be fully considered by the State Board. While the law is clear that all comments must be considered neither the statute nor the regulation requires the State Board to alter its proposed rules because public comment made in the course of the rulemaking process does not support the proposed change. Under New Jersey law, the ultimate rulemaking authority properly remains with the State Board.

COMMENT 5: Eighteen commenters were opposed to the phrase "potentially harmful effects" because it is discriminatory and promotes segregated placements.

RESPONSE 5: The Department has determined not to make any changes at this time. However, in recognition of the concerns raised by the commenters, the Department feels it is necessary to gather further information on whether or not the phrase "potentially harmful effects" may be discriminatory and may promote segregated placements. Upon the completion of this study the Department will provide the State Board with a report and recommendations for any necessary rulemaking.

COMMENT 6: Twelve commenters felt that the proposed order of the Least Restrictive Environment (LRE) statements negate the Federal intent by relegating the LRE statements to a lower priority.

RESPONSE 6: The Department has determined that the order of LRE statements may have a negative effect and is proposing to reorder the statements to conform to the order of the items in the Federal mandates (Individuals with Disabilities Education Act regulations 34 CFR 300.550). Because such amendments represent a substantive change as defined by N.J.A.C. 1:30-4.3, they are subject to additional public notice and comment. Therefore, they are proposed as separate amendments to N.J.A.C. 6:28-2.10 and are being published in this issue of the New Jersey Register.

COMMENT 7: One commenter expressed frustration at continued inaction over LRE issues.

RESPONSE 7: While the Department recognizes the commenters frustration, the Department has taken action regarding LRE. The Department has added language to N.J.A.C. 6:28-2.10 to clarify the district's responses for providing appropriate educational programs in the least restrictive environment. Furthermore, the Department has proposed amendments to reorder the LRE statements to conform, to the order set forth in Federal language in response to 6 above. The effect of this will be to show clearly the preference for educating pupils with disabilities in the regular classroom set forth under the Federal mandates.

COMMENT 8: One commenter was opposed to the proposed amendment to N.J.A.C. 6:28-2.10. It was felt that the proposed revision moves the Federal statutory mandate from first and second place on the list to third and fourth place, which promotes the segregated classroom as the preferred placement. The commenter further felt that N.J.A.C. 6:28-2.10(a)2 is unnecessary, confusing, unlawful and should be deleted because the program is the child's IEP. The commenter also suggested that N.J.A.C. 6:28-2.10(a)5 be deleted because the meaning is unclear and that N.J.A.C. 6:28-2.10(a)6i will foster a segregated setting. The commenter felt that N.J.A.C. 6:28-2.10(a)6ii should also be deleted because either the IEP or the school should change.

RESPONSE 8: Due to the many concerns raised regarding the change in the order of the LRE statements, the Department has determined that the order of the LRE statements may have a negative effect and is proposing to reorder the statements to conform to that order which is set forth in the Federal regulations. The proposed amendments to N.J.A.C. 6:28-2.10 are being published in this issue of the New Jersey Register.

N.J.A.C. 6:28-2.10(a)2, N.J.A.C. 6:28-2.10(a)5 and N.J.A.C. 6:28-2.10(a)6ii are intended to establish a mechanism to assure that pupils with disabilities are placed in suitable programs. The ability of the program to meet the pupil's needs in the least restrictive environment as described in the IEP must be considered to assure that an appropriate program is provided. Therefore, the Department has determined that no additional changes to the regulations are necessary at this time. In response to comments regarding N.J.A.C. 6:28-2.10a(6)i, the Department will study the issue further and will provide a report and recommendations for further rulemaking, if necessary, to the State Board.

COMMENT 9: One commenter felt that the proposed amendments to the code misconstrued the opinion of the U.S. Court of Appeals for the Third Circuit in the case of Oberti v. Clementon Elementary School. The commenter further felt that courts decide cases on the following factors: The first factor is whether the school has included the child in programs with non-disabled children. Inclusion of a child in the regular classroom comes first. The continuum is to supplement the regular class placement. The second factor is the comparison of the educational benefits the child will receive in a regular class and the segregated class. The third factor is the possible negative effects the child's inclusion may have on the education of the other children. However, an adequate individualized program may prevent disruption that would otherwise occur.

RESPONSE 9: The use of the phrase "potentially harmful effects" generated many comments. In response to those comments, the Department has determined to gather further information on this issue. Upon

the completion of this study, the Department will provide the State Board with a report and recommendations for any future rulemaking.

The Department does not agree that the proposed amendments misconstrue the opinion of the U.S. Court of Appeals for the Third Circuit in the Oberti case. However, the Department has determined that the order of the LRE statements may have a negative effect and is proposing to reorder the items contained in N.J.A.C. 6:28-2.10(a) to conform to the order of the items in the Federal mandates (Individuals with Disabilities Education Act regulations 34 CFR 300.550).

COMMENT 10: One commenter felt that a definition of LRE is needed.

RESPONSE 10: The Department disagrees. The Federal mandates (Individuals with Disabilities Education Act regulations 34 CFR 300.550) clearly set forth the requirements for the placement of pupils with educational disabilities in the least restrictive environment thereby defining its meaning. These mandates are clearly established in N.J.A.C. 6:28-2.10, therefore an additional definition is not needed.

COMMENT 11: Four commenters support the Department's proposal to eliminate the referral step contained in N.J.A.C. 6:28-3.3, as it will simplify the process for parents.

RESPONSE 11: The Department appreciates the support expressed by the commenters concerning the elimination of the referral step contained in N.J.A.C. 6:28-3.3. The Department believes that this is an unnecessary step which delays the initiation of the evaluation. The Department agrees with commenters that such elimination simplifies the process for parents.

COMMENT 12: One commenter objected to the elimination of the referral process (N.J.A.C. 6:28-3.3). In was felt that parental referrals must always be evaluated to assure that parents are always considered joint and equal participants.

RESPONSE 12: The Department disagrees. If identification and referral are maintained as separate steps, the amount of time between the identification of a pupil as potentially educationally disabled and the evaluation by the Child Study Team (CST) will be unnecessarily prolonged. When the two steps are merged all parental rights to contest the actions of the CST in the evaluation and determination of eligibility for special education are fully maintained.

COMMENT 13: Seven commenters were opposed to the elimination of the evaluation plan.

RESPONSE 13: The Department disagrees. While the requirement for a formal written evaluation plan will be eliminated, districts will still have to determine what evaluations are necessary based upon the presenting problems of the pupil suspected of having educational disabilities and they will have to communicate to parents, in writing, what types of evaluations they plan to conduct. Parents will have the right to contest the proposed action. The Department maintains that the requirement for a separate evaluation plan should be eliminated. The Department should not require that districts develop a complex written document, although this would remain an option for districts.

COMMENT 14: Three commenters opposed the elimination of the formal written evaluation plan because it is not in the best interest of students, and it was felt that the plan facilitates the parents role as a partner in the IEP process.

RESPONSE 14: The elimination of the evaluation plan does not alter the responsibility of the CST to determine what evaluations are to be conducted in the interest of appropriately assessing student needs. Further, it does not eliminate the requirement to provide the parent with notice of the proposed evaluation. Therefore, parents will continue to have an opportunity to participate in the evaluation process.

COMMENT 15: Two commenters felt that the evaluation plan should be retained because it provides the parents with written documentation of the specific evaluations recommended by the district.

RESPONSE 15: The Department disagrees. Districts will still have to determine what evaluations are necessary based upon the presenting problem of the pupil suspected of having educational disabilities, and they will have to communicate to parents, in writing, what types of evaluations they plan to conduct. Parents will have the right to contest the proposed action. The Department should not require that districts develop a complex written document, although this would remain an option for districts.

COMMENT 16: One-hundred-and-four persons expressed the identical concerns in a form letter commenting on the instructional guide and resource center group size. Specifically, it was felt that the elimination of the instructional guide would result in a lack of appropriate instructional strategies, methods and materials.

RESPONSE 16: The Department believes that the requirement for a separate instructional guide should be eliminated, as proposed. This will eliminate the requirement for two separate meetings and the detailing of information more appropriate to teacher lesson plans. The Department, however, agrees that there is information in the current instructional guide section that is necessary for program planning and implementation for pupils with disabilities. Thus, at its February 2, 1994 meeting, the State Board of Education approved for publication amendments to N.J.A.C. 6:28-3.6 which will add those items to the IEP. The proposed amendments include instructional strategies fitted to the pupil's learning style; any specialized equipment or materials; and techniques and activities designed to support the personal and social development of the pupil. The proposed amendments to N.J.A.C. 6:28-3.6 are being published in this issue of the New Jersey Register. See related proposal section for further discussion.

COMMENT 17: One commenter expressed horror at the amendment to abolish IEPs and urged the State Board to vote no on N.J.A.C. 6:28-3.6.

RESPONSE 17: The Department disagrees. IEPs are not being eliminated. The instructional guide is not Federally required and, in most cases, has caused IEPs to be unnecessarily long, overly prescriptive and much more specific than intended. The Department does, however, agree that there is information in the current instructional guide section that is necessary for program planning and implementation for pupils with disabilities. Thus, amendments to N.J.A.C. 6:28-3.6 are being published in this issue of the New Jersey Register, to include these items in the IEP. This is detailed in comment/response number 16. For additional discussion, see related proposal in this Register.

COMMENT 18: Three commenters felt that the rationale for changes to the instructional guide appeared to be for administrative and budgetary reasons rather than educational reasons.

RESPONSE 18: The elimination of the instructional guide will eliminate the requirement for two separate meetings. However, the Department agrees that there is information in the current instructional guide that is necessary for program planning and implementation for pupils with disabilities. This is detailed in comment/response number 16. For additional discussion, see related proposal in this Register. The primary result of this change will have educational benefit to the pupil in that all program information will be included in one document developed in one meeting. There will be administrative benefit by reducing the amount of time required for staff to schedule and attend meetings.

COMMENT 19: One commenter felt that the elimination of the instructional guide would reduce communication between special education and the mainstream and that accountability for implementation of special education modifications would be diminished.

RESPONSE 19: While the Department disagrees with the recommendation to retain the instructional guide, the Department does agree that there is important information in the current instructional guide that is necessary for program planning and implementation for pupils with disabilities. This is detailed in comment/response number 16. For additional discussion, see related proposal in this Register. Therefore, communication between special education and the mainstream and the implementation of special education modifications will not be diminished.

COMMENT 20: Twelve commenters felt that instructional guides are necessary and were opposed to their deletion.

RESPONSE 20: The Department believes that the requirement for a separate instructional guide should be eliminated, as proposed. This will eliminate the necessity for two separate meetings. However, the Department agrees that there is information in the current instructional guide section that is necessary for program planning and implementation for pupils with disabilities. This is detailed in comment/response number 16. For additional discussion, see related proposal in this Register. The result of the proposed amendments will be one meeting where all programming information will be included in one IEP document.

COMMENT 21: Seven commenters suggested that the Department include components of the instructional guide into the IEP and eliminate the separate instructional guide meeting.

RESPONSE 21: The Department agrees that the requirement for a separate instructional guide should be eliminated, as proposed and also agrees that there are three components of instructional guide that are necessary for program planning and implementation for pupils with disabilities. These are detailed in comment/response number 16. For additional discussion, see related proposal in this Register.

COMMENT 22: Two commenters felt that the elimination of the instructional guide would reduce the accountability of districts and the level of parental input.

RESPONSE 22: The Department disagrees. The requirement for a separate instructional guide should be eliminated as proposed. This will eliminate the necessity for two separate meetings. However, the Department agrees that there is information in the current instructional guide that is necessary for program planning and implementation for pupils with disabilities. These are detailed in comment/response number 16. For additional discussion, see related proposal in this Register. The results of the proposed amendments will be one meeting attended by the parent and CST where all programming information will be included in one IEP document. Therefore, the accountability of districts and the level of parental input will be maintained.

COMMENT 23: Two commenters supported the Department's proposal to eliminate the instructional guide.

RESPONSE 23: The Department agrees. The Department continues to believe that the requirement for a separate instructional guide should be eliminated, as proposed. However, the Department believes that there is information in the current instructional guide section that is necessary for program planning and implementation for pupils with disabilities. This is detailed in comment/response number 16. For additional discussion, see related proposal in this Register.

COMMENT 24: One commenter felt that beginning the process of transition services prior to the Federal requirement should not be mandated in Code.

RESPONSE 24: The Department disagrees. While the Federal requirements state that transition planning must begin at age 16 or earlier, we believe that planning for successful transition from school to adult life for pupils with disabilities should logically begin when the pupil enters high school (generally age 14), not later. This assures that the secondary school experience reflects the preparation for transition to adult life.

COMMENT 25: One commenter suggested that the Department delete the proposed change to the age requirement for transition services. The commenter further suggested that the Department delete the requirement for inviting agency representatives to the IEP meeting or taking other steps to obtain agency participation for planning transition services.

RESPONSE 25: The Department disagrees. Planning for successful transition from school to adult life for pupils with disabilities should logically begin when the pupil enters high school (generally age 14), to assure that the secondary school experience reflects the transition planning. The requirement for other agency participation in planning for transition services is a Federal requirement which cannot be deleted.

COMMENT 26: Three commenters supported the strengthening of the transition regulations.

RESPONSE 26: The Department agrees that transition regulations should be strengthened. The amendments will assure that planning occurs for successful transition from school to adult life for pupils with disabilities when the pupil enters high school (generally age 14), not later.

COMMENT 27: One commenter suggested that in N.J.A.C. 6:28-4.2(a)7, the phrase "when it is not appropriate to provide services according to (a)1 through 6 above," should be deleted. This is contradictory to having the full continuum of options available. It was further pointed out that in the current code, hospitals and convalescent centers must receive consideration before private schools. Federal LRE does not require prioritization.

RESPONSE 27: The Department agrees that the identified phrase in N.J.A.C. 6:28-4.2(a)7 may inappropriately suggest that hospitals and convalescent centers must be considered before private schools. The Department proposes to review the issue to determine whether a change is necessary.

COMMENT 28: One commenter opposed the readoption of N.J.A.C. 6:28-4.2(b) because the single placement option for preschool pupils violates IDEA's mainstreaming requirement. The commenter further pointed out that preschool amendments proposed in April 1993 by the State Board were not adopted and tabled for further study. It was suggested that the Department revise the special education regulations to be consistent with Federal law.

RESPONSE 28: The Department does not agree that N.J.A.C. 6:28-4.2(b) violates IDEA's mainstreaming requirement. Both N.J.A.C. 6:28-4.2(a) and (b) provide for a variety of placement options including regular class placement. The proposal that was not adopted by the State Board of Education would have provided for funding for special education programs provided in other settings. Those programs could always be provided by districts but they would not receive State Aid. With regard to options for preschool handicapped pupils, the Department recognizes the need for a broader array of options for this population of pupils and has developed a grant project to establish and encourage these programs.

COMMENT 29: Three commenters felt that the rationale for changes to resource center programs appears to be for administrative and budgetary reasons rather than educational reasons.

RESPONSE 29: The proposed amendment was made because districts have had difficulty in scheduling single subject replacement, particularly in small schools and in some cases, it has resulted in increased costs for staff. This change is intended to give districts increased flexibility and at the same time allow them to continue to provide effective quality programs for the pupils served.

COMMENT 30: One commenter encouraged adoption of the proposed changes to resource center rules because they allow more flexibility in scheduling and better meet the needs of resource center students.

RESPONSE 30: The Department appreciates commenter's expression of support and agrees that the changes will allow more flexibility in scheduling and meeting the needs of resource center students.

COMMENT 31: Eight commenters were opposed to the lack of restrictions on multiple subjects for resource center programs and objected to the teaching of multiple subjects in resource center programs.

RESPONSE 31: In an effort to address the concerns raised by commenters, the Department has proposed to amend N.J.A.C. 6:28-4.3(b)8ii to limit to three the number of subjects that can be taught in replacement instruction in approved separate resource centers (see the related proposal in this Register).

COMMENT 32: Two commenters expressed concern about the proposal to schedule multiple subjects in pull-out replacement resources centers. It was felt that classified students need more, not less, time of instruction.

RESPONSE 32: When single subjects are taught in pull-out replacement resource center programs, larger group sizes would be appropriate, as is the case in self-contained special education classrooms. To assure that districts have the flexibility necessary to develop and provide such programs, particularly in small school buildings, they also should be allowed to schedule multiple subject pull-out instruction, as long as the number of pupils being taught is small. In an effort to address the concern raised by commenters, the Department has proposed to amend N.J.A.C. 6:28-4.3(b)8ii to limit to three the number of subjects that can be taught in replacement instruction in approved separate resource centers. See the related proposal in this Register.

COMMENT 33: Three commenters supported the Department's proposal regarding resource center group size.

RESPONSE 33: The Department appreciates the commenters support for amendments for group size for replacement instruction resource centers. This change is intended to give districts increased flexibility and at the same time allow them to continue to provide effective quality programs for the pupils served.

COMMENT 34: One commenter suggested that the Department replace the word "continuum" with the word "array" to allow for clearer interpretation of the code and so the program options are not placed in a hierarchical order.

RESPONSE 34: The term "continuum" as found in N.J.A.C. 6:28-2.10(a)1, is clear and is taken directly from Federal language. The phrase "full continuum of alternative placements" suggests a progression of placement options, taking into consideration that least restrictive environment and the needs of the pupil with disabilities. The Department does not believe a change is necessary.

COMMENT 35: One commenter supported the Department's proposal for extension of home instruction approval.

RESPONSE 35: The Department appreciates the commenter's support. However, numerous commenters raised concerns, at the various State Board discussion levels, over the extension of home instruction approval. Therefore, the approval period of 60 days for home instruction as published in the December 20, 1993 New Jersey Register was not changed.

COMMENT 36: Two commenters were opposed to increasing the approval period for home instruction from 60 to 90 days.

RESPONSE 36: The Department agrees. In response to concerns raised by commenters prior to the publication of the proposed readop-

tion, as published in the December 20, 1993 New Jersey Register at 25 N.J.R. 5734(a), the approval period for home instruction was not changed.

COMMENT 37: One commenter felt that exceptions to classification, placement, or length of school day/year should continue to be monitored by the county office even if parents and districts agree to a waiver.

RESPONSE 37: The Department disagrees. When parents and the district agree in the areas of class placement and length of day/year, there is no need for the county office to approve the exception or to second guess their agreement.

COMMENT 38: One commenter asked if waivers could be granted for square footage requirements?

RESPONSE 38: The square footage requirement is an issue of health and safety and therefore, cannot be waived.

COMMENT 39: One commenter supported the designation of a case manager for each pupil with a disability. Commenter further recommended limits in granting exceptions under subchapter 12 for those requirements which can be shown to interfere with the proposed innovation.

RESPONSE 39: The Department agrees with the designation of a case manager for each pupil with an educational disability. The requirement for a case manager is not new but has been moved from the evaluation plan section to the section that addresses child study team responsibilities. The Department as part of the application process will definitely require that districts applying for the special education outcomes project clearly demonstrate why the exception is needed in order to implement their innovative project.

COMMENT 40: One commenter suggested that in N.J.A.C. 6:28-6.5(b)5ii, the Department should delete the phrase "or shall meet the personnel qualification standards of a recognized accrediting authority." This section contradicts Federal standards.

RESPONSE 40: The Department does not agree that N.J.A.C. 6:28-6.5(b)5ii contradicts the Federal standards. As proposed, N.J.A.C. 6:28-6.5(b)5ii fully complies with Federal mandates and at the same time requires that the personnel qualification standards are recognized by an accrediting authority.

COMMENT 41: One commenter felt that preschool screening is needed to identify children with special needs as early as possible and should be mandated in N.J.A.C. 6:28.

RESPONSE 41: The Department disagrees. When a pupil has already been identified by a parent, physician, or teacher, screening, as a mandated process, adds an additional step in the evaluation process, effectively delaying the determination of eligibility for special education. A local education agency (LEA) may conduct districtwide screening for all preschool age pupils if it determines that this will be a mechanism for identification.

COMMENT 42: One commenter supported the continuation of the pilot rules in N.J.A.C. 6:28-11.4 because use of the medical model disability labels is not relevant to contemporary practice.

RESPONSE 42: The Department appreciates commenters support for the continuation of the pilot rules in N.J.A.C. 6:28-11.4. The Department believes that legislation should be passed to replace the current disability-based labeling system with a program-based categorical system as implemented in the Plan to Revised Special Education pilot project.

COMMENT 43: Two commenters recommended that a requirement be added to the innovative outcomes-based projects to provide parents with a simplified copy of Federal law to assure their awareness of requirements that cannot be waived.

RESPONSE 43: This is already required. All districts, including those that will be participating in the Outcomes Project, are required to distribute to all parents of pupils with disabilities the Parents' Rights in Special Education (PRISE) document as currently required in N.J.A.C. 6:28-2.3(f)3. This document includes the Federal requirements in simple language.

COMMENT 44: One commenter suggested that the Department clarify that the Outcomes-Based Innovative Project applies only to pupils with educational disabilities.

RESPONSE 44: The Department agrees that the Outcomes Project applies only to pupils with educational disabilities. However, the amendment proposed by this commenter is unnecessary because the Outcomes Project is included only in the special education code, provides exceptions only to special education requirements and therefore, relates only to pupils with educational disabilities.

COMMENT 45: One commenter recommended that private schools should be included in the Innovative Outcomes-Based Project.

RESPONSE 45: At present, implementation of the Outcomes-Based Project is focused on district boards of education. The Department will give further consideration as to how private schools may be included in the Outcomes-Based Project.

COMMENT 46: One commenter supported the elimination of the screening process for preschoolers as it may delay the evaluation process. It was further pointed out that requirements of Child Find must still be provided.

RESPONSE 46: The Department appreciates the commenter's support of the elimination of screening process for preschoolers. The Department agrees that the requirements of Child Find must still be provided thereby ensuring that preschool pupils will be appropriately identified and educated.

COMMENT 47: One commenter recommended that the requirement for all child study team members to conduct an initial evaluation should be examined.

RESPONSE 47: The Department agrees with the commenter's suggestion to examine the need for all child study team members to conduct an initial evaluation. Under the Plan to Revise, a comprehensive evaluation consists of a minimum of two child study team members. The issue of streamlining the evaluation process will be a part of the consideration in further implementation of the Plan to Revise Special Education.

COMMENT 48: Four commenters felt that the proposed change to multiple subject resource center programs will fail to address the unique needs of pupils, erode the quality of their education and diminish educational benefit.

RESPONSE 48: In response to the many comments received regarding multiple subject resource center programs, the Department has proposed an amendment to define multiple as no more than three subject areas. The proposed amendment seeks to ensure the educational benefit to the pupil with disabilities and to provide the flexibility needed by districts. The proposed amendment will be published in this issue of the New Jersey Register. The Department believes that these numbers will allow resource center teachers to address the unique needs of pupils. These numbers are maximums and districts must always develop programs that are appropriate to the individual pupil.

COMMENT 49: Two commenters felt that the proposed class size for resource center programs is too large.

RESPONSE 49: The Department disagrees. We believe that the class sizes for resource centers allow for flexibility depending on the needs of the pupils. The proposed class size for resource centers, is intended to assure the educational benefit to pupils with disabilities and to provide flexibility in program planning needed by districts. The various class sizes for resource centers are maximums. Districts must determine the actual group size based on the individual needs of the pupil. In response to many comments received regarding multiple subject resource center programs, the Department has proposed an amendment to define multiple as no more than three subject areas. The proposed amendment will be published in this New Jersey Register.

COMMENT 50: One commenter felt that waivers are needed to protect the handicapped child.

RESPONSE 50: The Department disagrees. When parents of pupils with disabilities and districts agree regarding length of school day and/or academic year and classification placements, no waiver should be required. When parents and districts do not agree, either may request conflict resolution through mediation or due process.

COMMENT 51: The New Jersey Education Association (NJEA) felt that a study should be conducted on the impact of the 1989 change in the waiver procedure. NJEA further suggested strengthening the requirements regarding waivers; and the reporting of the data to the State Board.

RESPONSE 51: The Department plans to gather data on this issue of classification/placement, provide a report to the State Board and if necessary, recommend amendments. The Department disagrees that waiver requirements should be strengthened. When parents of pupils with disabilities and districts agree regarding the length of the school day and/or academic year and classification/placements, no waiver should be required. In fact the Federal government has directed the Department to assure that pupils with disabilities are placed solely on the basis of the IEP.

COMMENT 52: One commenter felt that the proposed regulations do not permit districts to open elementary special education classes for students with mixed handicaps. Lack of this option requires waivers and

pressures Child Study Team (CST) members to classify students by availability of programs, and deletion of the exception for classification invites abuse.

RESPONSE 52: The Department disagrees. By eliminating the waiver requirement, districts and parents will be able to place pupils based on their educational needs as described in their IEPs, not based simply on their disability label.

COMMENT 53: One commenter felt that elimination of waivers could allow the entire nature of the class to change.

RESPONSE 53: The Department disagrees. Under the current waiver process pupils with different classifications are permitted in the same class. Eliminating the waiver only eliminates the involvement of the child study supervisor. The Federal regulations require that the placement decision be based solely on the IEP and be determined by the CST and parent.

COMMENT 54: One commenter supported the Department's proposal regarding exceptions.

RESPONSE 54: The Department appreciates the commenter's support of the elimination of waivers regarding length of school day and/or academic year and classification placement.

COMMENT 55: Five commenters recommended that the requirement for waivers be continued.

RESPONSE 55: The Department disagrees. When parents of pupils with disabilities and districts agree regarding length of school day, and/or academic year and classification placements, no waiver should be required. The Federal requirements are clear in that placement must be made based on the pupil's IEP not the classification. The Federal government has directed the Department to assure that pupils are placed solely on the basis of their IEP.

COMMENT 56: One commenter felt that where a preschool child has been identified, preschool screening is not required. It was further pointed out that general preschool is valuable and should be encouraged.

RESPONSE 56: The Department agrees that preschool screening should not be a mandated process when a student's needs have already been identified. Such a requirement adds an additional step to the process which effectively delays the determination of eligibility for special education. The Department also recognizes the value of preschool education to pupils with disabilities.

Summary of Agency-Initiated Changes Upon Adoption:

In N.J.A.C. 6:28-4.7(b)6 the agency corrected a typographical error to the word "program".

In N.J.A.C. 6:28-2.1(c) the agency corrected punctuation by adding a comma.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 6:28.

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]).

6:28-1.1 General requirements

(a)-(m) (No change.)

(n) Each district board of education shall provide mandated pupil records according to N.J.A.C. 6:3-6 to programs operated by the Departments of Human Services or Corrections when a pupil is placed in a State facility. The parent or adult pupil shall receive notice of release of these records to the facility. Permitted records according to N.J.A.C. 6:3-6 may be released only with consent.

6:28-1.2 Plans for special education

(a)-(f) (No change.)

(g) Upon request, additional reports shall be submitted to the Department of Education including, but not limited to, high school graduation requirements, and the numbers of pupils with educational disabilities exiting education, identified as potentially educationally disabled, classified, evaluated and receiving home instruction.

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Individuals with Disabilities Education Act.

...

"Transition services" means a coordinated set of activities for a pupil with educational disabilities, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

6:28-1.4 District board of education policies and procedures

(a) Each district board of education shall develop and adopt written policies and procedures for the following:

1.-2. (No change.)

3. Compilation, maintenance, access to and confidentiality of pupil records according to N.J.A.C. 6:3-6;

4.-9. (No change.)

10. Placement of pupils with educational disabilities in the least restrictive environment according to N.J.A.C. 6:28-1.1(h), 2.1(a), 2.10, 3.6(d)5, and 4.1(i); and

11. (No change.)

6:28-2.1 General requirements

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

(c) After parental consent for initial evaluation has been received, the district board of education shall ensure that within 90 calendar days*,* evaluation and determination of eligibility for special education and/or related services, and, if eligible, development and implementation of the individualized education program for the pupil shall be completed.

1. The individualized education program shall be written within 30 calendar days of the determination that the pupil is eligible for special education and/or related services; and

2. The individualized education program shall be implemented as soon as possible but no more than 30 calendar days after the individualized education program meeting.

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

(f) Upon request by a parent or adult pupil, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6:28), pupil records rules (N.J.A.C. 6:3-6) and information regarding the availability of free and low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

(g) (No change.)

6:28-2.3 Parental notice, consent, participation and meetings

(a) (No change.)

(b) For those pupils classified as eligible for speech-language services, additional consent shall be obtained prior to initial evaluation by the child study team and/or implementation of a special education program and/or related services resulting from that identification.

(c) Written notice which meets the requirements of this section shall be provided to the parent(s) when a district board of education:

1. Proposes or declines to initiate or change the identification, classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil;

2.-4. (No change.)

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

(h) Meetings shall be conducted to determine eligibility and to develop, review and revise the pupil's individualized education program.

1. Each meeting shall include the following participants:

i.-iv. (No change.)

v. Certified school personnel identifying the pupil as potentially educationally disabled, the school principal or designee and other appropriate individuals if they choose to participate.

2.-6. (No change.)

(i)-(k) (No change.)

6:28-2.6 Mediation

(a) (No change.)

(b) Mediation shall be provided as follows:

1.-6. (No change.)

7. Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree or emergency relief is granted by the Office of Administrative Law according to N.J.A.C. 6:28-2.7(g).

6:28-2.7 Due process hearings

(a) A due process hearing may be requested in regard to the identification, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. For pupils above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

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

(i) Pending the outcome of a due process hearing or any administrative or judicial proceeding, no change shall be made to the pupil's classification, program or placement unless both parties agree or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (g) above.

6:28-2.9 Pupil records

(a) All pupil records shall be maintained according to N.J.A.C. 6:3-6.

(b) The parent(s), adult pupil or their designated representative shall be permitted to inspect and review the contents of the pupil's records maintained by the district board of education under N.J.A.C. 6:3-6 without unnecessary delay and before any meeting regarding the individualized education program.

(c) Any consent required for pupils with educational disabilities under N.J.A.C. 6:3-6 shall be obtained according to N.J.A.C. 6:28-1.3 "Consent" and 2.3(a).

6:28-2.10 Least restrictive environment

(a) Each public agency of education shall ensure that:

1. A full continuum of alternative placements according to N.J.A.C. 6:28-4.2 is available to meet the needs of pupils with educational disabilities for special education and/or related services;

2. Pupils with educational disabilities are placed in appropriate programs in the least restrictive environment;

3. To the maximum extent appropriate, a pupil with an educational disability is educated with children who are not educationally disabled;

4. (No change in text.)

5. Placement of pupils with educational disabilities is provided in appropriate educational settings as close to home as possible;

6. Consideration is given to:

i. The potentially beneficial or harmful effects which a placement may have on the pupil with educational disabilities or the other pupils in the class, and/or;

ii. The ability of the program to implement the pupil's individualized education program;

7. When the individualized education program does not describe specific restrictions, the pupil is educated in the regular school program provided in the school he or she would attend if not educationally disabled; and

8. To the maximum extent appropriate each pupil with an educational disability participates in regular classes, health and physical education, industrial arts, fine arts, music, home economics, vocational and other regular education programs, intramural and interscholastic sports, nonacademic and extra-curricular activities.

6:28-3.1 Child study teams

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

(e) One member of the child study team shall be designated as the case manager for each pupil with an educational disability.

6:28-3.2 Identification

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

(d) Potentially educationally disabled pupils considered to require services beyond those available within the regular public school program shall be identified to the child study team.

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

(g) When identification of a potentially educationally disabled pupil is made by an individual other than the parent, the child study team shall make a determination whether or not to conduct an initial evaluation and provide the parent(s) with written notice of this determination within 30 days of the identification.

(h) Interventions in the regular public school program to alleviate educational problems shall be provided to the pupil unless the pupil's educational problem(s) is such that direct identification to the child study team can be supported and documented. Written documentation of the intervention(s) and its effect, if any, shall be made by the staff of the regular program. The parent(s) shall be informed of the interventions attempted and receive a copy of the written documentation.

(i) When parental consent for initial evalution is withheld, a district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(j) The parent(s) may make a written request for an evaluation of his or her child which shall be forwarded to the child study team.

(k) Audiometric screening shall be conducted for every pupil identified to the child study team according to N.J.A.C. 6:29-5.

(l) Vision screening shall be conducted by the school nurse for every pupil identified to the child study team.

(m) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally disabled pupil for whom a district board of education is responsible, the district board of education shall accept the pupil's identification by the Division of Youth and Family Services and shall request parental consent for initial evaluation according to this subchapter.

6:28-3.3 (Reserved)

6:28-3.4 Evaluation

(a) Prior to conducting an initial evaluation, the child study team shall request and obtain consent to evaluate.

(b) All evaluations leading to a determination of a pupil's eligibility for special education and/or related services shall be completed without undue delay consistent with the timelines established in N.J.A.C. 6:28-2.1 and shall include assessment in all areas of the suspected disability.

(c) (No change.)

(d) An initial evaluation shall consist of an assessment by a school psychologist, a learning disabilities teacher-consultant, a school social worker and a physician employed by the school. The child study team evaluation shall include an appraisal of the pupil's current functioning and an analysis of instructional implication(s) appropriate to the child study team member reporting. Each initial evaluation of the pupil by the child study team shall:

1.-5. (No change.)

6. Include functional assessment as follows:

i.-ii. (No change.)

iii. An interview with the teacher(s) identifying the potentially educationally disabled pupil;

iv. (No change.)

v. A review of interventions documented by the classroom teacher(s) and others who work with the pupil; and

vi. (No change.)

(e)-(j) (No change.)

6:28-3.5 Determination of eligibility

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

(c) Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the staff member identifying the potentially educationally disabled pupil shall be given a written summary, signed by the child study team, of all decisions and any recommended course(s) of action.

1. (No change.)

(d) Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, a teacher having knowledge of the pupil's educational performance, parent(s) and, if they choose to participate, the school principal and staff members identifying the potentially educationally disabled pupil. Classification according to the following definitions shall be based on all evaluations conducted:

1.-12. (No change.)

6:28-3.6 Individualized education program

(a) The individualized education program shall be written upon completion of the child study team's evaluation according to the timelines in N.J.A.C. 6:28-2.1(c), and prior to the pupil's placement in a special education program.

(b) The individualized education program shall be developed with the participation of the parent(s) and members of the district board of education child study team who have participated in the evaluation and any additional persons required to attend the meeting according to N.J.A.C. 6:28-2.3(h).

(c) (No change in text.)

(d) With the exception of an individualized education program for a pupil classified as eligible for speech-language services, the individualized education program shall include, but not be limited to:

1.-4. (No change.)

5. A description of the pupil's educational program which includes:

i.-vi. (No change.)

vii. For pupils with educational disabilities age 14 and over, or younger, if deemed appropriate, annual goals and objectives shall be related to the post/secondary outcomes. Transition services shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests and shall include:

(1) Instruction;

(2) Community experiences;

(3) The development of employment and other post-school adult living objectives; and

(4) If appropriate, acquisition of daily living skills and functional vocational evaluation.

viii. If the participants in the individualized education program meeting determine that transition services shall not be needed in one or more of the specified areas in (d)5vii(1) through (3) above, the individualized education program shall include a statement to that effect and the basis upon which the determination was made.

Recodify existing viii.-xi. as ix.-xii. (No change in text.)

xiii. The criteria, procedure and schedule to determine if the pupil's goals and objectives are being met;

xiv. Any exemptions from local disciplinary policies and/or procedures and;

xv. Any specialized equipment.

(e) The individualized education program for the pupil classified as eligible for speech-language services shall include (d)1, 2, 3, 4, and 5i, ii, iii, x, xi, and xiii above. When appropriate, (d)5vii and xii above shall be included. The statement of the current educational status in (d)2 above shall be a description of the pupil's status in speech-language performance. If related services other than speech-language services are required, the speech-language specialist shall identify the pupil with an educational disability to the child study team.

(f) Annually, or more often if necessary, the case manager, parent(s), teacher(s), the pupil, if appropriate, and other individuals at the discretion of the parent(s) or district board of education shall meet to review and revise the individualized education program and determine placement as specified in this subchapter.

1.-2. (No change.)

Recodify existing (k) through (n) as (g) through (j) (No change in text.)

6:28-3.7 Reevaluation

(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1. (No change.)

Recodify existing 3.-5. as 2.-4. (No change in text.)

6:28-3.9 Services to pupils in programs operated by the State of New Jersey

(a) (No change.)

(b) For a pupil in residence in a State facility, the responsible district board of education shall:

1. Maintain the educational records sent by the State facility according to N.J.A.C. 6:28-6; and

2. (No change.)

(c) (No change.)

6:28-4.2 Program options

(a) A full continuum of alternative placements shall be available to meet the needs of pupils with educational disabilities for special education and/or related services. Educational program options include the following:

1.-10. (No change.)

(b) (No change.)

6:28-4.3 Program criteria: supplementary instruction, speech-language services and resource center programs

(a) (No change.)

(b) Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1.-7. (No change.)

8. Group size for classified pupils who receive replacement instruction in an approved separate resource center shall be as follows:

i. For a single content area:

(1) Preschool or elementary—six pupils; and

(2) Secondary—nine pupils.

(3) The group sizes in (b)8i(1) and (2) above may be increased by one-third with the addition of a classroom aide by obtaining the written approval of the Department of Education through its county office.

ii. For multiple content areas—four pupils.

9.-13. (No change.)

6:28-4.5 Program criteria: home instruction

(a) For pupils determined by the school physician to need confinement at their residence for at least a two week period of time, home instruction shall meet the following criteria:

1.-4. (No change.)

5. The pupil shall receive a program that meets the requirements of the district board of education for promotion and graduation. Pupils with educational disabilities may be exempted in their individualized education program according to N.J.A.C. 6:28-3.6(d)5iv;

6. (No change.)

7. Instruction may be provided for up to 60 calendar days in a school year. If the school physician believes that instruction for a longer period of time is indicated, identification shall be made according to N.J.A.C. 6:28-3.2 for determination by the child study team of eligibility for special education and/or related services.

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

6:28-4.6 Exceptions

(a) Exceptions to the requirements of this chapter shall be:

1.-2. (No change.)

3. Regarding class size or age range according to N.J.A.C. 6:28-4.4(a)4. An exception shall not be required regarding the provision of an extended academic year program.

(b) (No change.)

6:28-4.7 Transition

(a) (No change.)

(b) For pupils with educational disabilities age 14 and over, or younger, if determined appropriate, planning for transition to adulthood shall include the following:

1. The individualized education program shall be written in accordance with N.J.A.C. 6:28-3.6(d)5vii.

i. (No change.)

2.-3. (No change.)

4. The individualized education program shall designate the person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate;

5. In addition to the required participants in an initial individualized education program meeting or an annual review meeting, the pupil with educational disabilities and a representative of any other agency that is likely to be responsible for providing or

paying for transition services shall be invited to attend the individualized education program meeting. Notice of the meeting shall be provided to the participants according to N.J.A.C. 6:28-2.3(h)4;

6. If the pupil with educational disabilities does not attend the individualized education program*[s]* meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the pupil's preferences and interests are considered; and

7. If an agency invited to send a representative to the individualized education program meeting does not do so, the district board of education or public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

6:28-6.2 Provision of programs and services provided under N.J.S.A. 18A:46-1 et seq. and 18A:46-19.1 et seq.

(a) Identification, evaluation, determination of eligibility, development of individualized education programs and provision of speech and language services, home instruction and supplementary instruction shall be provided according to this chapter.

(b)-(i) (No change.)

(j) The district board of education in which the nonpublic school is located shall maintain all records of nonpublic school pupils receiving programs and/or services under this subchapter according to N.J.A.C. 6:3-6.

6:28-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of educationally disabled pupils

(a) (No change.)

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1.-4. (No change.)

5. The pupil shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18A:7A-5c, d, e f, and g and as implemented in N.J.A.C. 6:8-2.2, 6:8-4.3(a)3i(3)(A), (B) and (C), 3iii, iv and v, 5ii, 6:8-6.1(a), 6:8-7.1(c)1 and (d)1. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(d)5iv.

i.-iii. (No change.)

6. The pupil shall receive a comparable program to that required to be provided by the local district board of education according to N.J.S.A. 18A:35-1, 2, 3, 5, 7 and 8, 18A:40A-1, 18A:6-2 and 3, 18A:58-16, N.J.A.C. 6:29-4.2 and 6.6 and 6:28-1, 2, 3, and 4. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(d)5iv.

7.-10. (No change.)

11. The nonpublic school has been provided copies of N.J.A.C. 6:28, N.J.A.C. 1:6A and N.J.A.C. 6:3-6.

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

6:28-7.6 Termination or withdrawal from an educational program

(a) Prior to the termination or withdrawal of any pupil with an educational disability from an approved program described in N.J.A.C. 6:28-7.1(a), there shall be an individualized education program review conference according to N.J.A.C. 6:28-3.6(f) which shall include participation of appropriate personnel from the receiving school. Fifteen calendar days prior to termination or withdrawal written notice shall be given by the parent(s), the district board of education or the school providing the program to the other parties.

(b) (No change.)

6:28-7.8 Records

(a) All providers under this subchapter shall conform to the requirements of N.J.A.C. 6:3-6 pertaining to pupil records. In addition:

1. (No change.)

2. Requests for access to pupil records by authorized organizations, agencies or persons as stated in N.J.A.C. 6:3-6 shall be directed to the chief school administrator or his or her designee of the local school district having responsibility for the pupil with an educational disability.

3. (No change.)

(b) (No change.)

6:28-8.1 General requirements

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

(d) When a pupil enters a State facility:

1. (No change.)

2. If the pupil is not currently classified as educationally disabled, or if the State facility does not have current school records, the State facility shall review the pupil's educational status within 30 calendar days to determine if the pupil is potentially educationally disabled and if identification to the child study team is required.

(e) (No change.)

6:28-9.2 Complaint investigation

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

(d) Upon receipt of the complaint investigation report, either party may appeal the findings and/or recommendations by filing a petition with The United States Secretary of Education in accordance with 34 C.F.R. 76.781.

6:28-11.3 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who shall:

1. Evaluate pupil instructional needs after parental consent has been received and participate in the determination of eligibility for special education and/or related services for pupils identified as potentially educationally disabled;

2.-5. (No change.)

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

6:28-11.4 Identification

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

(e) Each pilot district shall follow identification requirements according to N.J.A.C. 6:28-3.2.

6:28-11.5 (Reserved)

6:28-11.6 Comprehensive evaluation

(a) Prior to conducting an initial evaluation, the child study team shall request and obtain consent to evaluate. The purpose of the evaluation shall be to:

1.-2. (No change.)

(b)-(f) (No change.)

(g) A comprehensive evaluation shall consist of the following:

1. A minimum of two child study team members shall evaluate a pupil to determine eligibility for special education and/or related services and the program needs of the pupil. Evaluator selection shall be based upon the nature of the educational problem, available pupil records, eligibility criteria and program planning. A parent shall have the right to receive a third child study team member assessment of their child upon request.

i. (No change.)

ii. All preschool pupils identified to the child study team shall undergo a comprehensive medical evaluation.

iii. (No change.)

2. Assessment by a child study team member must include an appraisal of the pupil's current functioning and an analysis of instructional implication(s) appropriate to the discipline reporting. The initial assessment must comply with the eligibility criteria of N.J.A.C. 6:28-11.8, address those areas included in the evaluation plan based upon the presenting problem of the identified pupil, and result in a written report.

(h)-(m) (No change.)

6:28-11.7 Determination of eligibility

(a) When an evaluation is completed, members of the child study team who participated in the assessment and parent(s) shall meet

with the school principal and staff member(s), identifying the potentially educationally disabled pupil, if they choose to participate, in order to:

1. (No change.)

2. Determine whether the pupil is eligible for special education and/or related services;

i. (No change.)

ii. Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the staff member identifying the potentially educationally disabled pupil shall be given a written summary of all decisions and any recommended course(s) of action, signed by the participating child study team members.

3.-4. (No change.)

(b) (No change.)

(c) Pupils determined by the school physician to have temporary health problems which prohibit regular attendance in school need not be classified as educationally disabled but shall be entitled to receive at least five hours per week of individual instruction at home for a period of time determined by the school physician. After 60 days, the pupil shall be identified to the child study team to determine if the pupil is eligible for special education and/or related services.

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

6:28-11.8 Eligiblity criteria

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

(d) The following criteria are established for each domain:

1.-6. (No change.)

7. Communication criteria are as follows:

i.-iv. (No change.)

v. Pupils identified solely for speech-language services shall require at least the evaluation and observation of the speech correctionist or speech-language specialist and information from the pupil's teacher.

(e)-(g) (No change.)

6:28-11.9 Individualized education program

(a) The individualized education program for each pupil with an educational disability shall be developed according to N.J.A.C. 6:28-3.6 and this subsection.

1. The individualized education program shall be developed at a meeting attended by the child study team members who evaluated the pupil, the pupil's parent(s), teacher(s) having knowledge of the pupil's educational performance and the pupil, if appropriate. The certified school personnel identifying the pupil, the school principal or designee and other appropriate individuals may participate in the meeting.

2. The individualized education program shall conform with N.J.A.C. 6:28-3.6(a), (b), (d), (e) and (f) shall also include the following:

i.-iii. (No change.)

(b) Annually, or more often if necessary, the case manager, parent(s), teacher(s), the pupil, if appropriate, and other individuals at the discretion of the parents, shall meet to review and revise the individualized education program as specified in this subchapter.

1.-2. (No change.)

3. Eligibility criteria described in N.J.A.C. 6:28-11.8 shall apply only to pupils being identified to special education for the first time. The child study team shall document the reason(s) for continuing a pupil in special education and/or related services when the pupil no longer meets the eligibility criteria.

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

SUBCHAPTER 12. OUTCOMES-BASED INNOVATIVE PROJECT

6:28-12.1 General provisions

(a) For the purpose of establishing innovative outcomes-based special education projects, exceptions to State requirements in this chapter shall be granted to a select number of district boards of education by the Department of Education in accordance with a Request for Proposal submitted to the Department which shall:

1. Address each of the criteria listed in (c) below;

2. Be submitted to the director of the Office of Special Education on forms prepared by the Department; and

3. Be submitted in a timely manner.

(b) Exceptions to Federal requirements shall not be granted.

(c) District boards of education shall be selected for participation in this project based on a formal written proposal which shall:

1. Demonstrate that the district has a clear commitment to and is taking responsibility for improved pupil outcomes in special education;

2. Describe clearly stated, measurable pupil outcomes;

3. Demonstrate a high probability that the innovative program design will result in achievement of the intended pupil outcomes;

4. Assure full compliance with all federal special education requirements;

5. Demonstrate that the district's educational community, including the local district board of education, parents, administration and staff, have been involved in the development of the proposed innovative program;

6. Demonstrate that the proposal is designed to meet the educational needs of pupils with educational disabilities in the district; and

7. Demonstrate a commitment to full participation in the evaluation of the project by the Department of Education.

CORRECTIONS

(a)

THE COMMISSIONER

Administration, Organization and Management Research

Adopted New Rules: N.J.A.C. 10A:1-10

Proposed: February 7, 1994 at 26 N.J.R. 726(a).

Adopted: March 10, 1994 by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 11, 1994 as R.1994 d.181, **without change.**

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

Effective Date: April 4, 1994.

Expiration Date: June 1, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

SUBCHAPTER 10. RESEARCH

10A:1-10.1 Medical research or experimentation

(a) No medical, pharamceutical or cosmetic experiments or research shall be conducted involving the use of inmates or parolees of the New Jersey Department of Corrections except as provided by court order, consent decree, or other legal processes (see N.J.A.C. 10A:16-2.20).

(b) The New Jersey Department of Corrections encourages nonmedical, nonpharmaceutical, and noncosmetic research projects that are conducted in accordance with this subchapter.

10A:1-10.2 Procedure for submitting a request to conduct nonmedical, nonpharmaceutical, and noncosmetic research projects

(a) Any person(s) or agency(s) who wishes to conduct nonmedical, nonpharmaceutical or noncosmetic research projects shall complete and submit Form 980-I RESEARCH PROJECT REQUEST to the correctional facility Superintendent, Parole District Supervisor or the noninstitutional operational unit administrator.

(b) The correctional facility Superintendent, Parole District Supervisor, or the noninstitutional operational unit administrator shall review Form 980-I to determine if the research will:

1. Adversely affect the maintenance of security and/or the orderly operation of the correctional facility or unit;

2. Involve the review of inmate or parolee records; and/or
3. Require inmate or parolee participation, such as interviews or questionnaires.

(c) When the research activity does not involve the review of inmate or parolee records or the participation of inmates or parolees, the correctional facility Superintendent, Parole District Supervisor, or the noninstitutional operational unit administrator may approve or disapprove a request for research by signing and dating Section IV of Form 980-I. The original Form 980-I shall be returned to the person(s) or agency(s) requesting to conduct the research, and a copy of Form 980-I shall be retained by the correctional facility Superintendent, Parole District Supervisor or noninstitutional operational unit administrator.

(d) When the research activity involves the review of inmate or parolee records or the participation of inmates or parolees, the correctional facility Superintendent, Parole District Supervisor or the noninstitutional operational unit administrator shall complete Section IV of Form 981-I and submit the Form to the appropriate Assistant Commissioner with a recommendation for approval or disapproval.

1. The Assistant Commissioner shall review Form 980-I and shall approve or disapprove the request to conduct research by signing and dating the appropriate section on Form 980-I and shall then submit Form 980-I to the Commissioner for final review.
2. The Commissioner shall retain the final review authority of any request to conduct research which involves the review of inmate or parolee records or the participation of inmates or parolees.
3. The Commissioner shall approve or disapprove the request to conduct research by signing and dating the appropriate section on Form 980-I and shall return Form 980-I to the Assistant Commissioner.
4. The Assistant Commissioner shall retain a copy of the signed Form 980-I and return the original to the correctional facility Superintendent, Parole District Supervisor, or the noninstitutional operational unit administrator.

10A:1-10.3 Express written inmate/parolee consent requirement

(a) The express written consent of the inmate and/or parolee shall be required:

1. To ensure that direct inmate participation in any research project is on a voluntary basis; and
2. To authorize inspection or release of records per N.J.A.C. 10A:22-2.8.

(b) In order to obtain written consent of an adult inmate or parolee to directly participate in a research activity, Form 980-II ADULT INMATE/PAROLEE RESEARCH PARTICIPATION CONSENT shall be completely filled in and signed by:

1. The inmate/parolee;
2. A witness; and
3. The correctional facility Superintendent, Parole District Supervisor or the noninstitutional operational unit administrator.

(c) In order to obtain written consent of a juvenile inmate or parolee, to directly participate in a research activity, Form 980-III JUVENILE INMATE/PAROLEE RESEARCH PARTICIPATION CONSENT shall be completely filled in and signed by:

1. The juvenile inmate/parolee;
2. A parent or guardian;
3. A witness; and
4. The Superintendent, Parole District Supervisor, or noninstitutional operational unit administrator.

10A:1-10.4 Refusal to participate in research

(a) An inmate or parolee shall not be required or coerced to participate in research activities.

(b) Refusal by an inmate or parolee to participate in research shall not constitute a reason for imposing penalties upon the inmate or parolee.

10A:1-10.5 Inmate/parolee records

Confidentiality of inmate/parolee records and procedures for release or examination of records by authorized individuals or agencies shall be in accordance with N.J.A.C. 10A:22-2, Records.

10A:1-10.6 Research findings

The person(s) or agency(s) who completes a research project must, prior to publication or any public dissemination, make available the research findings or results to the correctional facility Superintendent, Parole District Supervisor, or the noninstitutional operational unit administrator, and the Commissioner, New Jersey Department of Corrections, for review and comments (see Form 980-I Section III).

10A:1-10.7 Written procedures

(a) Each correctional facility, noninstitutional operational unit, and the Bureau of Parole shall develop written procedures governing research projects and activities consistent with the requirements of this subchapter.

(b) These written procedures shall be reviewed at least annually and updated as necessary and signed and dated by the Superintendent, Parole District Supervisor, or noninstitutional operational unit administrator.

(a)

THE COMMISSIONER

Inmate Discipline
Scope; Definitions
Adult County Correctional Facilities
Definitions; Disciplinary Rules and Sanctions; Disciplinary Rule Book; Adult County Correctional Facilities Rules and Regulations

Adopted Amendments: N.J.A.C. 10A:4-1.2 and 1.3; and 10A:31-1.3, 16.1, 16.2 and 21.4

Proposed: February 7, 1994 at 26 N.J.R. 727(a).
Adopted: March 10, 1994 by William H. Fauver, Commissioner, Department of Corrections.
Filed: March 11, 1994 as R.1994 d.182, **without change.**

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 30:4-85.

Effective Date: April 4, 1994.
Expiration Date: May 7, 1996, N.J.A.C. 10A:4;
March 5, 1995, N.J.A.C. 10A:31.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendments follows:

10A:4-1.2 Scope

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

(c) This chapter shall apply to State sentenced inmates incarcerated at county correctional facilities.

10A:4-1.3 Definitions

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

. . .

"Handbook on Discipline" means a publication that is provided to inmates which contains the inmate's rights and responsibilities, the acts and activities which are prohibited, and the disciplinary procedures and sanctions imposed.

. . .

10A:31-1.3 Definitions

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

. . .

"Handbook on Discipline" means a publication that is provided to inmates which contains the inmate's rights and responsibilities, the acts and activities which are prohibited, and the disciplinary procedures and sanctions imposed.

. . .

10A:31-16.1 Disciplinary rules and sanctions
(a)-(d) (No change.)
(e) N.J.A.C. 10A:4, Inmate Discipline, applies to State inmates incarcerated at adult county correctional facilities.

10A:31-16.2 Disciplinary rule book
(a) The adult county correctional facility will develop a written inmate discipline handbook which includes:
1.-2. (No change.)
3. The disciplinary procedures;
4. The disciplinary appeal process; and
5. A notice that N.J.A.C. 10A:4, Inmate Discipline, also applies to State sentenced inmates incarcerated within the adult county correctional facility.
(b)-(e) (No change.)

10A:31-21.4 Adult county correctional facility rules and regulations
(a) (No change.)
(b) State sentenced inmates incarcerated in a county correctional facility shall be advised that they are subject to the inmate discipline of the county correctional facility except when there is a conflict with N.J.A.C. 10A:4. When a conflict exists, the State sentenced inmate is subject to N.J.A.C. 10A:4, Inmate Discipline.
Recodify existing (b)-(c) as (c)-(d) (No change in text.)

(a)

STATE PAROLE BOARD

Parole Board Rules
Victim Input
Adopted Amendment: N.J.A.C. 10A:71-3.47

Proposed: October 18, 1993 at 25 N.J.R. 4705(a).
Adopted: February 23, 1994 by the New Jersey State Parole Board, Mary Keating DiSabato, Chairman.
Filed: March 11, 1994 as R.1994 d.180, **without change.**

Authority: N.J.S.A. 30:4-123.48(d) and 123.55.

Effective Date: April 4, 1994.
Expiration Date: February 5, 1995.

Summary of Public Comments:
The State Parole Board was informed by the Director of the Division of Criminal Justice that the Division of Criminal Justice supported the proposed amendments.

Full text of the adoption follows:

10A:71-3.47 Victim input
(a)-(j) (No change.)
(k) Upon the victim or nearest relative of a murder/manslaughter victim informing the Board subsequent to notice being provided pursuant to (g) above that such person intends to testify before the Board panel, the case shall be processed as follows:
1.-2. (No change.)
3. Notice of the time, place and date of the Board panel hearing shall be provided to the victim or nearest relative of a murder/manslaughter victim in writing and shall be mailed at least 14 days prior to the hearing date.
4. The victim or nearest relative of a murder/manslaughter victim shall be required to confirm with the Board their appearance before the Board panel seven days prior to the hearing date.
5. Upon confirmation by the victim or nearest relative of a murder/manslaughter victim of their appearance before the Board panel, the Board shall notify the Department of the identities of the person(s) who will appear before the Board panel on the scheduled hearing date.
6. The Board shall notify the victim or nearest relative of a murder/manslaughter victim that appropriate personal identification is required by the Department in order to enter the institution.
7. During the victim input segment of the Board panel hearing, the Board panel shall permit the victim or nearest relative of a murder/manslaughter victim a reasonable opportunity to present information relative to the factors outlined in (f) above or any other information relevant to the Board panel's consideration of the inmate's case. The Board panel shall, in recognition of the number of hearings to be conducted on the hearing date, be permitted to establish a reasonable time period(s) for the presentation of information.
8. (No change.)
9. If a Board panel hearing is cancelled, the Board panel shall provide immediate notification of the cancellation to the victim or nearest relative of a murder/manslaughter victim. The Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.
10. In the victim input segment of the Board panel hearing, only the Board members, appropriate Board personnel and victim or nearest relative of a murder/manslaughter victim shall be present in the hearing room. If deemed necessary by the Board panel, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm victim or nearest relative of a murder/manslaughter victim in the hearing. The Board panel may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the victim or nearest relative of a murder/manslaughter victim.
11. If a victim or nearest relative of a murder/manslaughter victim provides notice of their inability to attend the Board panel hearing on the scheduled date, the hearing shall be conducted as scheduled. However, if the hearing on the scheduled date is cancelled, the Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.
12. Upon the conclusion of the victim input segment of the Board panel hearing, the Board panel shall reconvene the hearing with the inmate present in the hearing room designated by the Department. In the inmate segment of the Board panel hearing, the victim or nearest relative of a murder/manslaughter victim shall not be present in the hearing room.
(l)-(r) (No change.)

INSURANCE

(b)

INDIVIDUAL HEALTH COVERAGE PROGRAM

Individual Health Coverage Program Board
Temporary Plan of Operation
Assessments for Total Reimbursable Net Paid Losses for Calendar Year 1993 and Thereafter
Adopted New Rule: N.J.A.C. 11:20-2.17

Proposed: February 4, 1994 in accordance with N.J.S.A. 17B:27A-16.1 and 17B:27A-16.2b, at 26 N.J.R. 1200(a), March 7, 1994.
Adopted: March 1, 1994 by Samuel F. Fortunato, Commissioner, Department of Insurance, in accordance with N.J.S.A. 17B:27A-16.1.
Filed: March 1, 1994 as R.1994 d.165, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B:27A-2 et seq., specifically N.J.S.A. 17B:27A-16.1 and 16.2b.

Effective Date: March 1, 1994.
Expiration Date: August 13, 1998.

These new rules are proposed and are being adopted pursuant to the procedures set forth at N.J.S.A. 17B:27A-16.1 as therein authorized.
Accordingly, notice of the proposal of these new rules was sent for publication in three newspapers of general circulation in New Jersey, mailed to all known interested parties, and submitted to the Office of Administrative Law (OAL) for publication in the New Jersey Register.
Pursuant to N.J.S.A. 17B:27A-16.1d, interested parties were provided a comment period of at least 20 days. As set forth in the notice of

proposed new rules, the written comment period ended on February 25, 1994.

Pursuant to N.J.S.A. 17B:27A-16.1e, notwithstanding the receipt of comments, the Commissioner of Insurance (Commissioner) may adopt these rules immediately upon the expiration of the public comment period by filing a copy of the adopted rules with the OAL for publication in the New Jersey Register. This new rule is effective upon the date of filing with the OAL, March 1, 1994.

Pursuant to the requirements of N.J.S.A. 17B:27A-16.1, this notice also includes a report listing all parties who provided comments, summarizing the content of the comments, and providing the Department of Insurance's (Department) response to the data, views and arguments contained in the comments.

Comments were received from the General Reinsurance Corporation and from the Individual Health Coverage Program Board of Directors (Board).

COMMENT: The Board requested that N.J.A.C. 11:20-2.17(d)2 be amended to change the 90 day limit to a 60 day limit for the Board to notify members of their assessment amount for total reimbursable net paid losses (for the preceding calendar year). The Board stated that it had proposed certification and audit requirements and a certification of non-member status (amendments to N.J.A.C. 11:20-8 and 11:20-9, and new rules at N.J.A.C. 11:20-13) which, in this year, delays certain reporting deadlines for carriers. Rather than potentially delaying the deadline for the Board to issue invoices to members, the Board is putting the onus upon itself to act more quickly than otherwise permitted, to attempt to keep deadlines consistent. The Board states that when it adopts its own Plan of Operation, it will restore the 90 day time frame for future use.

RESPONSE: The Department notes that the Board's intentions may be achieved without changing the 90 day deadline, inasmuch as the 90 days is the maximum amount of time permitted to the Board, not the minimum. However, since the change requested is from the single party upon whom there is an impact, and that party is willing to accept the additional responsibility associated with the change requested, the Department has made the change requested upon adoption.

COMMENT: The General Reinsurance Corporation noted that, while licensed for health lines of business, it provides reinsurance only, and stated that it presumed it was exempt from the rules at N.J.A.C. 11:20-2.17.

RESPONSE: The Department notes that the comment is not directly related to the subject matter of the rules, and could not be answered in any case by the Department. The Department suggests that the commenter review all of the Individual Health Coverage Program's rules, especially the most recently adopted rules at, N.J.A.C. 11:20-13, regarding certification of nonmember status.

Summary of Agency-Initiated Changes:

At N.J.A.C. 11:20-2.17(a), the reference to interim assessments is being deleted. This language parrots the statutory provisions of N.J.S.A. 17B:27A-11a, and as such, the repetition is unnecessary. Additionally, the deletion avoids the possible misinterpretation that the rule is only intended to regulate interim assessments, when the text of other provisions clearly addresses both interim and final assessments as appropriate.

At N.J.A.C. 11:20-2.17(c)1, the Department has added the phrase "for all health benefits plans" following the phrase "member's net earned premium" for purposes of increasing clarity. The referenced form, the Carrier Market Share and Net Paid Loss Report (Exhibit K to this chapter), still must be completed in accordance with N.J.A.C. 11:20-8.

At N.J.A.C. 11:20-2.17(d)2, a cross-reference has been corrected: "(b)1" should read as "(d)1." Additionally, the reference to amounts being assessed "on an interim basis" has been deleted for the reasons previously stated.

At N.J.A.C. 11:20-2.17(f)1, the second appearance of the word "amount" has been deleted and replaced by the word "account" to correct the meaning of the sentence.

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

11:20-2.17 Assessments for total reimbursable net paid losses for calendar year 1993 and thereafter

(a) The IHC Program Board may assess members for reimbursable net paid losses *[as an advance interim assessment,]* as may be necessary, pursuant to its authority under N.J.S.A. 17B:27A-11a and according to the procedures set forth in this Temporary Plan. *[An advance interim assessment paid shall be credited as an offset against any regular assessment due after the close of the following year as required by N.J.S.A. 17B:27A-11a.]*

(b) The IHC Program Board shall determine the preliminary total reimbursable net paid losses, if any, for the preceding calendar year based upon the information submitted by members no later than March 1 of each year annually to the IHC Program Board in the Carrier Market Share and Net Paid Gain (Loss) Report, set forth as Exhibit K in the Appendix to this chapter, completed in accordance with N.J.A.C. 11:20-8. Such a determination shall be made by the IHC Program Board on or about March 14 of each year.

1. The total reimbursable net paid losses of the preceding calendar year shall be the aggregate of the reimbursable net paid losses for all members reporting net paid losses for that calendar year.

2. Prior to receiving reimbursement for net paid losses, a member must meet the performance standards set forth at N.J.A.C. 11:20-10.

(c) The Board shall determine each member's assessment amount by multiplying the member's market share, or adjusted market share as applicable, by the total reimbursable net paid losses for the preceding calendar year, except that no member shall be liable for an assessment amount greater than 35 percent of the total reimbursable net paid losses for that calendar year.

1. The IHC Program Board shall determine each member's market share by comparing the member's net earned premium ***for all health benefits plans*** for the preceding calendar year to the net earned premium of all members for the preceding calendar year as reported by each member in the Carrier Market Share and Net Paid Loss Report, set forth as Exhibit K of the Appendix to this chapter, and completed in accordance with N.J.A.C. 11:20-8. Should a member fail to submit a Carrier Market Share and Net Paid Loss Report as required by N.J.A.C. 11:20-8, the member's market share shall be determined by the IHC Program based upon the premium set forth in the member's most recent Annual Statement filed with the Department. Members' market shares shall be adjusted in consideration of the following factors, if necessary:

i. A member that has been granted a final exemption under N.J.A.C. 11:20-9.5 shall not be assessed for any portion of the total reimbursable net paid losses.

ii. A member that has been granted a pro rata exemption under N.J.A.C. 11:20-9.5 shall be liable for an assessment determined by multiplying the total amount of reimbursable losses (program losses) for the preceding calendar year by the ratio of the member's net earned premium to the net earned premium of all members for the preceding calendar year multiplied by a fraction, the numerator of which is the difference between the minimum number of non-group persons allocated to the member by the Board and the number of non-group persons actually enrolled or insured by the member and the denominator of which is the minimum number of non-group persons allocated to the member by the Board.

2. To the extent a member's assessment exceeds the 35 percent limit, the excess amount shall be apportioned to other members, except those members that received a final or pro rata exemption or that have been granted a deferral, based upon their respective adjusted market shares until such other members reach the 35 percent limit or the total reimbursable net paid losses for the preceding calendar year are fully assessed, whichever occurs first.

3. Assessment amounts for members granted a deferral by the Commissioner, or subject to dispute by a member wherein the dispute is settled in favor of the disputing member, shall be apportioned to other members based on their respective adjusted market shares.

i. Members that have been granted a deferral shall remain liable to the IHC Program for the amount deferred and any additional amounts required by N.J.A.C. 11:20-11.6.

ii. Upon eventual payment of the deferred amount to the IHC Program, the members to whom the deferred amounts were reapportioned will be credited for those amounts previously apportioned to them.

(d) Every member shall be liable for a portion of the total reimbursable net paid losses for the preceding calendar year unless the member has been granted a final exemption from assessments for the preceding calendar year by the Board in accordance with N.J.A.C. 11:20-9.

1. The IHC Program Board shall provide a preliminary notice to its members in writing, on or about March 14 of each year, of the total reimbursable net paid losses for the preceding calendar year and whether the member may or may not be liable for a portion of the total reimbursable net paid losses for the preceding calendar year.

2. No later than *[90]* ***60*** days following the preliminary notice in *[(b)1]* ***(d)1*** above, the IHC Program Board shall notify each member by invoice of the dollar amount being assessed *[on an interim basis]* against the member for its portion of the total reimbursable net paid losses for the preceding calendar year.

3. The IHC Program Board may, as necessary, make reconciliations of the assessment for reimbursable net paid losses which may include adjustments in market share and adjustments for deferrals granted.

4. The IHC Program Board shall notify each member of the final reconciliation of the assessment for reimbursable net paid losses for the preceding calendar year by invoice stating the dollar amount then due or credit, if any, against future assessments on or before December 1st of the current year. As a result of the final reconciliation, any monies determined to be owed to or by the Board shall be calculated without provision for interest.

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

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

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

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

iii. Good faith errors that are reported to the Board by a member within 60 days of their occurrence shall not be subject to the interest penalty set forth in (e)1i above. If a carrier makes an error relating to or involving an assessment or any other error resulting in nonpayment or underpayment of funds, the member shall make immediate payment of additional amounts due.

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

(f) A member may request that the Commissioner grant a deferral of its obligation to pay an assessment in accordance with N.J.A.C. 11:20-11.

1. If a member files a proper request for deferral within 15 days of the date of the invoice, that member may make payment of the amount of the assessment invoice pursuant to (e) above, to be held in an interest bearing escrow *[amount]* ***account*** in accordance with the procedures set forth in (g) below, pending final disposition by the Commissioner of the deferral request.

2. If the member withholds payment, as permitted pursuant to (f)1 above and the Commissioner denies the request for deferral, the member shall be subject to payment of the interest penalty set forth in (e)1 above, accruing from the date of the invoice for the assessment.

(g) The Interim Administrator (or Administrator) shall deposit all monies received from the Treasury pursuant to this section in an interest bearing account maintained by the IHC Program Board for that purpose. The Board shall approve the disbursement of all funds then in the account, and any payments to those members determined by the IHC Program Board as having reimbursable net paid losses for the preceding calendar year. Disbursement shall be in proportion to the member's share of the total reimbursable net paid losses for that calendar year, until such available funds have been paid out, or a member's reimbursable net paid losses for the preceding calendar year have been reimbursed, whichever comes first.

1. Amounts of assessment in dispute or subject to a deferral request, including any interest penalty paid by a member pursuant thereto, shall not be disbursed to members having reimbursable net paid losses for the preceding calendar year, until such time as the dispute has been settled against the disputing member, or the deferral denied, except that any portion of an assessment not in dispute or subject to the deferral request, or portions no longer disputed or subject to a deferral request, may be disbursed to members having reimbursable net paid losses for the preceding calendar year in accordance with (g) above, along with any applicable interest penalty amounts paid or interest accrued while held in escrow by the Board.

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

(a)

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Certification and Audit Requirements for Carrier Reports of Reimbursable Losses and Covered Non-group Persons

Certification of Non-member Status

Adopted Amendments: N.J.A.C. 11:20-8 and 9

Adopted New Rule: N.J.A.C. 11:20-8.8 and 8.9 and 11:20-13

Proposed: February 2, 1994 in accordance with N.J.S.A. 17B:27A-16.1 and 16.2(b), at 26 N.J.R. 1294(a), March 21, 1994.

Adopted: March 8, 1994 by the New Jersey Individual Health Coverage Program Board of Directors, Charles Wowkanech, Chair.

Filed: March 10, 1994 as R.1994 d.177, **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. 17B:27A-2 et seq.

Effective Date: March 10, 1994.

Expiration Date: August 13, 1998.

Summary of Public Comments and Agency Responses:

The following entities submitted comments:

1. State Farm Insurance Companies
2. Blue Cross and Blue Shield of New Jersey

COMMENT: One commenter pointed out that the proposed new rule regarding certification of non-member status did not specify whether to appeal IHC Board's ruling on a request for non-member certification to the Board or the Commissioner of Insurance ("Commissioner"). The commenter recommended that, based on the nature of the determination

and the interrelationship between the IHC Board and the Commissioner, appeals of denials of non-member certification requests be directed to and heard by the Commissioner.

RESPONSE: The Individual Health Insurance Reform Act ("IHC Act"), N.J.S.A. 17B:27A-2 et seq., created the IHC Program and authorized the IHC Board to administer virtually all aspects of the Program, including assessing carriers their proportional share of reimbursable Program losses. The IHC Act authorizes the Commissioner to grant deferrals of assessments, a determination which involves an evaluation of a carrier's financial condition. Since determinations of which entities are carriers and which carriers are members of the Program subject to assessment are essential to the IHC Board's duties, the Board believes directing appeals of such determinations to the Commissioner would be an abdication not authorized by law. The commenter correctly states that the IHC Board is currently acting under a Temporary Plan of Operation promulgated by the Commissioner, as authorized by the IHC Act; however, the Commissioner's authority to promulgate a Temporary Plan of Operation does not in any way conflict with the Board's substantive authority over Program assessments. Therefore, the Board will hear appeals of non-member certification requests.

The Board attempted to make clear that the Board would hear appeals by entitling the section of the proposed new rule "Review and Hearing by the Board"; however, in order to avoid in the future the confusion raised by the commenter, the adopted rule clarifies that appeals shall be directed to and heard by the Board.

COMMENT: The same commenter suggested that the term "carrier or other entity" be used throughout the new rule.

RESPONSE: The Board agrees that the terminology should be consistent throughout the new rule and has made the changes in the adoption.

COMMENT: One commenter explained that the proposed amendment to N.J.A.C. 11:20-8, which uses factors to convert contracts issued prior to August 1, 1993 into covered lives, would distort its reported enrollment because the carrier did not offer a separate category of policy for husband and wife prior to August 1, 1993. Since many of the carrier's policies that cover only a husband and wife are called "family" policies, using a conversion factor of 3.9 would overstate the carrier's total individual enrollment. The commenter suggested that a composite factor of 3.33, a factor based on actuarial studies of the New Jersey population which assumes that 70 percent of the contracts affected are family and 30 percent are husband and wife, be applied to family contracts by carriers which cannot determine which family polices cover only a husband and wife.

RESPONSE: The Board recognizes that the proposed conversion factor would distort the reported enrollment of a carrier that did not distinguish between husband and wife and family polices prior to August 1, 1993. The Board agrees with the commenter that the proposed factor of 3.33 is reasonable and should be used by the carrier and any other similarly situated (though the Board is aware of none) so that distorted enrollment figures are not reported to the Board and used as the basis for assigning enrollment shares to carriers that have applied for exemptions. The Board has amended the regulation as adopted where appropriate. The amendment is consistent with the intent of the proposal, to allow carriers to use conversion factors to most accurately report individual enrollment, has narrow application to the carrier that commented on the proposal, does not impose additional burdens on carriers or the public, and does not enlarge or curtail the scope of the proposal. Therefore, the Board believes this change can be made on adoption and reproposal is not necessary.

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

SUBCHAPTER 8. THE IHC PROGRAM MARKET SHARE AND NET PAID LOSS REPORT

11:20-8.1 Scope and applicability

(a) This subchapter sets forth annual reporting, certification and audit requirements of market share data and losses to determine the total amount of losses which are reimbursable, and the allocation of assessments for reimbursement of those losses, as well as a basis for determining criteria to be met by carriers requesting exemption from such assessments.

(b) (No change.)

11:20-8.2 Filing of the market share and net paid loss report form

(a) Every member of the IHC Program shall file the report form set forth as Exhibit K in the Appendix to this chapter, on or before June 28, 1993, April 1, 1994, and annually thereafter no later than March 1. Every member shall complete Parts A, B, C and D of the report form, whether or not the member is seeking reimbursements for losses, or exemptions from assessments for losses.

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

11:20-8.4 Calculation of covered non-group persons

Members shall report in Part C2 of the report form the total number of persons covered under individual community rated health benefits plans, individual modified community rated health benefits plans, conversion health benefits plans, the number of Medicaid recipients covered by the member under a contract with the State of New Jersey, and Medicare lives covered by the member under Medicare cost and risk contracts with the Federal government, and contracts covering actual HealthStart Plus recipients, as of December 31 of the preceding calendar year. For contracts issued prior to August 1, 1993, where a member's administrative systems cannot provide the number of actual covered persons, the following factors shall be used to convert contracts or subscribers to the total number of covered persons: single = 1; husband and wife = 2; parent and child(ren) = 2.8; family = 3.9. ***If a husband and wife category is not used, a member shall use a composite factor of 3.33 in order to reflect the husband and wife category in the family factor.***

11:20-8.6 Certifications

(a) The Chief Financial Officer, or other duly authorized officer of the member, shall certify that all market share and net paid loss reports filed with he IHC Board are accurate, complete and conform with the requirements of this subchapter. The person certifying the combined market share and net paid loss report of an affiliated carrier shall be the same person certifying the separate market share and net paid loss report of the member submitting the combined market share and net paid loss report for the affiliated carrier. Every duly authorized officer who certifies a separate or combined market share and net paid loss report shall be responsible for errors contained therein.

(b) The Chief Financial Officer, or other duly authorized officer, of a member which has filed for reimbursement of losses shall certify, on or before April 1, 1994 and annually thereafter on or before March 1, that:

1. The administrative expenses reported therein are allocated on a basis consistent with previous market share and net paid loss reports and annual statements or other corporate reports of the member required to be filed with the Commissioner pursuant to law or regulations or, if changed, the changes have been outlined in detail including the impact and reason for the change; and

2. The net investment income reported therein has been allocated on a basis consistent with previous market share and net paid loss reports and annual statements or other corporate reports of the member required to be filed with the Commissioner pursuant to law or regulations or, if changed, the changes have been outlined in detail including the impact and reason for the change.

11:20-8.7 Penalties for failure to file market share and net paid loss report

(a) Failure to file in a timely manner market share and net paid loss reports and certifications required by this subchapter shall result in:

1. The denial of a member's application for exemption from assessments for reimbursable losses; and

2. The Board's using the premium set forth in the member's most recent Annual Statement filed with the Department as the premium base to calculate that member's market share allocation of assessments for reimbursement of losses.

11:20-8.8 Audits

(a) A member shall, upon written request of the IHC Program Board, provide additional information that the IHC Program Board may require to substantiate that the member has met the requirements in N.J.A.C. 11:20-8.6(b).

(b) The IHC Program Board shall review, and may audit, a member's reimbursable losses reported in the member's market share and net paid loss report. The IHC Program Board shall choose and direct the independent auditor. The IHC Program Board and the member being audited shall share equally the cost of an independent audit.

(c) The IHC Program Board shall adjust a member's reported net paid losses, for purposes of determining reimbursement for losses for the preceding calendar year, for the member's failure to meet the certification requirements of this subchapter or as a result of the findings of an independent audit conducted pursuant to (b) above.

11:20-8.9 Hearings

Any member that is denied reimbursement of losses, in whole or in part, on the grounds that the member has failed to meet the certification and reporting requirements of this subchapter, or as a result of the IHC Program Board's review of an independent audit of the member's reported net paid losses, may request a hearing within 20 days of the date that the IHC Program Board notifies the member of its final determination, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. A request for a hearing shall include a detailed explanation of the reasons that the Board's action should be reconsidered.

SUBCHAPTER 9. EXEMPTIONS

11:20-9.1 Purpose

The purpose of this subchapter is to set forth the procedures for obtaining conditional exemptions, reporting and certifying the number of non-group persons, and the standards for granting final or prorata exemptions from assessments for reimbursement of losses in accordance with N.J.S.A. 17B:27A-12.

11:20-9.2 Filing for an exemption from assessments for reimbursements

(a) A member seeking to be exempted from the obligation to pay assessments for reimbursement of losses shall submit a written request for such exemption to the Board. A written request for an exemption shall be submitted annually on or before May 1, except that in 1993, written request for exemptions shall be submitted to the Board on or before August 1, 1993 and in 1994, written request for exemptions shall be submitted to the Board on or before June 1, 1994. No exemptions from assessments for 1992 losses will be granted. Written requests shall be submitted to:

Interim Administrator
New Jersey Individual Health Coverage Program
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, New Jersey 08830

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

11:20-9.3 Minimum enrollment share

(a) On or about July 8, 1993, on or about May 1, 1994, and annually thereafter on or before April 1, the IHC Program Board shall issue to each member its minimum enrollment share of non-group persons for that calendar year which the member must agree to cover in that calendar year for purposes of obtaining an exemption from assessments for reimbursements for losses incurred in that calendar year.

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

11:20-9.5 Procedures for granting or denying exemptions

(a) A member granted a conditional exemption shall be granted a final exemption from assessments for reimbursements for losses accruing for the calendar year in which the conditional exemption was granted if the Board determines that the information filed by the member pursuant to (b) below evidences the following:

1.-3. (No change.)

(b) Members seeking final or pro rata exemptions shall report to the Board, on or before April 1, 1994, and annually thereafter on or before March 1, the number of non-group persons covered by that member as of December 31 of the preceding calendar year, so that the Board can determine whether the member has satisfied its minimum enrollment share. The member shall report separately the number of non-group persons in each category of non-group person enumerated in N.J.A.C. 11:20-9.4. The Chief Financial Officer, or other duly authorized officer of the member, shall certify that the covered non-group persons reported therein:

1. Were counted in accordance with N.J.A.C. 11:20-9.4;
2. If covered by standard health benefits plans and conversion health benefits plans, were enrolled on an open enrolled and community rated basis;
3. Were actual covered lives and not estimations of covered lives based on conversion factors applied to contracts or other approximation methods;
4. Were enrolled as of December 31 of the preceding calendar year; and
5. Do not include persons whose premium due is more than 30 days overdue.

(c) A member shall, upon written request of the IHC Program Board, provide additional information that the IHC Program Board may require to substantiate that the member has met the requirements in (b) above.

(d) The IHC Program Board shall review, and may audit, a member's non-group persons reported pursuant to (b) above. The IHC Program Board shall choose and direct the independent auditor. The IHC Program Board and the member being audited shall share equally the cost of an independent audit.

(e) The IHC Program Board shall adjust a member's reported non-group persons, for purposes of determining whether the member should receive an exemption or pro rata exemption from assessment for reimbursable losses, for the member's failure to meet the certification requirements of (b) above or as a result of the findings of an independent audit conducted pursuant to (d) above.

(f) (No change in text.)

(g) Members denied a pro rata exemption from assessments for reimbursements for losses may, within 20 days of the date of the Board's ruling, request a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. A request for a hearing shall include a detailed explanation of the reasons that the Board's action should be reconsidered.

Recodify existing (d) and (e) as (h) and (i) (No change in text.)

SUBCHAPTER 13. CERTIFICATION OF NON-MEMBER STATUS

11:20-13.1 Purpose and scope

The purpose of this subchapter is to provide a means by which carriers and other entities may be certified as non-members of the IHC Program.

11:20-13.2 Non-member status

(a) An entity is a non-member of the IHC Program if:

1. It is not a carrier as that term is defined in N.J.A.C. 11:20-1.2;
2. It is a carrier that neither has issued nor has inforce health benefits plans during the calendar year of certification; or
3. It is a carrier that is permitted by law to be certified as a non-member.

11:20-13.3 Filing of non-member certification requests

(a) A carrier or other entity that desires to be considered a non-member of the IHC Program for a given calendar year shall file with the Board a request for non-member certification by April 1, 1994, for calendar year 1993, and thereafter by March 1 following the end of the calendar year for which non-member status is sought. Such request shall be sent to:

Non-Member Status Certification
IHC Program Administrator
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, New Jersey 08830

(b) A carrier or other entity that submits a request for non-member certification shall include an affirmative statement, certified

by a duly authorized officer, of the reasons for which non-member status is requested.

(c) A carrier or other entity that submits a request for non-member certification shall file a copy of the request with the Commissioner.

11:20-13.4 Decisions on filings by the Board

Within 30 days of receipt of a written request for non-member status, the Board shall grant or deny the request for non-member status in writing, specifying the reasons for the decision. If the Board does not grant or deny the written request for non-member status within 30 days of its receipt by the Board, the written request shall be deemed to be approved, except that the Board may extend the decision period for an additional 30 days by notifying a carrier or other entity, in writing, of the Board's need for additional information in order to make a determination.

11:20-13.5 Review and hearing by the Board

(a) A carrier ***or other entity*** that has been denied non-member status may request a hearing ***by the Board in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1*** within 20 days of the date of the Board's ruling. A request for a hearing shall include a detailed written explanation of the reasons that the Board's action should be reconsidered. *[Hearings under this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.]*

(b) A carrier ***or other entity*** that requests a hearing shall be considered a member of the IHC Program until and unless the Board determines that the carrier is not a member.

LABOR

(a)

DIVISION OF PROGRAMS

Application and Review Process for Individual Training Grants Under the Workforce Development Partnership Act

Adopted New Rules: N.J.A.C. 12:23-3

Proposed: March 1, 1993 at 25 N.J.R. 884(a).
Adopted: March 1, 1994 by Peter J. Calderone, Acting Commissioner, Department of Labor.
Filed: March 1, 1994 as R.1994 d.166, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1992, chapters 43 through 49.

Effective Date: April 4, 1994.
Expiration Date: April 4, 1999.

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at (609) 777-1727 or N.J. Relay (TTY) 1-800-852-7899.

On March 1, 1993 at 25 N.J.R. 884(a), the Department of Labor proposed new rules at N.J.A.C. 12:23-3 which set forth the standards for individual grants for vocational and remedial training under the Workforce Development Partnership Program.

Comments on the proposal were received from the New Jersey State Employment and Training Commission staff and the Division of Programs of the Department of Labor during the comment period which closed on March 31, 1993. Thereafter, comments were submitted by the Department of Human Services of the County of Union and the Farmworkers Division of Camden Regional Legal Services. A full record of the opportunity to be heard can be inspected by contacting the Office of External and Regulatory Affairs, New Jersey Department of Labor, CN 110, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

COMMENT: The Department of Labor should try to the greatest extent possible to ensure that the benefits related to the proposed regulation are accessible to seasonal farmworkers. In some areas of the State, farmworkers are being displaced from their normal employment. In other areas, due to changes in recruitment patterns for workers, local farmworkers may be displaced.

RESPONSE: The Workforce Development Partnership Program provides benefits and services to individuals who are "qualified disadvantaged workers" and "qualified displaced workers" as defined in P.L. 1992, Chapter 43, Section 3. Displaced workers must also be permanently separated from their employer or regular type of employment and unlikely to return to that work due to a substantial reducton in the availability of employment. If these requirements are met, training may be approved if, among other considerations, it enhances the individuals' marketable skills and earning power, and the training entity is located in New Jersey and approved by the Commissioner. These requirements do not exclude seasonal farmworkers, if they should become permanently displaced from their regular type of employment or if they are upgrading their skills in new technologies leading to higher wages in agricultural or other labor demand occupations. The New Jersey Employment Service has available a migrant seasonal farmworker outreach program that informs agricultural workers of other employment and training programs for which they may qualify.

COMMENT: The prohibitions with regard to out-of-State training should be limited to the greatest extent possible. The regulation indicates that these additional benefits will be paid out of the unemployment insurance trust fund. Since the unemployment trust fund is set up on the basis of a Federal/State regulatory and statutory scheme, the out-of-State limitations on training are problematic. Although the benefit of encouraging training within New Jersey is recognized, the provision is discriminatory against migrant seasonal farmworkers who are largely a racial minority. In addition, to the extent that the restriction impacts on Federal funds, the restriction may be improper. Finally, the provision is anti-consumer in that it restricts competition and availability of training programs and therefore may increase costs for displaced workers.

RESPONSE: The Workforce Development Partnership Program legislation, P.L. 1992, Chapters 43 through 49, Section 8a, requires that the training provider be located within the State of New Jersey.

COMMENT: The credentialing of all staff, including counselors, to meet the expectations of their job is supported and the delayed implementation of such requirements until January 1, 1996 is noted; however, all existing staff should be grandfathered in permanently. Funding, set aside at the State level, should be used to upgrade all staff, including counselors, to a basic job level. All staff hired subsequent to the adoption of these rules should follow the requirements contained at N.J.A.C. 12:23-3.3.

RESPONSE: In order to effectively implement the Workforce Development Partnership Program, it is essential that the beneficiaries of the training grants be adequately counseled and that a standard be established and uniformly implemented. The legislation authorizes the Commissioner of Labor to establish standards for job counselors who counsel individuals being served under the Federal Jobs Training Partnership Program (JTPA) and the Workforce Development Partnership Program (WDPP) (P.L. 1992, Chapter 43, Section 3; Chapter 48, Section 1). There is no provision in the State law for a waiver of the standards or for "grandfathering" persons currently employed in such capacity, nor for funding for the upgrade of these requirements by the State.

The standards which the Commissioner has established are minimum standards which are based on the minimum education and experience requirements established by the State Department of Personnel for the title of Employment Counselor used by the Department of Labor. Job counselors are expected to have a college degree, one year of experience and 15 college credit hours related to vocational guidance. The 15 hours can be part of a baccalaureate degree, and relevant experience can be substituted for college on a year-for-year basis. Therefore, a person with five years experience needs 15 credit hours related to vocational guidance to meet the minimum standard. Newly hired counselors must meet the requirements immediately; in recognition of the impact of the proposed standards, the implementation date for compliance with the requirements set forth at N.J.A.C. 12:23-3.3 was delayed until January 1, 1996 for individuals currently serving as job counselors. The delayed implementation date represents a balance between the need to operate an efficient program and the needs of affected job counselors. The Department has made arrangements with Thomas Edison College to review transcripts and life experience to help individuals meet the requirements.

COMMENT: The rules appear complete and effectively address the implementation of the Workforce Development Partnership Program. All those involved in the crafting of these proposed rules are to be complimented.

RESPONSE: The Department appreciates the comment.

Summary of Agency-Initiated Changes:

All reference in N.J.A.C. 12:23-3 to the definitions found at N.J.A.C. 12:23-1 have been changed to the corresponding statutory citation at N.J.S.A. 34:15D-3 for these definitions. This change was made necessary due to the fact that the Department did not adopt the proposed rules at N.J.A.C. 12:23-1. It should be noted that the definitions proposed at N.J.A.C. 12:23-1 were derived from those set forth in the statute at N.J.S.A. 34:15D-1 to 11 creating the Workforce Development Partnership Program, P.L. 1992, Chapter 43. Accordingly, the reference to the statutory citation results in no substantive change to the rules as proposed.

The adopted new rule at N.J.A.C. 12:23-3.5, Other funding sources, requires individuals who are eligible for other Federal or governmental training services or benefits, such as Pell grants, to apply for these benefits before individual training grant dollars under the Workforce Development Partnership Program (WDPP) are allocated. However, both the Workforce Development Partnership Program and the Jobs Training Partnership Program contain similar language regarding the use of other Federal and State dollars before utilizing monies in these programs. Therefore, the adopted new rule at N.J.A.C. 12:23-3.5(a), as amended, accommodates these similar provisions by providing that JTPA Title III training grant dollars may be used to augment an individual's training grant award under the WDPP, if the total training cost exceeds the maximum individual grant entitlement under WDPP as set forth in N.J.A.C. 12:23-3.4. The adopted new rule at N.J.A.C. 12:23-3.5(b)4 was also amended to correct a typographical error in the word "difference."

The adopted new rule at N.J.A.C. 12:23-3.6(a) presently provides that Federal funding shall be considered unavailable when training cannot begin within 60 days of the execution of the Employability Development Plan and/or when JTPA funds are "exhausted" at the end of the fiscal year. Because the term "exhaustion" may be interpreted to mean a depletion of funds on hand, the Department is substituting the term "obligated." This change is intended to clarify that funds will be considered unavailable for the purposes of this section when such funds have been committed but have not yet been expended, due to a failure to continue the training or other conditions subsequent to the allocation of the training funds.

The adopted new rule at N.J.A.C. 12:23-3.7, Request for reconsideration of grant denials, identifies the lead counselor as the first level of review of a decision denying a training grant to an individual. On adoption, the Department is amending this rule at N.J.A.C. 12:23-3.7(a)1 to provide a first level review by the Local Office Manager since it is the Local Office Manager who has the authority to modify the decision made by a counselor, thereby leading to more timely review of decisions. Although a substantive amendment, the change reflects a management decision which has no negative impact on the individuals affected.

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

SUBCHAPTER 3. INDIVIDUAL TRAINING GRANTS

12:23-3.1 Eligibility

(a) Individual training grants may be approved for qualified displaced workers as defined at *[N.J.A.C. 12:23-1.1]* ***N.J.S.A. 34:15D-3***, who receive employment counseling by approved job counselors resulting in an Employability Development Plan.

(b) In order to be eligible for an individual training grant under the Workforce Development Partnership Program, an individual must be permanently separated from his or her employment, or laid off and unlikely to return to the previous employment due to a substantial reduction in work opportunities in the individual's job classification at his or her former worksite.

(c) An individual seeking training or other services under the Workforce Development Partnership Program must make an application for such services at an office of the Employment Service in the New Jersey Department of Labor or other agency designated by the Department.

12:23-3.2 Grant payments

Payment of individual training grants will be issued on behalf of the individual directly to the training service provider. In no case will direct payments be made to the individual awarded the training grant.

12:23-3.3 Approval of training grants

(a) Training grants will be approved only if:

1. It is for a labor demand occupation, either listed by the New Jersey Occupational Information Coordinating Committee (NJOICC) or approved by a qualified job counselor, acting on behalf of the NJOICC based on documented local labor market data and conditions, and projected labor market conditions.

i. For purposes of this section, "qualified job counselor" means an individual who is engaged in employment counseling and who meets the requirements specified by the Commissioner of Labor.

ii. A qualified job counselor must have a Bachelor's degree including or supplemented by:

(1) Fifteen college semester hours in vocational guidance or other courses directly related to vocational counseling preparation;

(2) One year of related professional counseling experience; and

(3) Knowledge of State and Federal education laws, employment and training laws, wage and hour laws, and temporary disability and unemployment insurance laws.

iii. Substitution of experience for education is allowed, provided the 15 college credits have been successfully completed. Master's degrees in psychology, education, social work and personnel administration may be substituted for the one year of experience.

iv. The job counselor must be an employee of the Department or an employee of an organization or agency designated by the Commissioner to deliver Workforce Development Partnership Program services.

v. An individual who is employed as a counselor and who does not meet the qualifications specified above, may continue in this function provided that such individual meets the requirements by January 1, 1996;

2. It is for training in a labor demand occupation which will enhance the worker's marketable skills and/or earning power;

3. The training services are provided in New Jersey by a training entity approved by the Commissioner pursuant to P.L. 1992, c.43, secs. 8 and 13 and N.J.A.C. 12:23-4;

4. It is determined by the individual assessment, evaluation and counseling that the individual is expected to successfully complete the training as indicated in the employability development plan;

5. The training is vocational, remedial, or a combination thereof; and

6. Sufficient funding exists in accordance with the Act.

12:23-3.4 Amount of individual training grants

(a) The maximum training grant is $4,000 per worker. This single $4,000 grant may be allocated over more than one fiscal year to support long-term training as identified in the employability development plan. As part of the employability development plan, the counselor will also determine the need for, source and amount of an additional grant for remedial education. Such grant for remedial education will not exceed $1,000.

(b) The Commissioner has the right to annually adjust the amounts available for both vocational and remedial training based on the cost of the services and the availability of other sources of funding to provide these services.

12:23-3.5 Other funding sources

(a) The program shall provide individual training grants only if funding from Federal or other sources is not available. Displaced workers potentially eligible for individual training grants shall be required to apply for all Federal, State and other sources of financial aid or assistance. ***The amount of training grants payable under this program will be limited to the amounts contained in N.J.A.C. 12:23-3.4. JTPA Title III monies may be used to supplement the individual grant funds available in this program, to the extent that individuals are eligible for both JTPA and WDPP funds when necessary to facilitate long term training.***

(b) Service providers shall apply all financial aid awards for tuition, fees and supplies first against those costs before using WDP funds. The service provider shall notify the Department of any and all such awards immediately after having received notice of such award from the awarding agency.

1. All eligible participants are to be made aware of their right and obligation to apply for financial aid.

2. PELL grants, other tuition assistance or other student aid must be used first for the cost of tuition and fees. WDP funds may be used to supplement these awards.

3. An individual who is potentially eligible for a PELL and/or any other grant but whose grant award cannot be estimated will be eligible for the full amount of the individual training grant allowed under this subchapter provided the Department is reimbursed by the service provider when the other such grant is received.

4. If an individual's eligiblity for a PELL or other grant has not been determined at the time of enrollment, but the individual becomes eligible after a Workforce Development Partnership Program (WDP) grant payment has been made, the amount of the WDP grant must be recalculated. The amount of the PELL or other grant(s) and the WDP grant will be combined. If the total of the combined grants exceeds the total cost of the training, the *[differnece]* ***difference*** between the total of the combined grants and the training cost must be reimbursed by the training provider to the Department.

12:23-3.6 Coordination with the Job Training Partnership Act

(a) With regard to the Job Training Partnership Act (JTPA), Federal funding shall be considered unavailable when training cannot begin within 60 days of the execution of the Employability Development Plan and/or when JTPA funds are *[exhausted]* ***obligated*** at the end of the fiscal year.

(b) To insure coordination of services and optimum resource utilization, the Service Delivery Area, as defined in Section 101, Title 1 of the Job Training Partnership Act (JTPA), will be required to describe the relationship of the JTPA with the WDP in the two-year job training plan as defined in Section 104, Title 1 of the JTPA.

(c) No individual training grant will be issued to an individual within one year of the completion date of a previous state or Federal job training program.

12:23-3.7 Request for reconsideration of grant denials

(a) If an individual is denied a training grant under the Workforce Development Partnership Program, he or she may file a request for reconsideration of the denial. A review of all appropriate facts regarding the denial of the training grant will be conducted within the Department of Labor in the following sequence:

1. *[Lead Counselor]* ***Local Office Manager***;
2. Regional Manager; and
3. Director of Division of Programs.

(b) A request to the next level of authority for reconsideration must be made within 14 calendar days of the date the denial is issued. The Director's decision will be final.

12:23-3.8 Refunds

The Department has the authority to recover all training grants improperly paid as a result of false or fraudulent representations.

(a)

DIVISION OF PROGRAMS

Application and Review Process for Approved Training Under the Workforce Development Partnership Act

Adopted New Rules: N.J.A.C. 12:23-4

Proposed: March 1, 1993 at 25 N.J.R. 886(a).

Adopted: March 1, 1994 by Peter J. Calderone, Acting Commissioner, Department of Labor.

Filed: March 1, 1994 as R.1994 d.167, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1992, chapters 43 through 49.

Effective Date: April 4, 1994.

Expiration Date: April 4, 1999.

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at (609) 777-1727 or N.J. Relay (TTY) 1-800-852-7899.

On March 1, 1993 at 25 N.J.R. 886(a), the Department of Labor proposed new rules at N.J.A.C. 12:23-4 which delineate the conditions under which a training program for eligible individuals will be approved and the waiver of certain eligibility requirements in order to qualify for additional unemployment benefits. Comments on the proposal were received from the New Jersey State Employment and Training Commission staff and the Division of Programs of the New Jersey Department of Labor during the comment period which ended on March 31, 1993. A full record of the opportunity to be heard can be inspected by contacting the Office of External and Regulatory Affairs, New Jersey Department of Labor, CN 110, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

COMMENT: The phrase "... except as permitted under N.J.A.C. 12:23-4.4" should be deleted from proposed N.J.A.C. 12:23-4.1(a)4. N.J.A.C. 12:23-4.1 sets forth the conditions under which training would be approved for a grant or for receipt of additional unemployment benefits. The objection is that N.J.A.C. 12:23-4.4 exempts an individual from disqualification for leaving temporary work or refusing an offer of work in order to enter approved training, and is therefore not relevant to the content of the proposed rule.

RESPONSE: The Department agrees. The phrase should instead read "... except as permitted under N.J.A.C. 12:23-6.4."

COMMENT: The language in N.J.A.C. 12:23-4.3(a) stating that "... he or she will not be required to actively seek work if the service provider certifies to the Department that the individual is in approved training" implies that the service provider has the authority to approve training.

RESPONSE: The Department agrees. The language will be revised to clarify that the service provider will certify that the individual is attending the training program.

Summary of Agency-Initiated Changes:

All reference in N.J.A.C. 12:23-4 to the definitions found at N.J.A.C. 12:23-1 have been changed to the corresponding statutory citation at N.J.S.A. 34:15D-3 for these definitions. This change was made necessary due to the fact that the Department did not adopt the proposed rules at N.J.A.C. 12:23-1. It should be noted that the definitions proposed at N.J.A.C. 12:23-1 were derived from those set forth in the statute at N.J.S.A. 34:15D-1 to 11 creating the Workforce Development Partnership Program, P.L. 1992, Chapter 43. Accordingly, the reference to the statutory citation results in no substantive change to the rules as proposed.

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

SUBCHAPTER 4. APPROVED TRAINING UNDER THE WORKFORCE DEVELOPMENT PARTNERSHIP ACT

12:23-4.1 Approved training

(a) Training will be approved only if:

1. It is for a labor demand occupation as defined at *[N.J.A.C. 12:23-1]* ***N.J.S.A. 34:15D-3***;

2. The training is provided by an entity located in New Jersey and approved by the Commissioner pursuant to P.L. 1992, c.43, sec. 8;

3. The individual may reasonably be expected to complete the training;

4. It does not include on the job training or training for which an individual receives wages except as permitted under N.J.A.C. 12:23-*[4.4]****6.4***; and

5. It is vocational, remedial, or a combination of both, in nature.

(b) If the conditions in (a) are met, approval will not be denied for the following reasons:

1. The training includes remedial education needed by the individual to succeed in the vocational component of the training;

2. The training is part of a college degree program which will enhance the individual's marketable skills and/or earning power;

3. The length of the training program; or

4. The lack of a prior guarantee of employment upon completion of the program.

12:23-4.2 Full-time training

(a) Training will be considered full-time only if:

1. It consists of not less than 20 hours per week of classroom work and structured assignments for individuals in training provided by a service provider other than an institution of higher education;

2. It consists of not less than 12 credit hours by individuals pursuing a degree at an institution of higher education; or

3. It consists of a minimum of nine credit hours for individuals pursuing a post-graduate degree at an institution of higher education.

12:23-4.3 Active search for work

(a) An individual in approved training must meet the requirements of N.J.S.A. 43:21-4(c), except that he or she will not be required to actively seek work if the service provider certifies to the Department that the individual is *[in]* ***attending an*** approved training ***program***. If there is an interruption in the training of more than four calendar weeks, the work search waiver does not apply.

(b) A work search waiver may be granted to an individual who is enrolled in an approved training program which will commence within four weeks.

(c) Work search waivers will be granted only to individuals in full-time training.

12:23-4.4 Acceptance of temporary work

(a) An individual who is working in temporary employment shall not be subject to disqualification for voluntarily leaving work under N.J.S.A. 43:21-5(a) if such individual leaves work to begin approved training.

(b) An individual who is in an approved training program and accepts employment during a scheduled break in the training shall not be subject to disqualification for voluntarily leaving work under N.J.S.A. 43:21-5(a) or failing to apply for or accept suitable work under N.J.S.A. 43:21-5(c) if such individual leaves work to return to the approved training program.

12:23-4.5 Courses of study at institution of higher education

Courses of study at institutions of higher education will be approved only if the majority of the credit hours during a semester are in a field of study which will lead to a degree that is specific to a labor demand occupation.

12:23-4.6 Remedial and basic skills courses

Courses of a remedial nature, for purposes of this subchapter, will be considered fields of study in reading, writing or mathematics which will enable the participant to acquire the necessary skills to attain a minimum level of proficiency needed in a designated occupation as indicated in the Dictionary of Occupational Titles.

(a)

DIVISION OF PROGRAMS

Application and Review Process for Additional Unemployment Benefits Under the Workforce Development Partnership Act

Adopted New Rules: N.J.A.C. 12:23-5

Proposed: March 1, 1993 at 25 N.J.R. 887(a).

Adopted: March 1, 1994 by Peter J. Calderone, Acting Commissioner, Department of Labor.

Filed: March 1, 1994 as R.1994 d.168, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1992, chapters 43 through 49.

Effective Date: April 4, 1994.

Expiration Date: April 4, 1999.

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at (609) 777-1727 or N.J. Relay (TTY) 1-800-852-7899.

On March 1, 1993 at 25 N.J.R. 887(a), the Department of Labor proposed new rules at N.J.A.C. 12:23-5 which set forth the standards governing eligibility and qualification requirements for additional unemployment benefits during training.

Comments on the proposal were received from the New Jersey State Employment and Training Commission staff and the Department of Labor's Division of Programs and Office of Unemployment Insurance and Disability Insurance Services during the comment period which ended March 31, 1993. A full record of the opportunity to be heard can be inspected by contacting the Office of External and Regulatory Affairs, New Jersey Department of Labor, CN 110, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

COMMENT: N.J.A.C. 12:23-5.1(a)4 should state that no benefits will be paid after December 31, 1997, not 1977.

RESPONSE: The Department will correct the typographical error and change the date to December 31, 1997.

COMMENT: The language of N.J.A.C. 12:23-5.9 which provides for the recovery of overpayments for benefits received due to false or fraudulent representation is inconsistent with N.J.S.A. 43:21-16 since it does not include non-fraudulent overpayments as a basis for seeking recovery.

RESPONSE: While the Department interprets N.J.S.A. 43:21-16(d) as providing the authority to limit the circumstances under which overpayments will be recovered, the Department has reviewed the comment and believes that the basis for recovering benefit overpayments should be consistent throughout the Unemployment Insurance Benefits Program. However, since such a change constitutes a substantive amendment to the rule, N.J.A.C. 12:23-5.9 may not be amended upon adoption. An amendment to that effect will be proposed and subject to public comment.

COMMENT: The rules appear complete and effectively address the implementation of the Workforce Development Partnership Program. All those involved in the crafting of these proposed rules are to be complimented.

RESPONSE: The Department appreciates the comment.

Summary of Agency-Initiated Changes:

Proposed N.J.A.C. 12:23-5.1(a)4 has been clarified. The rule, as proposed, provides that no additional benefits shall be paid after December 31, 1977 (see comment regarding the typographical correction pertaining to the date). As such, the rule could be interpreted to mean that no further unemployment benefits would be paid after that date. However, the legislation creating the Workforce Development Partnership Program precludes the discontinuation of benefits in midstream (see P.L. 1992, Chapter 47, section 8). To conform to the legislative mandate and to clarify the Department's intent, the rule has been amended to provide that no new claims for additional benefits may be filed after the specified 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]*):

SUBCHAPTER 5. ADDITIONAL UNEMPLOYMENT BENEFITS DURING TRAINING

12:23-5.1 Eligiblity requirements

(a) An individual will be eligible for additional unemployment benefits during training only if the individual:

1. Has exhausted all entitlement to unemployment insurance compensation and any State or Federally funded extension;

2. Is permanently separated from employment and is unlikely to return to such employment due to a substantial reduction in work opportunities in the individual's job classification at his or her former worksite;

3. Was entitled to not less than 26 times the weekly benefit amount on the most recent new claim for unemployment compensation filed in accordance with N.J.S.A. 43:21-1 et seq.;

4. Was eligible or potentially eligible for unemployment insurance benefits on or after July 7, 1992. No ***new claims for*** additional benefits shall be *[paid]* ***filed*** pursuant to this subchapter after December 31, *[1977]* ***1997***;

5. Meets the criteria listed in N.J.S.A. 43:21-4(c)(4)(A) and (B), as amended by P.L. 1992 c.46, and complies with the requirements set forth at N.J.A.C. 12:23-4 for approved training; and

6. Is in a full-time training program which has been approved by the Department of Labor through an employability development plan.

(b) No additional benefits shall be paid pursuant to the provisions of this subchapter for any week during which the individual receives training allowances or stipends pursuant to the provisions of any Federal law or any other state law. As used in this subchapter, "training allowances or stipends" means discretionary, cash-in-hand payments available to the individual to be used as the individual sees fit, but does not mean direct or indirect compensation for training costs, such as the costs of tuition, books and supplies.

12:23-5.2 Claims for additional unemployment benefits during training

(a) Initial claims for additional unemployment benefits during training may be dated no earlier than the Sunday of the calendar week in which the training commences.

(b) Weekly claims for additional benefits during training must be authorized by the Department based on a signed certification submitted to the Department by the training provider of the individual's active participation in the approved training program. Individuals who fail to comply with this section may be denied additional unemployment benefits.

12:23-5.3 Work search waiver

An individual receiving additional unemployment benefits during training must meet the requirements of N.J.S.A. 43:21-4(c), with the exception that the individual does not have to actively seek work.

12:23-5.4 Refusal of suitable work

An individual who refuses an offer of work because of attendance at training while receiving additional unemployment benefits shall not be disqualified under N.J.S.A. 43:21-5(c).

12:23-5.5 Intent to enter training

(a) An individual filing a new initial unemployment claim must notify the Department of his or her intention to enter the Workforce Development Partnership Program not later than 60 days after the date of the individual's permanent separation from employment or not later than 30 days after the Department provides notice to the individual of the benefits and services available under the WDP Program, whichever is later.

(b) For purposes of this section, intention to enter the Workforce Development Partnership Program (WDP) means that the individual agrees to enter WDP counseling within the time limitations set forth in (a) above, whether or not the counseling occurs within these time limitations, and upon receiving counseling agrees to enter the training program identified in the Employability Development Plan. Individuals who agree to enter counseling within the stated time limits but choose not to pursue the identified training will not be granted an extension of those time limits.

12:23-5.6 Certification of attendance by training service providers

A claimant will not be eligible for additional unemployment benefits unless the training service provider certifies to the Department that the claimant's attendance and progress has been satisfactory.

12:23-5.7 Out-of-State training

An individual who is attending a vocational training program provided by a facility located outside the State of New Jersey is not eligible for additional benefits during training.

12:23-5.8 Claim options

An individual in an approved training program who has reached the benefit year ending date and who has sufficient earnings and employment for a new claim for benefits will have an option to file a new claim for benefits or continue receiving additional unemployment benefits during training.

12:23-5.9 Overpayments

Overpayments of additional unemployment benefits during training improperly paid due to false or fraudulent representations shall be recovered by the Department in accordance with N.J.S.A. 43:21-16.

12:23-5.10 Appeals

Denials of claims for additional unemployment benefits during training may be appealed in accordance with N.J.S.A. 43:21-6 and N.J.A.C. 12:20.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Special Registration Plates for Non-Profit Organizations

Adopted Amendments: N.J.A.C. 13:20-39.1, 39.2, 39.3, 39.5 and 39.9

Proposed: January 18, 1994 at 26 N.J.R. 331(a).
Adopted: March 2, 1994 by Stratton C. Lee, Jr., Director, Division of Motor Vehicles.
Filed: March 10, 1994 as R.1994 d.175, **without change.**

Authority: N.J.S.A. 39:2-3 and 39:3-27.39.

Effective Date: April 4, 1994.
Expiration Date: December 13, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:20-39.1 Purpose

(a) N.J.S.A. 39:3-27.35 et seq. provides for the issuance of special motor vehicle registration plates to members of non-profit community, alumni or service organizations in this State which have been approved by the Director. This subchapter establishes the following:

1.-8. (No change.)

13:20-39.2 Definitions

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

. . .

"Organization" means any non-profit association, group or organization with a membership in good standing of at least 500 persons or, in the case of a service organization, with a membership in good standing of at least 175 persons, which qualifies as a non-profit organization.

. . .

13:20-39.3 Qualifications for organization approval; final decision; right to suspend approval

(a) An organization seeking approval from the Division pursuant to this subchapter to have special motor vehicle registration plates

prepared for its members in good standing who wish to apply for them shall:

1. (No change.)

2. Be composed of an active membership in good standing of at least 500 persons or, in the case of a service organization, an active membership in good standing of at least 175 persons;

3.-4. (No change.)

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

13:20-39.5 Certification of memberships

(a) Upon seeking approval to have special plates prepared for its members who wish to apply for same pursuant to this subchapter, an organization shall submit to the Division a list of the legal names, addresses and current New Jersey registration plate numbers of its 500 or more members in good standing or, in the case of a service organization, of its 175 or more members in good standing, in alphabetical order by surname, who will be requesting the special motor vehicle registration plates if the Division approves the issuance of such plates.

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

13:20-39.9 Fees; plate ordering; authenticity of membership

(a) (No change.)

(b) The initial order for special motor vehicle registration plates submitted to the Division by an approved organization on behalf of its members applying for such plates pursuant to this subchapter shall be for no less than 500 members of the organization in good standing or, in the case of a service organization, for no less than 175 members of the organization in good standing. The initial order shall be accompanied by a non-refundable fee representing the total cost of the initial order, which shall be determined by multiplying the number of sets of plates being ordered by the applicable fee for each set of such plates set forth in (a) above.

(c)-(f) (No change.)

(g) Upon receipt of the special motor vehicle registration plates and replacement certificate of registration by an organization member, that member must surrender his or her replaced license plates within 10 days to the Division at any motor vehicle agency or State operated motor vehicle inspection station or by mail to:

Division of Motor Vehicles
CN 403
Trenton, New Jersey 08666-0403

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ARCHITECTS

Scope of Architectural Services

Adopted New Rule: N.J.A.C. 13:27-3.1

Proposed: December 6, 1993 at 25 N.J.R. 5439(a).
Adopted: January 13, 1994 by the Board of Architects, Charles Spitz, President.
Filed: March 4, 1994 as R.1994 d.169, **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. 45:1-3.2 and 45:3-3 and 7.

Effective Date: April 4, 1994.
Expiration Date: February 20, 1995.

The Board of Architects afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:27-3.1, relating to scope of architectural services (design rule).

The official comment period ended on January 5, 1994.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on December 6, 1993 at 25 N.J.R. 5439(a). Announcements were also forwarded to The Star Ledger, The Trenton Times, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Architects, Kevin Earle, Executive Director, 124 Halsey St., Newark, NJ 07101.

Summary of Public Comments and Agency Responses:

During the 30 day comment period, the Board received seven written comments regarding the proposal. A list of the commenters follows:

Katharine E. Shuler, Executive Director, AIA New Jersey
Martin Santini, President, Ecoplan
Arthur Lewis Davis
Robert K. Houseal
Joseph Riggs, President, New Jersey Builders Association
Jerrold M. Sonet
Diane Gote, President, New Jersey Coalition for Interior Design Legislation

Following is a summary of the comments received together with the Board's responses:

COMMENT: Two respondents—the President of Ecoplan, Martin Santini, and the President of the New Jersey Builders Association, Joseph Riggs—wrote to express their support of the proposal because there are too many people out in the marketplace providing design services for more than one- and two-family residences, via advertisements of all kinds, and because the proposal will resolve past concerns regarding non-architects offering the public services misrepresented as architectural services.

RESPONSE: The Board appreciates the respondents' support of this rule.

COMMENT: Writing on behalf of the New Jersey Coalition for Interior Design Legislation (NJCIDL), President Diane Gote stated that the proposal's Social Impact statement should have mentioned that this rule will eliminate interior designers offering services for which they have been educated and trained, and that the Economic Impact statement should have mentioned that this rule will have an adverse impact on the ability of interior designers to earn a living.

RESPONSE: The Board believes this comment to be in error. There is no intent to eliminate proper interior design service providers from the marketplace. Rather, the rule defines and establishes standards for both Board licensees and design service providers that reflect when the practice of architecture will be deemed to exist, thus requiring particular work to be performed by a licensed architect. Accordingly, clarity to guide both licensee and non-licensee conduct is provided.

COMMENT: One respondent suggested that paragraph (a)2 be amended to expand the reference to "any dissemination" to include "any communication presenting architectural services" because contractors and home improvement builders also distribute cards and talk about their services.

RESPONSE: The Board accepts the intent of the respondent's suggestion as confirming the Board's intent, and as such has made changes so that the opening of paragraph (a)2 now reads: "'Advertisement' means any [dissemination] **communication** to the public [by means of] **including, but not limited to,** newspaper, periodical, journal, flyer, radio" and so forth.

COMMENT: One respondent wrote to object to paragraph (a)5 because the proposed definition of "design services" is vague, whereas the restrictive limits of permitted "design services" must be "crystal clear" to all parties concerned so as not to exacerbate the now widespread common practice of builders, designers, and others preparing construction documents for homeowners who, in turn, falsely swear such drawings were prepared by themselves.

RESPONSE: The Board considers the definitional language of paragraph (a)5 to be sufficiently clear.

Furthermore, while the respondent characterized the definitional language of paragraph (a)5 as ambiguous and cloudy, he offered no substitute language. He has also misperceived the primary purposes of the regulation, namely to define permissible advertising practices by non-licensees (for example, interior space planners, registered builders and home repair contractors) as well as to define activity by such non-licensees that will not be deemed to be the unlicensed practice of architecture.

COMMENT: Writing as General Counsel to the American Society of Interior Designers, Inc. (ASID), Jerrold M. Sonet wrote to state that the law firm of Levy, Sonet and Siegel has "grave difficulty" understanding the basis upon which the Board could legally justify promulgation of either paragraph (a)5 or subsection (g) of the proposed rule.

In particular, Mr. Sonet contended that chapter 3 and chapter 4B of Title 45 do not permit the Board either to redefine the practice of architecture or building design, or to attempt to regulate, however indirectly, other design occupations including, but not limited to, interior design. Mr. Sonet stated that any expansion, limitation or other change

in the definition or practice of architecture, or of the scope of services falling within either architecture or building design, requires the approval of the Legislature.

In Mr. Sonet's legal opinion, paragraph (a)5 constitutes an unwarranted extension of the definition and practice of architecture; subsection (g) transgresses the Legislature's powers in that it attempts to define and limit the type of services that can be rendered by other design disciplines, specifically interior design and space planning. Mr. Sonet stated that neither paragraph (a)5 or subsection (g) is requisite to carrying out the proposal's avowed purpose and that the proposal could be adopted without them.

RESPONSE: The Board does not agree that it contravenes any statutory provisions. The proposed rule articulates the Board's definition of its own enabling Act. The rule does not attempt to redefine the practice of architecture (or indeed the practice of interior design) but rather merely states what acts and practices constitute appropriate interior design services, in contrast with acts that must be reserved to licensed architects.

With regard to the suggested deletion of paragraph (a)5 and subsection (g), the Board notes that such definition of interior designers is intended to guide the provider of those services with standards to which their conduct should conform. To delete those standards would cause confusion and remove certainty regarding the appropriate standards for providing interior design services.

COMMENT: One respondent suggested that subsection (d) be amended to insert the word "only" at the beginning of the subsection.

RESPONSE: The Board rejects the respondent's suggestion as unnecessary and because it would erroneously imply that architects cannot provide design services.

COMMENT: One respondent suggested that subsection (e) be amended as follows: "An advertisement for design services by a builder or home improvement contractor pursuant to (d) above shall [not in any way be limited except as set forth in (f) below, and may] contain **only** the following **design services related** term[s or their substantial equivalent]: 1. **Concept drawings and costs for owner-occupant one or two family detached home.**" According to this suggestion, proposed paragraphs (e)1 through 6 would be eliminated.

RESPONSE: The Board regards the respondent's suggested amendments as too vague and ambiguous to clarify any of the concepts advanced. The terms "concept drawings" and "costs" as substitutes for the six more generalized terms to describe the design services contemplated by P.L. 1993, c.35 are, in the Board's view, unduly restrictive as to the rights of both advertisers of design services and consumers. A broader class of permissible technology will also avoid disputes as to what terms are lawful, especially in view of the fact that the "substantial equivalents" of the stated term may also be utilized. It should also be noted that "design services" as defined in paragraph (a)5 explicitly encompasses "conceptual drawings" of prescribed areas and price quotations and, as such, the definition already encompasses terminology advanced by the commenter.

COMMENT: Writing on behalf of the American Institute of Architects (AIA) New Jersey Legislative Committee, Executive Director Katharine E. Shuler requested that paragraph (e)1 be eliminated in order to avoid the confusion that might arise should licensees interpret "construction design services" to mean the preparation of construction documents.

RESPONSE: The Board does not believe that the respondent's suggested elimination of paragraph (e)1 clarifies any of the standards sought by the Board. The Board believes the permissible advertising term "construction design services" is an accurate, truthful and non-deceptive statement of those services contemplated by P.L. 1993, c.35, which permits registered builders and home improvement contractors to render certain design services in relation to one or two-family homes. Furthermore, the Board finds no likelihood of confusion by use of this term in view of the explicit prohibition against builders and home improvement contractors advertising or preparing construction documents as set forth in subsection (f).

COMMENT: Two respondents, including Katharine E. Shuler, requested that paragraphs (e)4 and 5 be respectively amended to read "design and construction" and "design and construction services" in order to eliminate the connection between design and construction implied by the term "design/build."

RESPONSE: The Board does not believe the respondents' suggested amendments clarify any of the standards sought by the Board.

The Board believes the terms "design/build" and "design/build services" are accurate, truthful and non-deceptive statements of those services contemplated by P.L. 1993, c.35, which permits registered builders and home improvement contractors to render certain design services in relation to one and two-family homes. Furthermore, the Board does not believe that the suggested substitutionary language of "design and construction" and "design and construction services" eliminates any impermissible or improper conduct, nor would such terms add clarity to the proposed standard.

COMMENT: Katharine E. Shuler requested that paragraph (e)6 be eliminated because the term "design services" implies more than just the residential services allowed by the law.

RESPONSE: The Board does not believe that the respondent's suggested elimination of subparagraph (e)6 clarifies any of the standards sought by the Board. The Board believes the term "building design services" is an accurate, truthful and non-deceptive statement of those services contemplated by P.L. 1993, c.35, which permits registered builders and home improvement contractors to render certain design services in relation to one and two-family homes. Furthermore, the term is virtually identical to that used in the statute. Again, the limited range of buildings to which the advertised services will apply, one and two-family residences, are plainly set forth both within the rule and the enabling statute.

COMMENT: One respondent suggested that subsection (f) be amended as follows: "Builders and home improvement contractors shall not advertise, offer, or perform **any 'architectural services' beyond design allowed under "**design services,**" including but not limited to,** [that involve] the preparation of construction documents, [which consist of, but are not limited to, the following: those] drawings or specifications necessary to support an application for building or other construction permits."

RESPONSE: The Board does not believe that the respondent's suggested amendments clarify any of the concepts advanced. The prohibition contained in subsection (f) simply implements the statutory limitation that builders and home-improvement contractors may offer "design services" up until the point where a construction permit is required. The Board has construed that point, at a minimum, to be the preparation of construction documents including, but not limited to, drawings and specifications necessary to support building permit applications. By prohibiting the advertising, offering or performing of such services, the standard is clear and unambiguous. The suggested substitute language referencing "architectural services," a term used in the general prohibition against unlicensed individuals advertising such services, directs the reader away from the specific subject of subsection (f) (lawful activity of home builders and home-repair contractors) into another, unrelated subject area. Such language is, therefore, so lacking in precision as to create ambiguity.

COMMENT: Katharine E. Shuler requested, without explanation, that paragraph (g)2 be amended to read: "Do not affect egress and life safety or involve any alteration or modifications of the building's existing or proposed structure, seismic integrity, or partitions, or its electrical, mechanical, HVAC or plumbing systems."

RESPONSE: The Board believes that paragraph (g)2 already implicitly addresses concerns regarding egress and life safety. However, in order to provide further definition and clarification, the Board has agreed to changes to paragraph (g)2 so that it reads: "Do not **affect the means of egress and life safety of the building; nor** involve any alteration or modifications of the building's existing or proposed structure, seismic integrity, or partitions **that affect the means of egress and life safety**, or its electrical, mechanical, HVAC or plumbing systems." It should be noted that egress is defined pursuant to the New Jersey Building Code.

COMMENT: One respondent wrote to question the intent of paragraph (g)2. The respondent asked if there is a conflict, since permitted interior design services must include partitions. Furthermore, the respondent asked if "partitions" should be restricted to non-load-bearing partitions.

RESPONSE: The change incorporated into paragraph (g)2 upon adoption relieves the appearance of a conflict by clarifying that partitions pertain specifically to partitions that affect the means of egress and life safety.

COMMENT: NJCIDL President Diane Gote suggested that paragraph (g)2 be amended as follows: "Do not involve any alteration in or modification of the building's existing or proposed **load-bearing** structure, seismic integrity, [or partitions,] or its electrical, mechanical, HVAC or plumbing systems **in accordance with applicable laws, codes, regulations and standards.**" Ms. Gote stated that the use of the term "parti-

tion" is ambiguous and unnecessary, and noted that interior designers within the scope of their space-planning work regularly utilize non-load-bearing partitions.

RESPONSE: The technical changes made to paragraph (g)2 as outlined above clarify issues raised by the respondent's suggestion to insert the qualification "load-bearing" structure while eliminating the term "partition." The technical changes agreed to by the Board clarify that interior designers are allowed to utilize partitions that do not effect the means of egress and life safety.

The respondent's suggested insertion of the phrase, "in accordance with applicable laws, codes, regulations and standards" is already addressed in paragraph (g)4. Together, paragraph (g)4 and the changed paragraph (g)2 clarify that interior designers are allowed to utilize partitions that do not affect the means of egress and life safety so long as their interior design services do not involve the production of construction documents necessary to support an application for a building or other construction permit.

Summary of Agency-Initiated Changes:

In adopting new rule N.J.A.C. 13:27-3.1 on January 13, 1994, the Board of Architects noted that this proposal included two typographical errors as originally published in the New Jersey Register on Monday, December 6, 1993 at 25 N.J.R. 5439(a).

The opening of subsection (d) should include the word "pursuant" and as such should read: "A builder registered **pursuant** to the "New Home Warranty and Builder's Registration Act. . . ."

In subsection (g), the word "subsequent" should instead be "substantial." In addition, the Board would like to insert the word "interior" before the reference to "design services" so as to clarify the nature of those services and differentiate them from the design services references elsewhere in the new rule. Thus subsection (g) should read as follows: "It shall be permissible for a person not authorized to render architectural services to utilize the terms "space planning," "interior design," "interior design services" or the **substantial** [subsequent] equivalent thereof provided that the **interior** design services advertised, offered or performed:" (with paragraph (g)1 through 4 as proposed).

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

SUBCHAPTER 3. SCOPE OF ARCHITECTURAL SERVICES

13:27-3.1 Scope of architectural services

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

1. "Person" means any individual, or any business association or entity.

2. "Advertisement" means any *[dissemination]* ***communication*** to the public *[by means of]* ***including, but not limited to,*** newspaper, periodical, journal, flyer, radio, telephonic or television communication in which architectural services are offered or by which the availability of architectural services is made known.

3. "Advertiser" means a person offering architectural services in the State of New Jersey by way of an advertisement.

4. "Architectural services" means services in connection with the design, construction, enlargement, or alteration of a building or a group of buildings and the space within or surrounding those buildings, which have as their principal purpose human use or habitation. These services include site planning, providing preliminary studies, architectural designs, drawings, specifications, other technical documentation, and administration of construction for the purpose of determining compliance with drawings and specifications.

5. "Design services" means conceptual drawings or sketches of floor plans or elevations, the rendering of price quotations or estimates, all of which may be necessary to develop the scope, character and potential cost of a one- to two-family, detached home or improvement thereto.

(b) No person, except an architect licensed in the State of New Jersey, shall use the title "architect" or its substantial equivalent or otherwise represent to the public that the person is licensed to practice architecture in this State.

(c) No advertisement shall include the terms "architect," "architectural," "architect on staff," "architectural services," or the substantial equivalent thereof unless the advertiser is a business association authorized to render architectural services pursuant to N.J.S.A. 45:3-17. Specifically, such services shall only be rendered by:

1. A sole proprietorship of a licensed architect;
2. A partnership of licensed architects;
3. A partnership of closely allied professionals, including at least one licensed architect;
4. A professional service corporation established pursuant to the "Professional Service Corporation Act" (N.J.S.A. 14A:17-1 et seq.); or
5. A general business corporation holding a certificate of authorization from the Board of Architects issued pursuant to the "Building Design Services Act" (N.J.S.A. 45:4B-1 et seq.).

(d) A builder registered ***pursuant*** to the "New Home Warranty and Builder's Registration Act" (N.J.S.A. 46:3B-1 et seq.) or a home improvement contractor may advertise, offer or perform "design services" either in the construction of one- to two-family homes or in connection with the demolition, enlargement or alteration thereto. A builder or home improvement contractor shall render such services only to the owner-occupant of such dwellings.

(e) An advertisement for design services by a builder or home improvement contractor pursuant to (d) above shall not in any way be limited except as set forth in (f) below, and may contain the following terms or their substantial equivalent:

1. Construction design services;
2. Design;
3. Design services;
4. Design/build;
5. Design/build services; and/or
6. Building design services.

(f) Builders and home improvement contractors shall not advertise, offer, or perform design services that involve the preparation of construction documents, which consist of, but are not limited to, those drawings or specifications necessary to support an application for building or other construction permits.

(g) It shall be permissible for a person not authorized to render architectural services to utilize the terms "space planning," "interior design," "interior design services" or the *[subsequent]* ***substantial*** equivalent thereof provided that the ***interior*** design services advertised, offered or performed:

1. Are limited to the function of the interior space within an existing or proposed building;
2. Do not ***affect the means of egress and life safety of the building; nor*** involve any alteration or modifications of the building's existing or proposed structure, seismic integrity, or partitions ***that affect the means of egress and life safety***, or its electrical, mechanical, HVAC or plumbing systems;
3. Do not require or involve the skill, training or expertise of a licensed architect; and
4. Do not include the production of construction documents, which consist of, but are not limited to, those drawings or specifications necessary to support an application for a building or other construction permit.

(h) Nothing in this section shall prohibit any person or entity authorized by law to render professional engineering services from utilizing the terms set forth in (e) above in connection with the advertising of professional engineering services.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Certified Nurse Midwife Practice: Prescriptive Authority

Adopted Amendments: N.J.A.C. 13:35-2A.9 and 6.13
Adopted New Rule: N.J.A.C. 13:35-2A.11

Proposed: October 4, 1993 at 25 N.J.R. 4583(a).
Adopted: February 23, 1994 by the Board of Medical Examiners, Fred M. Jacobs, M.D., President.
Filed: March 4, 1994 as R.1994 d.170, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2 and 45:10-22.

Effective Date: April 4, 1994.
Expiration Date: September 21, 1994.

The State Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendments and new rules concerning certified nurse midwife ("CNM") prescriptive practice authorization, as proposed in the New Jersey Register on October 4, 1993 at 25 N.J.R. 4583(a). The official comment period ended on November 3, 1993. Announcements of the opportunity to respond to the Board were also forwarded to the Star Ledger, the Trenton Times, the Medical Society of New Jersey, the Department of Health, and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Medical Examiners, 140 East Front Street, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

During the 30 day comment period, the Board received 94 comment letters, 88 of which were form letters. The 88 form letters were submitted by CNMs, registered nurses, student nurse-midwives, physicians and other individuals who did not identify their professions or positions. The form letters requested the changes summarized in Comments 1 and 2 below. The list of commenters follows:

Julie O'Sullivan Maillet, Ph.D., R.D., Associate Dean for Academic Affairs and Research, UMDNJ School of Health Related Professions
Anita Leon, Executive Director, Family Planning Association of NJ
Andre Heltai, M.D., F.A.C.O.G., P.A. Diplomate of the American Board of Obstetrics and Gynecology
Diane K. Erwin, C.N.M.
Bruce K. Routzahn, Jr., Manager, The Upjohn Co.
Laura Martin, C.N.M.
Gary R. Brickner, M.D., F.A.C.O.G., Lawrence Ob-Gyn Associates, P.A.
Stanley S. Bergen, Jr., M.D., President, UMDNJ
Frances Quinless, Ph.D., R.N., Dean and Professor, UMDNJ School of Nursing
Joseph N. Micale, M.D., President, Medical Society of NJ
Jerique Lozada
Ann Brito, R.N.B.S.
Maria Dotto
Charles Dotto
Leanne Miccio, R.N.
Collen Cook
Jo Anne Healey
Sherrill Glass
Anita Marcucci
Holly Sando
Teresa P. Dall
Daniel E. Myers
Jacqueline K. Benher
Melissa Merkly
Anita Smith
Roberta Laskowski, R.N.C., S.N.M.
Linda Steinhardt, C.N.M.
Mary Ellen Green, R.N., B.S.N.
Connie McRae
Ovelida Clemons
Karen Brennan
Mary-Jo Foster, R.N.
Jean Weed
Brenda Berry
Jessica Cylue
Trudy Myers
Keely Curtisine, Helene Fuld Medical Center
Jean D. Stout, R.N., Helene Fuld Medical Center
Leeann Hill, MSRD, Healthstart, Helene Fuld Medical Center
Viola K. Berkingheisen, C.N.M., Healthstart Ob-Gyn, Helene Fuld Medical Center
Elizabeth Gerasin, R.N.
Grace I. Muellien
Neeley Smith
Frosty Roman, C.N.M.
Patricia Vagnoni
Susan Sheaffer, R.N.
Parimal S. Bhayani, M.D.
Diane H. Reynolds, C.N.M.
Tamara L. Lkatschenko, R.N.
Judith Ford, R.N., B.S.N.
Judith T. Katz, C.N.M.
Gordon O. Danser
Kathleen Can Mahmoud
Ronald P. Portadin, M.D., F.A.C.O.G., Vineland Obstetrical and Gynecological Professional Association
Nancy Felt
Ray Mantell, D.O.
Donna Mangione, C.N.M.
Michael Mangione
Helen Mangione
Frederick S. Marenick
Elizabeth Mullen, C.N.M.
Peter S. Pyatak, M.D.
Elinor Buchbinder, C.N.M.
Anne Arnold
James B. Slade
Mary R. Pinto
Sheila Slade
Howard Slade
Barbara LaBric, C.N.M.
Judith Catenacci, C.N.M.
Donna Roosa, C.N.M.
M. Maresca, M.D.
William Kaufman, D.O.
Troy Hailparn, M.D.
Dawn R. Woods
Mary Ellen P. Slade, C.N.M.
Linda Hamlin, C.N.M.
Susan Stein
A. Hahn, M.D.
Mamie S. Bowers, M.D.
Wendy Marchesi, C.N.M.
Theresa A. Wisner, R.N., Health Educator, OB Clinic Newcomb Medical Center
Jennifer Frantin
Barbara Martin, C.N.M.
Jayne Barry
Lisa W. Misuta
Thomas O. Russo, M.D.
Mary Ann Friscellal
Kate Simon, C.N.M.
Karen Criss, Morristown Memorial Hospital
Richard Green, Green Dragon Studios
Christine T. Danser, C.N.M.
Vivian B. Newman
Laura Lewis
K. Pred, R.N., Planned Parenthood of Passaic County, Inc.
Mary E. Sessa, R.N., Director of Clinical Services, Planned Parenthood of Passaic County, Inc.
Dorothy Stansfield-Panzera, C.N.M.
Scott E. Eder, M.D., Del Val Ob/Gyn and Infertility Group, P.C.
Elsie E. Hassan, C.N.M., J.D., President, NJ Chapter, A.C.N.M.
M. Michelle Santangelo, C.N.M.

Diane M. James
Shary Rake
Merry L. Olrich
Wanda Fox, MSW, OGNP
Ethel Powell
Eugene Frienz
Theresa Rispoli-Mettberg, C.N.M.
Carolyn Greene, C.N.M.
Donna Lilla, R.N., Nurse Manager, Ob Clinic, Newcomb Medical Center
Gretchen K. Vien
Gwenne R. Baile, C.N.M.
Carolyn De Lucia, M.D.
Pamela E. Rosser, G.N.M.
Maryann H. Long, C.N.M., MPH
Dorothy Wolfe, C.N.M.
Gertrude Strunk, C.N.M.
Joseph J. Riley, D.O.
Marla Scott, C.N.M.
Myrtle E. Hosford, C.N.M.
Judith A. Riley, C.N.M.
Marie McDonald, C.N.M.
David J. Schwartz, M.D., FACOG, Vineland Obstetrical and Gynecological Professional Association
Martin O. Eitel, C.N.M.
Michele Torchia, M.D., FACOG, Vineland Obstetrical and Gynecological Professional Association
Carolyn R. Wood

1. COMMENT: In N.J.A.C. 13:35-2A.11(f)2, "supervising physician" should be changed to "affiliated physician," the term used throughout subchapter 2A, so that there is consistency in phrase usage for purposes of rule interpretation. Frances Quinless, Ph.D., R.N., Dean and Professor at UMDNJ School of Nursing, and Stanley S. Bergen, Jr., M.D., President of UMDNJ, suggested changing "supervising physician" to "collaborating physician."

RESPONSE: While the Board initially intended to reemphasize the oversight responsibilities of the affiliated physician by use of the term "supervising physician," it now believes that the identification should be uniform throughout the regulations that deal with CNMs and that identification should be "affiliated physician." The Board believes that the supervisory obligations of the affiliated physician are clearly stated in the regulations.

2. COMMENT: The need to publish each change to the formulary should be eliminated to enable CNMs to maintain current practice without the delay occasioned by the administrative process. Dean Quinless supports publication of the formulary. Dr. Bergen expresses the hope that by publishing the formulary it will not become necessary to go through the same legislative process with each addition to the formulary.

RESPONSE: The Board recognizes that the addition of individual drugs to the formulary could potentially inhibit the practice of certified nurse midwives if the addition of each drug was required to proceed through the administrative process. However, the formulary does not list individual drugs but instead lists categories of drugs that are permitted to be prescribed by CNMs. The Board anticipates that the addition of a new category of drug would occur relatively infrequently and therefore the addition of a category through the administrative process should not be overly burdensome. The Board recommends no change in this section of the regulation.

3. COMMENT: Diane Erwin, CNM, noted that the title of the regulation as published in the New Jersey Register is "Certified Midwife Practice: Prescriptive Authority." Because "Certified Midwife" and "Certified Nurse Midwife" are not synonymous, the title should be corrected.

RESPONSE: The Board intended that prescriptive authority be granted to certified nurse midwives, as the proposal Summary makes clear. The proposal title was an inadvertent error.

4. COMMENT: The Medical Society of New Jersey stated that the grounds for revoking or limiting a CMN's prescriptive authority should be extended to include unsatisfactory prescribing practices.

RESPONSE: The Uniform Enforcement Act, N.J.S.A. 45:1-13, gives the Board the authority to take an action based on inappropriate prescribing practices. There is no need to identify this authority with particular regard to CNMs when it applies to all licensees of the Board who may prescribe.

5. COMMENT: The Medical Society of New Jersey suggested that the Board reassess the CNM's role in utilizing certain medications, such as intravenous administration of barbiturates, antibiotics and oxytocics.

RESPONSE: The Certified Nurse Midwife Liaison Committee and the Board have studied the role of CNMs and feel that the oversight requirements included in the CNM regulations are sufficiently protective of the public.

6. COMMENT: The Upjohn Company asked that the Board consider adding "intramuscular injection for contraception" to the formulary.

RESPONSE: The Board believes that, under contraceptive, "oral" should be removed and "hormonal" should be added. Since "hormones" is already a category in the formulary, its placement under contraceptive is simply a clarification.

7. COMMENT: Andre Heltai, M.D. wrote a letter offering support for the proposal.

RESPONSE: The Board acknowledges and appreciates Dr. Heltai's support.

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

13:35-2A.9 Certified Nurse Midwife Liaison Committee

(a) (No change.)

(b) Functions of the Committee shall include, but are not limited to, the following:

1. Advising and assisting the Board in the evaluation of applicants for certified nurse-midwifery registration and applicants for prescriptive authorization, investigation of unlawful conduct and approval of professional training programs;

2.-4. (No change.)

13:35-2A.11 Prescriptive authorization

(a) A CNM who is currently registered with the Board of Medical Examiners may apply for authorization to prescribe drugs (as used within this section, the term "drugs" shall include drugs, medicine and devices). The CNM shall make application on forms prescribed by the Board and shall demonstrate:

1. Current registration with the Board;

2. A.C.N.M. or A.C.C. certification in good standing; and

3. Evidence of satisfactory completion of a minimum of 30 contact hours (as defined by the National Task Force on the Continuing Education Unit) in pharmacology or a pharmacology course in an accredited institution of higher education approved by the Department of Higher Education or acceptable to the Board (hereinafter, "qualifying education"). Qualifying education must have been obtained within the two years immediately preceding the date on which application is made, except that, for any application made within 90 days from the effective date of this section, qualifying education completed on or after April 1, 1989 shall be acceptable.

(b) Prescriptive authorization obtained pursuant to (a) above shall be valid for a period of two years. In order to renew prescriptive authorization, a CNM shall make application for renewal on forms prescribed by the Board and shall demonstrate:

1. Current registration with the Board;

2. A.C.N.M. or A.C.C. certification in good standing; and

3. Evidence of the satisfactory completion of seven contact hours (as defined by the National Task Force on the Continuing Education Unit) of continuing education, or equivalent education, in pharmacology and drug management (hereinafter "continuing education"). Continuing education must have been obtained within the two-year period immediately preceding the date of the renewal application.

(c) The Board has established a formulary of drugs which may be ordered, administered, prescribed or dispensed by CNMs who have prescriptive authorization. The formulary shall be reviewed, amended if deemed necessary, and published periodically. The formulary consists of:

Analgesics (IV**, IM**, PO**)
  Narcotics**
  Non-narcotic
Anesthetics
  Injectable (Local/Pudendal)

Topical
Antacids
Antihelmintics (Topical)
Antibacterials (IV**, IM, PO, Topical)
Antiseptics (IV**, IM, PO, Topical)
Antibiotics (IV**, IM, PO, Topical)
Antihistamines
Antivirals
Anti-Emetics
Barbituates (IV**, IM**, PO**)
Contraceptives *[Oral]* ***hormonal***
Devices
Topical
Barriers
Cough and Cold Preparations
Non-narcotic
Fungicides (Topical)
Hematinics
Hemorrhoidal Preparations
Hormones
Laxatives
Mineral Supplements
Oxytocics (IVII, IM, PO, Topical)
Parenteral Fluids**
Pre-Eclamptic Drugs**
Prostaglandin Gels**
RH—Immune Globulin
Stool Softeners
Tocolytics-Parenteral** (PO)
Topical
Moisturizers
Cleansers
Therapeutic Shampoo/lotion/cream
Steroids
Vaccines
Vaginal Preparations
Vitamins

**Administered in Licensed Health Care Facilities only.

(d) A CNM who is authorized to prescribe drugs may prescribe only those drugs which are specified within the formulary of drugs established by the Board. In no case may the written agreement with a licensed physician that CNM is required to maintain pursuant to N.J.A.C. 13:35-2A.3 include any substance or device not specified within the formulary.

(e) A CNM's authorization to prescribe drugs, medicine, or devices may, upon notice and an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., be revoked or otherwise limited by the Board if the CNM:

1. Fails to maintain current licensure and registration with the Board;

2. Fails to maintain A.C.N.M. or A.C.C. certification in good standing;

3. Uses prescriptive authorization for other than therapeutic purposes;

4. Uses prescriptive authorization to prescribe substances or devices not included within the formulary of drugs established by the Board; or

5. Uses prescriptive authorization to prescribe substances or devices not specified within any written agreement maintained pursuant to N.J.A.C. 13:35-2A.3 or for purposes not intended within any written agreement.

(f) A CNM shall provide the following on all prescription blanks:

1. The CNM's full name, identification of professional practice, license number, prescriptive authorization number, address and telephone number. This information shall be printed or stamped on all prescription blanks;

2. The *[supervising]* ***affiliated*** physician's full name, printed or stamped;

3. The full name, age and address of the patient;

4. The date of the issuance of the prescription;

5. The name, strength and quantity of drug or drugs to be dispensed and route of administration;

6. Adequate instruction for the patient. A direction of "p.r.n." or "as directed" alone shall be deemed an insufficient direction;

7. The number of refills permitted or time limit for refills, or both;

8. The signature of the prescriber, hand-written; and

9. Every prescription blank shall be imprinted with the words "substitution permissible" and "do not substitute" and shall contain space for the CNM's initials next to the chosen option, in addition to the space required for the signature in (f)8 above.

13:35-6.13 Fee Schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1.-5. (No change.)

6. Certified Nurse Midwifery (registration)

i.-v. (No change.)

vi. Biennial prescriptive authorization 50.00

7.-10. (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MEDICAL EXAMINERS

Patient Record Rules
Permissible Charges for Copies
Adopted Amendment: N.J.A.C. 13:35-6.5

Proposed: November 1, 1993 at 25 N.J.R. 4862(a).
Adopted: January 12, 1994 by the Board of Medical Examiners, Fred Jacobs, M.D., J.D., President.
Filed: February 10, 1994 as R.1994 d.119, **without change.**

Authority: N.J.S.A. 45:9-2.

Effective Date: April 4, 1994.
Expiration Date: September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:35-6.5, relating to patient record rules.

The official comment period ended on December 1, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 1, 1993 at 25 N.J.R. 4862(a). Announcements were also forwarded to The Star Ledger, The Trenton Times, the Department of Health and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Charles A. Janousek, Executive Director, 140 E. Front St., 2nd Fl., Trenton, NJ 08608.

Summary of Public Comments and Agency Responses:

During the 30 day comment period, the Board received 18 written comments regarding the proposal. A list of the commenters follows:

E. Megariotis
William L. Klempner, North Jersey Neurosurgical Associates
Louis J. Spizziri
Dr. Cheryl A. Altieri
Bernard Robins, M.D., Secretary, Medical Society of New Jersey
Ronald Napiorski, Chief Financial Officer, UMDNJ
Robert Lane, Rehabilitation Supervisor, Motor Club of America Insurance Companies
S. James Nussbaum, Assistant Vice President, Claims Counsel, USAA
Stephen C. Vanna, M.D., Neurological Regional Associates
Nancy Bruner, ART, Vice President, Development, Smart Corporation
Ronald J. Cinotti, M.D., President, Hudson County Medical Society
Kenneth J. Ciarrocca, D.C.
J. Joseph Angval, D.C.
Teresa Schwartz, Controller, Fair Lawn Mental Health Center, Inc.
Linda M. Higgins, Assistant Secretary—Claims, Harleysville Insurance Companies
Linda L. Leach, Office Manager, Hospital Correspondence Corporation
Judy Perrone, CMA
Patricia Reyes, C.A.

Following is a summary of the comments received together with the Board's responses:

COMMENT: Four respondents objected to the entire proposal because the fees set by the regulations do not adequately reflect the copying, storage and labor costs involved in reproducing a patient's record.

RESPONSE: In the Board's view, the amounts set in this rule do capture the costs of reproducing a patient's record in the vast majority of instances where requests are made.

COMMENT: Three respondents felt that physicians should be able to charge patients based on the specific time that it takes and the actual full costs of copying a patient record, rather than a lump sum fee based on a specific per page rate.

RESPONSE: The Board chose to take essentially the same approach to this issue as did the New Jersey Department of Health because of the administrative ease of setting charges based on a specific per page rate. It should also be noted that this approach provides patients with the means of knowing what they will be expected to pay for the copying of their records.

COMMENT: Two respondents felt that it is inappropriate to charge for all copy work at the same rate because licensees should retain the discretion to charge a fair price based on special circumstances, including review of sensitive documents.

RESPONSE: There may be isolated instances where review may present special circumstances; overall, however, the Board believes that the allowable charges established by this rule will strike a reasonable balance between instances in which the time involved may be somewhat greater than normal and the many instances in which the time devoted to copying a patient's record will not prove to be excessive.

COMMENT: Four respondents felt that health care providers should be allowed to charge "appropriately" for additional information requested by insurance companies beyond that provided on Universal HCFA-1500 claim form. The respondents strongly felt that this leeway was necessary in order to discourage what they regard as excessive requests for documentation from the insurance industry.

RESPONSE: While the charge of excessive requests may or may not be true, it should be noted that this regulation does not affect the circumstances in which insurance companies request documentation. As to the creation of "leeway," the Board's response is that any attempt to establish guidelines regarding those instances when leeway may be exercised would be difficult and require elaboration that would leave health care providers more rather than less encumbered. The Board has made a good-faith effort to establish a fee that will avoid excessive charges while ensuring that licensees are adequately compensated for the copying of a patient's record.

COMMENT: Three respondents felt that the minimal charge of $10.00 for a short record of less than 10 pages is inadequate given the copying and labor costs that even a short patient record entails.

RESPONSE: The Board disagrees because it believes that this regulation creates fair fees and that the instances when this minimal charge might be deemed to be marginally inadequate will be offset by other, equally numerous instances when the minimal charge may marginally exceed the copying and labor costs involved in response to a given request.

COMMENT: One respondent felt that there should be no minimum charge of $10.00, since that standard could result in an unreasonable charge of $10.00 for a single page.

RESPONSE: The Board disagrees because it believes that this regulation creates fair fees and that the minimal charge is meant to protect the public and licensees alike from a preponderance of instances in which an unreasonable charge might otherwise result for the copying of short patient records.

COMMENT: Two respondents felt that the minimal charge for copying of a patient record of 10 pages or less should be $20.00 instead of $10.00.

RESPONSE: The Board disagrees because it believes that this regulation creates fair fees and that the minimal charge has been set at as low a figure as the Board considers reasonably adequate in order to ensure that licensees are adequately compensated for their copying and labor costs while simultaneously seeking to provide the public with a benefit priced so as to avoid hindering requests for the copying of short patient records.

COMMENT: Writing on behalf of the Medical Society of New Jersey, Secretary Bernard Robins expressed the opinion that the minimal charge for copying a patient record should be an allowed charge of $20.00 for all records of 20 pages or less.

RESPONSE: The Board disagrees because it believes that this regulation creates fair fees and that the establishing of the minimal fee as pertinent to requests for records of 10 pages or less, rather than 20 pages or less, creates a demarcation that the Board considers to be best suited for the purposes of this regulation.

COMMENT: One respondent wrote that a separate provision should be made for the difficult process of providing copies of records from microfilm.

RESPONSE: The Board does not believe that the need to provide copies of records from microfilm is a common experience. However, should that prove to be the case the Board may consider revising this rule at a future point in time.

COMMENT: One respondent felt that the fees charged should be identical to those charged by hospitals, that is, $1.00 per page for the first 100 pages and $.25 for each page thereafter, not to exceed $200.00, and that the collection of additional sums for record retrieval and postage and handling should be separately allowed.

RESPONSE: The costs of postage and handling were considered and factored into the amounts set by this rule. The Board believes that in most instances patient records maintained in a physician's office will only infrequently exceed 100 pages. Should the limit of $100.00 prove to be a problem, the Board may amend this rule at a future point in time.

COMMENT: One respondent felt that this proposal should be structured according to the copying fees established by the New Jersey Department of Health: no more than $1.00 per page or $100.00 per record for the first 100 pages; no more than $.25 per page for records in excess of 100 pages, up to a maximum of $200.00 for the entire record.

In addition to per page costs, the following charges are permitted: a search fee of no more than $10.00 per patient per request; where required by law, sales tax; a postage charge of actual costs for mailing, not to exceed $5.00. Additional copies shall be furnished at a fee based on actual costs, and in no case shall exceed $1.00 per page.

RESPONSE: The Board believes that there are too few patient records that exceed 100 pages in length to create provisions requested above. The Board also does not believe that the retrieval process in a physician's office is generally as difficult and time-consuming as that undertaken by hospitals and other, similar institutions. The Board does not understand the necessity of considering a sales tax among the factors implicated in establishing fair fees. The postage charge requested is already factored into the fees established by this rule. The idea of basing the fee for additional copies on actual costs is too difficult to handle administratively.

COMMENT: One respondent felt that the charge should not be at a rate of more than $.15 per page.

RESPONSE: The Board disagrees because it believes that this regulation creates fair fees and that the labor costs involved in locating, retrieving and copying a short patient record have been adequately addressed by establishing the minimal charge on which the Board has agreed.

COMMENT: One respondent felt that the charge should not be at a rate of more than $.50 per page.

RESPONSE: The Board disagrees because it believes that this regulation creates fair fees and that the minimal charge on which the Board has agreed reflects a good-faith effort to establish a fee structure that affirms the respondent's desire to avoid egregious pricing for the copying of short patient records.

COMMENT: Two respondents felt that copying costs related to patient records should be borne by the licensee or institution involved as an operational cost; such records should be provided at no costs, except where the insurance carrier is requesting documentation over and above the statutory requirement of the given insurance law.

RESPONSE: The Board disagrees because it believes that providing records at no cost is unfair given the time and expenses involved in fulfilling such requests.

COMMENT: One respondent felt that the fee charged should only reflect the cost of the production of the requested document.

RESPONSE: The Board disagrees because it believes that it would be far too difficult to arrive at judgments regarding fees that reflect the cost of the production of requested documents.

Full text of the adoption follows:

13:35-6.5 Preparation of patient records, computerized records, access to or release of information; confidentiality, transfer or disposal of records

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

(c) Licensees shall provide access to professional treatment records to a patient or an authorized representative in accordance with the following:

1. (No change.)

2. Unless otherwise required by law, a licensee may elect to provide a summary of the record in lieu of providing a photocopy of the actual record, so long as that summary adequately reflects the patient's history and treatment. A licensee may charge a reasonable fee for the preparation of a summary which has been provided in lieu of the actual record, which shall not exceed the cost allowed by (c)4 below for that specific record.

3. (No change.)

4. Licensees may require a record request to be in writing and may charge a fee for the reproduction of records, which shall be no greater than $1.00 per page or $100.00 for the entire record, whichever is less. (If the record requested is less than 10 pages, the licensee may charge up to $10.00 to cover postage and the miscellaneous costs associated with retrieval of the record.) If the licensee is electing to provide a summary in lieu of the actual record, the charge for the summary shall not exceed the cost that would be charged for the actual record.

5.-6. (No change.)

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

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF SOCIAL WORK EXAMINERS

State Board of Social Work Examiners Rules

Adopted New Rules: N.J.A.C. 13:44G-1 through 5, 7 and 8

Proposed: July 19, 1993 at 25 N.J.R. 3081(a).

Adopted: December 15, 1993 by the Board of Social Work Examiners, Joseph P. Bordo, President.

Filed: March 14, 1994 as R.1994 d.189, **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. 45:15BB-11(e).

Effective Date: April 4, 1994.

Expiration Date: January 4, 1998.

The Board of Social Work Examiners afforded all interested parties an opportunity to comment on the proposed new rules set forth at N.J.A.C. 13:44G-1 through 5, 7 and 8.

A notice of proposal appeared in the New Jersey Register on July 19, 1993 at 25 N.J.R. 3060(a), and copies of the published proposal were forwarded to the Star Ledger, the Trenton Times and other interested parties. The proposal included notice of a public hearing to be held on August 4, 1993.

During the official 30 day comment period which ended on August 18, 1993, the Board received 126 written comments. On August 25, 1993, based upon a recommendation made to the Board as part of the public hearing officer's report and recommendation, the Board voted to informally accept responses until the date of its next Board meeting, September 15, 1993. Ten additional responses were received during the extended comment period, for a total of 136 written comments.

The discussion below includes the comment of 10 individuals who spoke about the regulations at the August and September Board meetings, which took place during the official and extended comment periods. A list of all commenters is attached.

A full record of this opportunity to be heard can be inspected by contacting the Board of Social Work Examiners, Post Office Box 45033, Newark, New Jersey 07101.

The following persons commented:

Eliane Goldman, William R. Abrams, Karen J. Uebele, Paul Kurland, ACSW, BCD, Thomas R. Bonney, MSW, ACSW, Emilie R. Kaye, Patricia A. Nardone, MSW, ACSW, Margaret L. DePol, Judi Menut Buncher, Margaret Noone, SSD, Gladys R. Cohen, Greg Linda Casterline, ACSW, Lor A. DePetro, BSW, Marilyn Zwarych, Judy W. Gecheler, Leila D. Morgan, MSW, ACSW, Christine Rednor, Johanne M. Schroeder, Amy-Marie Hohn, MSW, CSW, ACSW, Lois Malnak, Jackie Moss, ACSW, Robert B. Jones, BCD, Kirsten Eberhardt, BA, Pamela A. Scott, Noreen Lundeen, Marissa Maselli, Maria A. Diaz, Laurence Scappa, MSW, Eleanor L. Brilliant, Althea Schoen, MSW, CSW, BCD, Richard Blake, Ph.D., Michael S. Isaacs, Paul DeSantis, Jane Bernstein, MSW, CSW, Laurie Boehm, ACSW, BCD, Philip F. Wilson, ACSW, James P. Gallagher, Thomas W. Ludlow, ACSW, Virginia E. Haines, Laura M. Krug, ACSW, David W. Wolfe, Andrew R. Ciesla, Leila Whiting, ACSW, LCSW, Elbn M. Idland, ACSW, Edna M. Hill, Karen Petsch, MSW, Rochelle Smith, MSW, Michelle Hartzac, Karen McGvcrew, Leila Davis, Lorraine M. Reusstle, BA, Leonard S. Altamura, DSW, Lee A. Solomon, Robert J. Fogg, Esq., Gwendolyn Sills, Mary Burke, MSW, CSW, Marcyann E. Sosnoski, MSW, Kim & Domenic Ram, Donald W. Beless, Susan Roth, Ed.D., Karen A. Spinner, Neville Newton, Joseph S. Pollack, ACSW, Paggie O'Brien, Thomas W. Ludlow, ACSW, Richard Hillenbrand, BSSW, MSW, ACSW, Robert B. Jones, BCD, Katherine M. Wood, Cecelia Perkel, MA CRC, Valerie Hart, Sidney Blanchard, Kimberly Iannitto, Ed Kershaw, Eric Grant, Kathy Totten, Lucy Fernandez, Terri Gregory, Pat De'Risi, Linda Reed, Roger Goodreau, Toni Swick, Kerry M. Mulvihill, Christine Wildemuth, Robert L. Neal, Angela Estes, M.Ed., Martin I. Krupnick, Psy.D., Leonard S. Altamura, DSW, Regina Podhorin, Fran Chvala, MVW, ACSW, BCD, Julie Turner, Senator John O. Bennett, Martha Viel, MSW, Ann R. Neuman, MSS, BCD, Hadassah Mushkin, Joan O'Brien Cohen, Ruth A. Kunes, MA, Nancy Lee Lovejoy, Daniel Katz, DSW, ACSW, Toby Brown Ehrlich, Guy T. Calafato, 3rd, Laurie Kruger-Azer, Fran Hepburn, ACSW, CADC, Beverly A. McConnell, ACSW, Joseph E. Esposito, Enrico De Gironimo, Santo F. Tavormina, Mirianm Dinerman, MSW, DSW, Robyn Ciangetti, Edward P. O'Connor, ACSW, Kathy Emmrich.

Summary of Public Hearing Officer's Report and Recommendations and Agency Responses:

Board Vice President Catherine DeCheser served as the hearing officer at the August 4, 1993 public hearing held at the War Memorial Building, Trenton, New Jersey. Seventeen persons spoke at the hearing. In Ms. DeCheser's absence from the September 16, 1993 Board meeting, Board counsel orally advised the Board of the issues raised at the hearing and the recommendations of the hearing officer as transmitted to counsel by telephone.

The Board took formal action as to each recommendation at the September 16, 1993 meeting. All of the issues raised at the public hearing were also raised by the same or other commenters in writing during the official and extended comment periods. To avoid unnecessary repetition, the discussion below incorporates, where applicable, the recommendation of the hearing officer and Board action in either accepting, denying or modifying the recommendation.

Summary of Public Comments and Agency Responses:

Requests for extension of comment period

COMMENT: The Psychoanalytic Center of Northern New Jersey requested a 30-day extension of the comment period, stating that many of the persons directly affected by the proposed rules will be on vacation and unavailable to assist the Center in preparing comments. A request to reschedule the August 4, 1993 public hearing was made for the same reason.

RESPONSE: The commenter did not submit specific issues which would warrant extending the comment period or rescheduling the public hearing, nor could the Board determine what those issues might be. However, as noted, the comment period was extended to September 15, 1993 upon recommendation of the public hearing officer. The Board did not receive additional correspondence from this commenter during the extended comment period.

COMMENT: Senator Ciesla, Assemblyman Wolfe, Assemblywoman Haines and Senator Bennett requested an extension of the comment period so that additional efforts could be explored to rectify a problem with regard to the statutory time frame for accumulating experience which would qualify an individual to apply for licensure without examina-

tion or certification without a bachelor's degree in social work (BSW). (That statutory time frame is May 6, 1986 to May 5, 1991 and will be referred to hereinafter as "the five-year window.")

RESPONSE: As stated, the Board extended the public comment period to September 15, 1993. For a discussion of the hearing officer's recommendation and the Board's action concerning the five-year window, see below.

COMMENT: Assemblyman Solomon requested a one-week extension to permit his constitutents to present their concerns regarding the question of whether clinical agency supervisors are included in the grandparent clause.

RESPONSE: The hearing officer recommended, and the Board agrees, that for purposes of the five-year window individuals who supervise clinical social workers and individuals who supervise clinical supervisors will be deemed to have practiced clinical social work. This issue is addressed in more detail below.

COMMENT: Woman Space, Incorporated, a non-profit agency providing counseling, advocacy and support services, recommended a delay in implementing the regulations, stating that the non-profit community had not been consulted. More specifically, this commenter stated that experienced frontline staff with little ability to qualify for certification will find their employment at risk if certification is to be a condition of employment. The commenter also expressed concern about the economic impact of certification fees on State and local HSACs (human service advisory councils).

Similarly, the New Jersey Association of Children's Residential Facilities was concerned that private agencies serving children were not involved in the Board's informal information-gathering meeting of March 31, 1993. "By utilizing an exclusionary process in developing these self-serving regulations, they do not reflect current practice, do not benefit clients and contradict existing regulations." For example, Division of Youth and Family Services (DYFS) regulations permit degrees other than social work degrees.

RESPONSE: Beginning on March 31, 1992 when the Board became fully constituted and began meeting in open public session, it has consistently sought input from the regulated community—by inviting public comment at each of its meetings since that date, holding an informal information gathering meeting on March 31, 1993 prior to public of the proposal, and holding a public hearing upon publication of the proposed regulations. Many representatives from interested social work agencies or organizations (including the New Jersey Association of Mental Health Agencies which responded on behalf of 90 non-profit agencies) have, in fact, corresponded with the Board and participated in the rulemaking process since its inception.

The Board also points out that, with one exception, all of its currently appointed members are practicing social workers and/or social work educators who have brought their experience and expertise to the lengthy and painstaking task of developing regulations. The Board is confident that the proposed regulations both accurately reflect current social work practice and adequately protect the public, and therefore declines to delay the implementation of these regulations. These commenters are invited, however, to submit to the Board, in writing, any specific concerns not addressed either in this response or in the remainder of the notice of adoption.

With regard to employees at risk, the Social Workers Licensing Act of 1991, like most professional and occupational licensing acts, contains a provision intended to avoid jeopardizing the employment of individuals who practiced prior to licensure requirements. N.J.S.A. 45:15BB-8(c) permits individuals who can document two years of full time social work practice between May 6, 1986 and May 5, 1991 (the five years preceding the Act's enactment) to apply for certification without meeting the statutory educational criterion of a BSW. As addressed in more detail below, the Board has received legal advice from the Attorney General that it may, through regulation, extend the five-year window in order to address the many concerns it has received regarding employees at risk. This advice will be implemented in a separate proposal to the published shortly.

Whether certification is a condition of practice can only be determined by the employing agency based upon the scope of practice of its employees. The commenter is directed to the Board's responses set forth below to other commenters who raised similar concerns with regard to scope of practice determinations.

Finally, the Board is aware that, to the extent an agency pays its employees' certification fees, it will experience an adverse economic impact. However, as the hearing officer pointed out, N.J.S.A. 45:1-3.2 requires all professional and occupational licensing boards to be self-funding through a per capita pass through of its operating costs. The proposed regulations and fee structure implement the provisions of that law. In addressing this issue, the hearing officer stated that the Board is committed to keeping fees at the lowest possible level consistent with its obligation to perform its responsibilities. More specifically with regard to HSACs, the Board believes that employees of 19 (out of a total of 21) county HSACs will be exempt from licensure pursuant to N.J.S.A. 45:15BB-5.

Opening Statement

The overwhelming majority of the comments related to three separate and distinct issues: (1) Concern that the work of many mental health professionals, particularly within agency settings, falls within the social work scope of practice and that these individuals cannot meet the statutory criteria for licensure and/or certification; (2) Whether the five-year window may be extended by regulation until the date these rules are promulgated in order to enable additional qualified professionals to be licensed without examination or certified without a BSW; and (3) Whether social work educators may use their experience during the five-year window to qualify for clinical licensure and whether the Board should set standards for social work educators.

These issues will be addressed first, following by a section-by-section summary of the various additional concerns raised.

1. Scope of Practice

Numerous commenters stated the belief that the regulations inappropriately restrict all social work services to licensed or certified social workers. The following specific concerns were raised:

1. The New Jersey Association of Children's Residential Facilities objected that the regulations attempt to exclude all other human service professionals (such as sociologists) from performing activities such as assessment, treatment planning, advocacy, community organization. The regulations limit the ability to advocate on social issues only to those who are able and willing to be licensed, thus infringing on the right to free speech.

2. The regulations appear to restrict many services provided by UMDNJ's Community Mental Health Center to being delivered only by licensed or certified social workers.

3. Licensing requirements place an undue burden on non-profit agencies. One commenter questioned how agencies who service the chronically mentally ill will survive to continue to provide these crucial services to the community.

4. If agencies must be limited to employing only those with social work degrees, they might be unable to find the most appropriate individual. A successful paraprofessional who is a former welfare recipient with limited education may be a more effective and qualified client advocate with a welfare board than a young college graduate with a BSW.

5. As affirmative action goals, many non-profit agencies working with disadvantaged clients have developed clients into workers since they understand the problems of clients and are perceived as less threatening than degreed workers. They are not considered social workers but "social service workers." Because of the definition of social work, these regulations will eliminate such activities.

6. The definition of social work services includes activities that are basic to most human interaction. "One need not be a certified social worker to help someone identify problems and suggest possible solutions ... Neither can we expect to certify everyone who engages in such activities." Many grass roots community projects will be unable to function if participants must be licensed or certified.

7. Requiring staff at group homes to hold a CSW would paralyze the residential service community. The regulations as currently constituted can be construed as restraining the trade of members of related professions.

Several commenters suggested an exemption for providers of these services and "a sufficient amount of time to comply with all these complicated rules and regulations."

RESPONSE: Exemptions to the Social Workers Licensing Act are limited to those set forth in N.J.S.A. 45:15BB-5; the Board cannot create additional categories of exemption by regulation. Similarly, the Board cannot by regulation extend the limited 180-day period during which individuals may apply for licensure without examination or certification without a BSW.

However, the Board recognizes that there are many dedicated professionals and para-professionals employed in human service agencies who are not social workers and who do not present themselves as such

but who perform services which appear to be within the social work scope of practice. Neither the Legislature nor the Board intended to restrict the activities of participants in grass roots community projects or of agency-based social service support staff who do not have social work degrees. For example, the Board would not require staff at group homes to be certified to the extent that these employees are performing only a limited component part of a social service task. Licensure or certification would, however, be required for those staff members who engage in work which falls clearly within the social work scope of practice as defined in the regulations. For this reason, the Board has attempted to define social work services carefully so as to include the many tasks performed by social workers but to exclude the work of other human service professionals who do not hold themselves out to be social workers and who do not engage in conduct limited to licensed or certified social workers.

Although the Board recognizes that the parameters between activities requiring licensure or certification and those not requiring licensure or certification may not always be clear, it cannot make such determinations absent specific information concerning the social work tasks being performed; rather, it is up to the employer—with Board assistance, if needed—to differentiate between professional social work practice and the supporting social service functions.

COMMENT: One commenter stated that certification is meaningless for hotline workers and that crisis workers in general do not belong in these regulations because on the job training is infinitely more important than their educational background. Another commenter argued to the contrary that licensure should be required for social workers who work at "suicide prevention, crisis intervention telephone hot lines."

RESPONSE: Crisis counselors certified by the Department of Health would fall within the statutory exemption provided for other licensed professions. Accordingly, these individuals need not be licensed by this Board in order to continue to practice. It is the responsibility of the agency to determine whether the services of individuals staffing telephone hot lines are within the parameters of social work services. Agencies may be guided in this regard by the Board's responses set forth above in regard to scope of practice determinations.

COMMENT: Although clinical assessment and client centered advocacy are clearly major components of the work of social workers, clinical assessment is also a major component of the work of people who receive M.A.'s in counseling. It is presumptuous to say that clinical assessment is solely in the social work domain. Since M.A.'s in counseling do not hold any type of licensure, how do these regulations apply to them?

RESPONSE: The Social Workers' Licensing Act requires an individual performing clinical social work assessment to be an LCSW or an LSW under appropriate supervision. If an MA counselor engages in clinical social work assessment as defined in the regulations, he or she would be required to hold an LCSW.

2. Extension of the Five-Year Window

N.J.S.A. 45:15BB-8 permits practicing social workers who can document a specified number of hours of social work practice during the five-year period immediately preceding the enactment date of the Act (May 6, 1986 to May 5, 1991, "the five year window") to qualify for licensure without examination or certification without a BSW.

Numerous commenters asked the Board to extend the five-year window to the date these rules are promulgated and presented the following arguments in support of this position:

(a) Many professionals will lose their jobs due to lack of two years of experience during the window. Many individuals employed in nursing care facilities will not be certified under the grandparent provisions because they do not have two years of experience within the window. One commenter stated: "Had I not chosen to pursue higher education after high school in 1987 and gone directly into the field, I would meet the standards of this legislation."

1. In a sampling of slightly less than 50 percent of long term care facilities, it was found that 25 percent of the social workers (61 out of 241) will lose their jobs because their experience was not within the window. If the Board extended the window, 52 of these 61 social workers would qualify.

2. The Department of Health estimates that approximately 150 individuals currently employed as social workers in the long term care industry may lose their jobs.

(b) Job loss will result in lack of continuity in services. Clinical social workers who do not meet the experiential requirements will be forced to close their practices, to the detriment of their long term clients. It would be unethical to end therapy before the work is completed. If agency social workers lose their jobs, it will disrupt continuity of services and will be detrimental to the patient population who have come to know and trust these workers as their true advocates.

(c) The Legislature did not anticipate a delay in licensing. Several commenters including four State legislators stated that the unanticipated time lapse in promulgating regulations defeated the intent of the cut off date, which was to require recent and relatively consistent work experience. They stated if the window cannot be modified by regulation, the Legislature intends to introduce legislation that would extend the end of the work experience from May 1991 to the effective date of these rules.

(d) The five-year window is discriminatory. The window discriminates against persons who have many years of experience but stayed at home to raise a family, were ill, etc. Choosing an arbitrary five years is unfair to many social workers.

(e) Many agencies cannot or do not employ full time social workers. It is incomprehensible that individuals employed by these agencies should be required to take the licensing exam because they will not meet the requirement for two years of full-time experience.

The Department of Health recommended that if this issue cannot be resolved before adoption of the regulations, the Board should consider provisional licensure until the issue can be resolved. Another commenter suggested that the Board should require an examination and a supervisor's affidavit assessing the applicant's experience.

RESPONSE: The public hearing officer has addressed this issue as follows:

"While sympathetic to the plight of persons currently engaged in social work practice whose experience falls outside the window created by statute, I note that the Board discussed the matter extensively and has been informally advised that it cannot alter that period by regulation. Absent legislative action, the period will remain fixed. If legislation were to be proposed (and I do not recommend that the Board initiate such action at this time) I recommend that the Board, after due consideration of the proposal to ensure that its mandate of protecting the consuming public is met, support the concept that recent social work experience be considered in a grandparenting context. An individual who wishes to engage in the practice of social work in this State is not forever barred but may do so if he or she meets [legislative] requirements."

Legal advice from the Attorney General regarding extending the five-year window has now been received. The Attorney General has advised that the Board may extend the five-year window by regulation. A proposal implementing that directive will be published in the New Jersey Register.

3. Social Work Education

Several commenters expressed concern that social work education was not defined in the scope of practice regulation, although the term "social work education" appears in the statute. These commenters believe that the absence of a definition of social work education would preclude that experience from being considered the practice of social work for licensing purposes.

The hearing officer recommended that the Board work to define social work education, stating that "social work education is recognized by the Board as an important element of social work practice. Social work educators may be licensed or certified during the grandparenting phase if experiential requirements are met."

The Board disagrees with the hearing officer that the term should be defined in the regulations. As a practical matter, it is quite difficult to construct a definition of social work education that would have relevance to the scopes of practice of licensed and certified social workers. The Board wishes to avoid the anomalous result of a blanket grant of permission of all social workers to teach advanced courses or the requirement that all educators who teach social work be licensed. The Board discussed this issue at length and concluded that it does not wish to interfere with a university's independence to determine whether licensure is required for all educators who teach social work courses. Accordingly, the Board decided not to assert jurisdiction in this regard at this time.

However, the Board recognizes—for the reasons set forth more specifically in the next response—that some social work educators may qualify for licensure without examination.

COMMENT: Will teaching social work courses for the requisite period of time during the five-year window enable an educator to qualify for clinical licensure without examination?

RESPONSE: Hours spent in teaching clinical social work courses will be considered for purposes of LCSW license, and hours spent in teaching social work courses other than clinical social work will be considered for purposes of LSW licensure.

This issue was raised both during the comment period and at the public hearing. The hearing officer noted that the Board initially had determined that teaching clinical courses was the practice of social work but was too far removed from the statutory definition of clinical social work. A clinical faculty member, if otherwise qualified, may therefore be eligible for licensure as an LSW. Upon further discussion and consideration of this issue at the November 17, 1993 meeting, however, the Board concluded that it would be in keeping with the spirit and intent of the law to allow professors of clinical social work courses to include their teaching hours of clinical social work courses during the five-year window toward the 2,880 hours of clinical practice necessary to be eligible to apply for an LCSW without examination. The 2,880 hours of clinical practice therefore may be teaching hours, direct client contact and/or clinical supervision. Teachers of social work courses other than clinical courses may use their teaching hours toward the 4,800 hours of social work practice in order to be eligible for an LSW. N.J.A.C. 13:44G-5.1 and 5.2 have been amended accordingly.

COMMENT: The New Jersey Baccalaureate Social Work Educators' Association suggested that the Board identify which social work courses must be taught only by licensed social workers and which may be taught by educators who are not licensed social workers. The Association believes that core courses and clinical courses should be taught only by licensed individuals.

RESPONSE: As stated, the Board considered the implications of requiring a license to teach certain courses, including the adverse impact on academic prerogatives. The Board believes that current accreditation standards of the Council on Social Work Education (CSWE) provide sufficient guidance as to who may teach social work courses. The Board notes, however, that it is appropriate that core social work courses be taught by licensed social workers, who are in the best position to disseminate to students the unique nature of social work practice and to instill a firm foundation in social work theory and practice. The Board will, of course, revisit this issue if necessary based upon future expressions of public concern with regard to teaching standards.

COMMENT: A full-time Rutgers faculty member stated she should not be licensed as a clinical social worker but would like to be a licensed social worker.

RESPONSE: As stated above, the Board believes it is in keeping with legislative intent to permit educators to use their hours of teaching during the five-year window toward either an LCSW or an LSW, as appropriate.

COMMENT: Another Rutgers faculty member argued that if clinical social work is not defined to include social work education, the educator would not qualify for licensure without examination due to a lack of recent experience. But the same individual could receive a clinical license not by relying on recent experience but merely by taking a test.

RESPONSE: As stated above, educators may use their teaching hours accumulated during the five-year window to qualify for licensure without examination during the six-month period subsequent to implementation of these regulations. However, once this limited opportunity has passed, the examination is an important criterion upon which a professional board relies to determine minimum competency to practice.

Economic Impact Statement

COMMENT: In evaluating economic impact, did the Board do a survey of the number of jobs covered by these definitions; the number of individuals currently holding these positions who do not have an MSW/BSW; and the number who would be unable to meet the requirements for licensure without examination or certification without a BSW?

RESPONSE: The Board is and has been especially sensitive to the issue of possible job loss. Although the Board did not do a formal survey, it requested and received significant input from numerous professionals through correspondence and at the informal meeting held on March 31, 1993 among Board members and representatives of various areas of the profession.

Purpose and Scope; Definitions

N.J.A.C. 13:44G-1.1 Purpose and scope

COMMENT: The regulations allow for different standards for public employees, clergy, medical professionals and one individual who hired his own lobbyist, all of whom are exempt from licensure and certification requirements. This is discriminatory against those who work for private agencies and clients of State workers and displays the influence of special interest groups.

RESPONSE: The Board believes it is reasonable to exempt members of other licensed professions provided the services they offer are within their scope of practice and that they do not hold themselves out as social workers. The Legislature has determined that individuals employed in the public sector in a social work capacity are exempt from licensure under the Act during the course of their employment. The Board agrees, however, that exempting public employees creates a two-tiered system of social work services which is not in the best interests of the citizens of this State. Accordingly, the Board would support attempts to modify the existing exemption for public employees. The hearing officer recommended that the Board "continue its stated commitment to support efforts to upgrade standards for all social workers ... to scale back exemptions currently in the statute ... and encourage [State, County and local governments] ... to upgrade standards for their employees."

COMMENT: One commenter questioned why the exemption provided for in N.J.S.A. 45:15BB-8(d) was not included in the regulations, stating that "this statutory provision provides an exemption which is very limited in scope and possibly applies to only one person."

RESPONSE: The Board does not believe it is necessary to repeat this statutory exemption in its regulations because of its limited scope.

N.J.A.C. 13:44G-1.2 Definitions

COMMENT: The word "psychotherapy" should replace "psychotherapeutic counseling" in the definition of clinical social work. Psychotherapeutic counseling more properly describes the activities of the LSW, not the LCSW. We should not present the work we do as watered down psychotherapy; i.e., counseling. The work clinical social workers do is psychotherapy.

RESPONSE: The term "psychotherapeutic counseling" is included in the statute within the definition of clinical social work (see N.J.S.A. 45:15BB-3), and the Board has provided a definition of the term in the regulations for clarification purposes. The Board does not agree that the term is defined as watered down psychotherapy but rather defines the context in which clinical social workers offer psychotherapy.

COMMENT: If the words "Psychotherapy, unconscious motivation, psychoanalysis and family therapy" are not included in the LCSW scope of practice, many clients will be unable to collect third party reimbursement.

RESPONSE: As stated, the Board believes its definition of psychotherapeutic counseling is useful in providing the context in which social workers offer psychotherapy. The term "unconscious motivation" was not included in the definition because the Board does not believe this term is widely used in the field. Finally, inclusion of psychoanalysis within the scope of practice of psychology was the subject of a public hearing by the Board of Psychological Examiners held on October 18; the Board will defer including psychoanalysis in this Board's definition of psychotherapeutic counseling for consistency pending the outcome of the public hearing.

COMMENT: In view of the current bid by the Board of Psychological Examiners to claim psychoanalysis as being under its jurisdiction, these regulations should state that LCSWs are "considered qualified candidates at psychoanalytic institutes, and that upon completion of training at accredited psychoanalytic institutes, are eligible to practice psychoanalysis."

RESPONSE: The Board does not have jurisdiction to determine who may qualify for admittance to a psychoanalytic institute; these institutions set their own admittance criteria. For the reasons set forth above, the Board does not believe it is necessary to include the term "psychoanalysis" in the regulations at this time.

COMMENT: The definition of "social work services" precludes the certified social worker (CSW) from performing counseling services. The Board should permit CSWs who have engaged in more than five years of full time, supervised social work to perform counseling services under supervision of an LCSW.

RESPONSE: As set forth in the Act, a CSW may not perform clinical social work activities, including clinical (psychotherapeutic) counseling. However, a CSW may perform counseling services that fall within the parameters of the definition of "social work consultation." Again, the Board has taken great care to craft these definitions so as not to limit the activities in which certified social workers or other health care professionals may engage pursuant to the Act.

COMMENT: The definition of clinical social work is full of antiquated social work jargon. For example, the term "psychological, social" should replace the word "psychosocial."

RESPONSE: The Board disagrees with this statement and believes that the definition should remain as written.

COMMENT: The term "character pathology" should be added to the definition of psychotherapy.

RESPONSE: The Board disagrees. Character pathology is not a widely used term and in any event is only one of many types of assessments. The Board does not believe it is necessary to enumerate all types of assessment in a regulation.

COMMENT: The terms "client centered advocacy and community organization" should be deleted from the definition of social work. They are not social work issues in the field of domestic violence and do not require even minimally a BSW.

RESPONSE: The Legislature included client centered advocacy and community organization in its definitions of social work and established qualifications for licensure and for grandparenting. A legislative amendment would be required to delete these terms from the definition of social work or to amend the provisions of the grandparent clause. Again, if the services of individuals working in the field of domestic violence do not fall within the social work scope of practice, licensure is not required. This commenter is referred to the Board's policy statement set forth above.

COMMENT: The New Jersey Hospital Association stated that the rule is confusing to interpret, epecially since the scope of practice references the definition section rather than specifying the level of social worker within the language of the rule.

RESPONSE: The Board agrees that this section, N.J.A.C. 13:44G-3.1, should be clarified and has amended it upon adoption to incorporate the commenter's suggested revisions.

Subchapter 3. Authorized Practice

COMMENT: A commenter urged the Board to retain the provision which requires that supervision may be rendered only by an LCSW. The New Jersey Hospital Association argued to the contrary that requiring supervision to be rendered only by a specific professional may impose additional financial burdens on hospitals, without necessarily improving outcomes.

RESPONSE: As stated in the proposal, the intent of the three-year transition period is to enable the Board to analyze supervision requirements to determine how best to resolve the statutory tension regarding supervision of licensed social workers.

"Pursuant to N.J.S.A. 45:15BB-4(d), licensed social workers may practice clinical social work only under the supervision of a licensed clinical social worker. The Board recognizes the inherent tension between this practice limitation and the provisions of N.J.S.A. 45:15BB-6(a)2 that allow persons to acquire clinical social work experience under the supervision of a licensed social worker, an individual eligible for licensure or any other supervisor deemed acceptable to the Board."

The hearing officer recommended, and the Board agrees, that the Board will "continue its stated position to evaluate all information regarding supervision and seek appropriate legislative revision to clarify who may provide clinical supervision when its evaluation is complete."

Subchapter 4. Applicant Qualifications

COMMENT: The Board should accept degrees in areas other than social work. Many individuals (in all three categories) will not be able to be licensed because they do not have social work degrees. It is presumptuous to assume that only graduates with degrees in social work can perform the duties outlined. Although many will be able to be certified without a BSW during the six-month period following promulgation of these regulations, their inability to be licensed will impact on services they can deliver.

RESPONSE: The degree requirements were set by the Legislature. Requests for amendment in this regard must be directed to the Legislature.

COMMENT: Not permitting alternate degrees is contrary to the Division of Youth and Family Services (DYFS) Manual of Standards concerning MSW/BSW requirements for agency directors and social service workers and will require the commenter's agency to fire seven currently employed individuals.

RESPONSE: N.J.S.A. 45:15BB-6 exempts from the licensure and certification requirements of the Act "An employee of the State or a political subdivision thereof which is subject to the provisions of Title 11A, Civil Service, of the New Jersey Statutes, but only in the course of this employment." To the extent that these seven individuals are not exempt, it appears that absent a statutory amendment permitting alternate degrees, DYFS will be required to amend its Manual of Standards.

COMMENT: In accepting only BSW and MSW degrees, the law appears discriminatory to minorities who cannot afford additional schooling at this stage of their career and to non-profit agencies who can't afford to pay all MSWs salaries at this time.

RESPONSE: The degree requirements set by the Legislature reflect the value of formal social work education. The Board recognizes this value and believes the profession is defined by such education. The formal degree requirements will improve delivery of services to the consuming public. The Board rejects the notion that the law discriminates against minorities and notes that extensive efforts were employed during its legislative journey to ensure there was no discrimination.

COMMENT: It is "nearly impossible" for a bachelor's level individual to obtain a masters degree because there are not enough seats available in graduate schools as compared to the number of applicants.

RESPONSE: While sympathetic to this concern, the Board is required to implement the law as it is written. The Board recommends that the commenter direct concerns in this regard to the graduate schools of social work and/or the Legislature.

COMMENT: There is no provision for dealing with an applicant who fails an exam. How many times may it be taken?

RESPONSE: No limitation has been placed on the number of times the exam may be taken. The Board will address this issue in detail in a separate proposal.

COMMENT: At what point will licensure be required? Must everyone apply within 180 days, even if not applying under the grandparent provision?

RESPONSE: The licensing act passed in May 1991 contemplated that persons engaging in the practice of social work should be licensed by April 1992. Since the Board recognizes that procedures for licensure could not have been in place until these regulations were promulgated, it does not anticipate initiating enforcement action for unlicensed practice until individuals have been provided a reasonable period of time in which to comply. The Board urges all individuals whose social work activities fall within the social work scope of practice to seek licensure or certification as expeditiously as possible. The Board intends to announce the date on which enforcement action will be taken for unlicensed practice as soon as it is confident that ample opportunity to obtain social work licensure or certification has been provided.

N.J.A.C. 13:44G-4.1(a) Eligibility requirements, LCSW

COMMENT: These regulations discriminate against clinical social workers in solo private practice settings by requiring proof of additional hours and the examination. "Simply countermanding the stigma attached to the fact that we are required to provide more documentation as well as sit for the examination which is not free adds financial concerns."

RESPONSE: To ensure that applicants for clinical licensure are qualified to engage in psychotherapeutic counseling, which is the defining element of clinical social work practice, the Social Workers Licensing Act requires documentation of two years of supervised clinical (face-to-face) experience. The Board disagrees that any stigma is attached to LCSW licensure as a result of this legislative requirement; rather, the intent is to isolate and require proof of that experience which differentiates clinical practice from other social work practice. The examination, too, is a legislative mandate for clinical licensure which serves to protect the consumer by ensuring that only qualified individuals are licensed to practice clinical social work.

COMMENT: The definition of clinical experience emphasizes face to face client contact. However, client advocacy may involve little face to face contact. In this respect, the regulations show a bias in favor of the private practice of psychotherapy and against social work as practiced in the public sector on behalf of the poor and socially handicapped.

RESPONSE: The Board has defined clinical social work services broadly to encompass various areas of clinical social work practice. The Board has isolated the psychotherapeutic counseling component of clinical social work practice for purposes of establishing two years of clinical social work practice under supervision. This reflects the Board's determination that 20 hours per week of face-to-face client contact under supervision is a reasonable requirement which will assure adequate protection to consumers of clinical social work services which include psychotherapeutic counseling—whether in the private or public sector. An individual in the public sector who advocates on behalf of the poor

and disadvantaged but who does not engage in psychotherapeutic counseling may obtain licensure as an LSW and need not obtain a clinical license.

COMMENT: There are some valid clinical modalities which are not face to face; specifically, telephone crisis intervention services. Why not define clinical social work as "direct client contact."

RESPONSE: Telephone crisis intervention does not appear to fall within the definition of clinical social work since crisis counseling is not "ongoing" psychotherapeutic counseling. Again, defining clinical social work to consist of a specific number of hours of face-to-face client contact serves the purpose of defining the type of work which only the holder of a clinical license may perform.

COMMENT: The Board should define clinical practice as "supervised face-to-face appropriate psychotherapeutic counseling and/or assessment contact per week." This will avoid the misinterpretation that client contact may include "standing in the hallway talking with clients about the weather or sports."

RESPONSE: The Board believes the regulation is clear as written and is confident that applicants are aware of their ethical responsibility to accurately report their qualifying experience.

COMMENT: Several commenters stated that NASW credentials should be considered in the criteria for determining licensure of social workers. Specific comments include the following:

(a) Is the NASW credential "now a worthless credential in New Jersey for self-regulated practice?"

(b) "I am totally shocked by your failure to acknowledge the national certifications ... I find it almost unbelievable that no mention is made of the Academy of Certified Social Workers or the Diplomate status."

(c) In this computer era, the Board should utilize a system already in place rather than create another layer of bureaucacy. Applicants would simply provide ACSW certificate and the Diplomate certificate.

(d) One commenter expressed concern that she had spent a great deal of time and money to get the ACSW and now finds that it will not stand in lieu of an examination for licensing.

(e) The Council on Social Work Education states that credentialing for specialized areas of social work practice is the responsibility of the profession, exercised through nationally recognized professional standard-setting organizations, namely CSWE and NASW.

RESPONSE: These individuals mistakenly believe that membership in a self-regulating body such as a professional association is the same as licensure by a state licensing board. While the Board recognizes the validity of the various credentialing processes, it has a statutory mandate to establish professional standards for social work practice in New Jersey for the protection of the public health, safety and welfare. These proposed regulations implement that requirement.

COMMENT: The Acting Dean of Rutgers School of Social Work stated she has serious concerns about the clinical social work license, "especially the fact that the board has taken upon itself the role of establishing standards and assessment procedures." The commenter quoted the Council on Social Work Education as stating that "The state is not equipped or well suited to establish standards and assessment procedures to certify the exceptional knowledge and skill necessary for specialized practice."

RESPONSE: In implementing the Social Workers Licensing Act, the Legislature assigned to the Board the obligation to establish social work standards of practice and to license clinical social workers. The Board is well qualified to do so as it consists of both practicing social workers and social work educators, all of whom are appointed by the Governor by virtue of their expertise in the area of social work practice.

N.J.A.C. 13:44G-4.1(b)3ii

COMMENT: Several commenters (NASW, CSWE and an associate professor at Rutgers School of Social Work) urged the Board to eliminate any reference to specific course content because:

(a) Specific content of professional education is the purview of schools and accrediting bodies and is an underlying condition of both academic freedom and professional standard setting.

(b) "There is also the pragmatic question of ascertaining if there is compliance with this regulation." Reviewing transcripts would be cumbersome and expensive.

(c) Specification of required content areas will undermine the flexibility that is essential to curriculum development.

RESPONSE: The hearing officer commented as follows with regard to this issue:

"The Board proposed 12 credits in methods of clinical social work practice as the minimum needed to protect the consuming public. An applicant who does not meet those requirements may return to a C.S.W.E. accredited school to obtain the necessary credits. While this may prevent an individual from enjoying the benefits of licensure as a clinical social worker without examination, I note that the individual may be eligible to be licensed during that time as a licensed social worker."

The Board reaffirms its position as stated by the hearing officer. Furthermore, the Board notes that in developing these requirements, it was sensitive to maintaining the flexibility of curriculum development.

COMMENT: Minimum competency should be assessed by means other than minimum course requirements. The rationale for the licensing act is to protect the public by identifying minimal competency. This minimal competency may have been obtained in school or through practice or through continuing education.

RESPONSE: Minimum qualifications for licensure under the Act specifically include both experiential **and** educational requirements; the Act does not provide for proof of minimal competency through experience alone or through continuing education credits. Furthermore, the Board believes that a strong knowledge base is essential for good social work practice.

COMMENT: The requirement of 12 semester hours of course work in methods of clinical social work practice is unfair to those who did not focus on a clinical track but who are now providing direct services in addition to their management responsibilities. The commenter stated "After years of waiting for licensure, are individuals like me going to have to settle for the LSW that may inhibit 3rd party insurance reimbursement?"

RESPONSE: N.J.S.A. 45:15BB-6 states that the Board shall issue a license to an individual who, in addition to other requirements, "satisfactorily completed minimum course requirements established by the Board to ensure adequate training in **methods of clinical social work practice** (emphasis supplied)." The Board has established the 12 semester hour requirement in order to comply with its statutory obligation. The Board cannot anticipate the impact of either the law or these regulations on insurance reimbursement practices and therefore cannot comment in that regard.

COMMENT: The requirement for 12 semester hours is at variance with the law. "By changing the basic educational requirement of the masters in social work degree which is the intent of the law to non-specific types of coursework, there is a significant negative consequence to individuals whose education does not neatly fit into the board's five areas of study." This commenter recommends elimination of the 12 hour requirement and that "the masters level education criteria be used."

RESPONSE: The statute requires both a master's degree and completion of minimum course requirements as specified by the Board. The Board believes the proposed requirements are necessary to ensure that only qualified individuals are licensed to practice clinical social work. Individuals who have not completed the required clinical course work may, of course, seek LSW licensure while completing such requirement.

COMMENT: "Human Behavior and the Social Environment" (HBSE) courses are foundation courses, not specific to any method of practice. The regulations deviate from common usage and are very confusing in this area.

RESPONSE: This broad category necessarily includes other courses which may be used to meet the 12-hour requirements. The Board believes the regulation is clear in this regard but will, of course, clarify it in the future if necessary.

COMMENT: Can an individual take all credits in only one of the areas mentioned?

RESPONSE: Yes.

N.J.A.C. 13:44G-4.3 Eligibility requirements; CSW

COMMENT: The Board should certify individuals with degrees in human service fields other than social work, consistent with Department of Health and Federal regulations. One commenter stated that "there is an apparent and obviously very influential lobby to protect the social work field from 'outsiders' being certified." Another commenter pointed out that it is inequitable to deny certification to an individual with a bachelor's degree in a human service field other than social work while certifying an individual with the required experience who has only a high school diploma.

RESPONSE: The Board believes that the BSW is important in that it provides specialized social work training which may not be offered in other fields. In any event, the BSW requirement has been set by the Legislature and the Board has no authority to deviate from statutory requirements.

COMMENT: The Board should require either that the BSW degree have been received within the five years preceding application or that the applicant have passed the baccalaureate certification examination offered by NASW.

RESPONSE: A commenter at the public hearing recommended that the Board should require the degree to have been received within eight years preceding the date of application. The hearing officer made the following recommendation.

"The law does not require an examination for certification nor does it place any time frame on when a BSW was conferred. I appreciate the concerns expressed by the commenter regarding reciprocity but recommend that the Board not change the requirements for certification at this time."

The Board agrees with the hearing officer that it cannot change the statutory requirements for certification and accordingly adopts the hearing officer's recommendation.

Subchapter 5. Licensure without Examination; Certification without Proof of Educational Criteria

COMMENT: All practicing social workers should be licensed without examination at this time, and the requirements outlined in the regulations should be placed into effect in the future. This will recognize all of the talented people presently in the field and avoid placing clients at risk for lack of services.

RESPONSE: Licensure requirements were established by the Legislature, and the Board is required to ensure that applicants meet all requirements for licensure.

N.J.A.C. 13:44G-5.1 Licensure without examination; clinical social worker

COMMENT: Several individuals argued that the requirement of two years of full-time clinical supervised practice (defined by the Board as 1,920 hours over any three consecutive year period) is discriminatory. Among individuals against whom the definition was said to discriminate are the following:

(a) Qualified part-time clinical social workers, primarily women, who may have had to restrict themselves to part time work due to child care responsibilities.

(b) Persons living in rural areas where reliable and affordable child-care/eldercare were largely unavailable during the five-year window.

(c) Older social workers. When the National Association of Social Workers (NASW) granted its ACSW credential in 1966 (when Medicare came into being), NASW waived the two years of supervision upon recommendation of the hospital administrator because no medical social work supervision was available at that time. Lack of this two-year supervision requirement will prohibit these older social workers from obtaining a clinical license and will hinder them from supervising new graduates, thereby impacting on their employability. These commenters argued, therefore, that the Board should permit the required 1,920 hours of clinical supervised experience to be completed over a period of time longer than three consecutive years.

RESPONSE: This experience is required for those seeking to be licensed without examination as well as to those applicants who will take an examination. The public hearing officer recommended that the Board reconsider whether the 1,920 hours of supervised clinical experience can be acquired in a four-year period. In formulating these regulations, the Board considered at length how best to balance the statutory intent of "two years of full-time clinical practice" with the Board's belief that some consideration should be given to qualified individuals who may—for some of the reasons set forth above—have worked on a somewhat less than full-time basis. The Board took the position that three years (13.5 to 20 hours of face to face contact per week) is a reasonable construction of the statutory requirement of two years of full time clinical social work experience under supervision. Upon reconsideration, the Board reaffirmed its position that to permit the 1,920 hours to be obtained over a four-year period would be to define "full time" as less than 10 hours a week, a definition which may not stand up to either legislative review or legal scrutiny. The Board points out that any of the above individuals may qualify for an LSW and practice while obtaining the required 1,920 hours of supervision necessary for clinical licensure.

COMMENT: The Board has not addressed the needs and requirements of retired social workers, many of whom have 30+ years of experience in a variety of settings and are ACSW members or NASW diplomates. These qualifications should be enough to permit these individuals to apply for a clinical license without examination.

RESPONSE: The Board cannot delegate its responsibilities to implement the act to agencies such as ACSW or NASW in which it has no decision-making authority. The regulations reflect the Board's considered interpretation of specific statutory provisions.

COMMENT: The Board should define "clinical social work" to include experience in a variety of settings such as schools. A Gestalt psychotherapist and certified Ericksonian hypnotherapist suggested the Board consider experience other than direct client contact. The commenter stated her training provided therapeutic experience from the inside out; therefore, it should be considered.

RESPONSE: The law mandates that clinical social work may be performed only by individuals who have the educational and experiential requirements outlined in the law. The Board defined clinical social work to consist of a specific number of hours of client contact because it is such direct client contact which most appropriately reflects clinical social work experience. However, the Board is amending subchapter 5 upon adoption to provide that individuals who qualify for licensure without examination and who have engaged in direct client contact need not show that their 2,880 hours of direct client contact during the five-year window was strictly "face-to-face." The Board is making this change upon adoption consistent with the spirit and intent of the law to permit qualified practicing social workers to continue to practice.

COMMENT: The Board should permit a certification in psychotherapy or psychoanalysis from a Board-approved institute to replace the requirements for supervision and face-to-face client contact.

RESPONSE: An individual with such a certification would not necessarily meet the statutory educational and experiential requirements for licensure as a clinical social worker. The Board is obligated to ensure that all applicants meet the statutory licensing criteria.

COMMENT: For purposes of the period of licensure without examination, the Board should permit an applicant to have obtained his or her required supervision from a supervisor from a neighboring state or a psychiatrist or psychologist.

RESPONSE: Supervision by any of these persons would qualify an individual to apply for licensure without examination. N.J.A.C. 13:44G-8.1(a)2iv provides that clinical supervision may be rendered by a psychiatrist, a psychologist or "any other supervisor the Board may deem acceptable."

COMMENT: There should be an overall general clause giving the Board discretion to issue a clinical license to "clinicians who amply demonstrate by their clinical experience and education that he or she meets the qualfications to assure competence in the field. The experience should include but not be limited to certification by a post-masters institute for training and psychotherapy, a record of experience as a supervisee and supervisor, a successful clinical practice and peer recommendations." Another commenter recommended that the Board permit these individuals to continue in private practice provided they obtain an LSW license, have or will obtain the 12 academic credits and are on the path of obtaining necessary hours of supervision so as to be able to take the clinical exam.

RESPONSE: The law does not enable the Board to exercise discretion with regard to licensing individuals who do not meet the statutory educational and experiential requirements. These requirements were established by the Legislature as the minimum necessary for the protection of the public health, safety and welfare.

COMMENT: Several commenters recommended that supervisors in clinical agencies who are not involved in direct clinical practice should qualify for clinical licensure without examination. NASW recommended that the Board permit clinical social workers above the first level of supervision to qualify for licensure without examination. Family Service Association of New Jersey, representing 18 not-for-profit agencies, urged the Board to be flexible and avoid unnecessary exclusion from clinical licensure of professionals who have successfully progressed through the social work career ladder in community based agencies and are now senior staff and executives. Another commenter stated "By not grandfathering masters prepared people who are directors or supervisors these regulations will disenfranchise many skilled individuals and cause havoc in many agencies and hospitals where non-MSWs are in supervisory positions."

RESPONSE: A commenter at the public hearing urged that individuals who supervise clinical supervisors, particularly in an agency setting, should be permitted to use the supervising experience as clinical social work for purposes of licensure without examination. In response, the hearing officer stated as follows:

"The commenter makes an excellent point. My experience has been that these supervisors are all often directly involved in cases, have first hand knowledge of the issues and have a direct impact on the lives of clients. I feel strongly that such persons be included and recommend to the Board to modify the proposal accordingly."

The Board agrees that these supervisors are sufficiently engaged in the day-to-day practice of clinical social work to be qualified to apply for LCSW licensure without examination.

COMMENT: The Public Advocate stated that supervisors should not be licensed without taking the examination. "If a person does not have recent extensive direct face-to-face clinical experience and they are supervising individuals who are actively doing clinical social work, they, before all others, should be required to take the examination to establish a current knowledge of clinical social work.

RESPONSE: While the Board is mindful of its obligation to set standards which will protect the public, for the reasons set forth above it believes that supervisors are qualified candidates for licensure without examination. Continuing education requirements to be imposed upon all certified and licensed social workers in the near future will ensure that these individuals maintain professional competency.

N.J.A.C. 13:44G-5.2 Licensure without examination; LSW

COMMENT: The Board should grandparent in as licensed social workers individuals who do not have MSWs but who work for private agencies, are supervised by an LCSW and have years of experience. An adoption agency stated it was accredited every three years by the Council on Accreditation of Services for Families and Children, which has stringent requirements.

RESPONSE: The minimum educational requirement set by the Legislature for an LSW is a master's degree from a CSWE accredited institution or a DSW from an accredited institution.

N.J.A.C. 13:44G-5.3 Certification without BSW

COMMENT: Several commenters recommended that the Board should adopt additional educational requirements for those who qualify for certification without a BSW; under N.J.S.A. 45:15BB-11b the Board has the authority to "examine and pass on the qualifications of applicants for licensure or certification." One commenter suggested that permitting two years of social work experience to substitute for a bachelor's degree devalues the degree and social workers. Another commenter stated that there should be a fourth category "below certified to address high school graduates and possibly A.A. degreed individuals" because it is unjust to "lump together high school graduates with BSW holders and recipients of advanced degrees in related fields (masters level pastoral counselors and psychologists). The public advocate recommended that since the statute permits certification without educational criteria, the Board should require, in addition to the two years of full time social work experience, proof of in-service training in social work services or some minimum number of social work or sociology courses. Another commenter suggested that the Board should ensure that a precise method exists for determining who is and who is not a professionally educated, trained social worker.

RESPONSE: In response to a different recommendation made at the public hearing regarding qualifications during the period of licensure without examination, the hearing officer pointed out that the statute mandates the Board to examine and pass on the qualifications for license or certification **under this act**; that is, the statute establishes the licensure and certification criteria while the Board determines whether an individual is qualified under the act. Accordingly, the Board does not have authority to impose additional requirements upon applicants for certification without a BSW.

In any event, the Board does not agree that permitting qualified individuals to be certified without a BSW for a limited time devalues the BSW degree. As previously stated, licensing laws typically permit qualified individuals practicing prior to the effective date of the licensing law to continue such practice without being subject to prospective licensure requirements. The Board also points out that individuals who are certified without a BSW will be required to maintain their competency through biennial continuing education requirements.

The Board therefore affirms the following statements made by the hearing officer in response to a recommendation that persons desiring to be professional social workers should possess at least a bachelor's degree in social work:

"During the grandparenting window the law provides that persons with certain experience may be certified as social workers notwithstanding the lack of a BSW. By this provision, the legislature acknowledges that there are many persons who have ably labored in the field prior to enactment of the act but who have not earned a degree in social work. For the brief grandparenting period, such individuals will be eligible for certification without a BSW. After that opportunity, persons desiring to hold themselves out as social workers will need to have a BSW, as set forth in the law and regulations."

COMMENT: Because State agencies have been using the title "social worker" for individuals who perform minimal social work services, the Board should look closely at the work performed by the applicant during the required two years of social work practice. This commenter asked whether someone is a social worker solely because his/her agency says so.

RESPONSE: The statute clearly establishes minimum requirements for certification without a bachelor's degree during the grandfather phase. The Board spent a considerable amount of time in defining social work services and believes the social work scope of practice regulations will provide sufficient guidance to individuals in determining the necessity for certification.

COMMENT: A clause permitting certification without a BSW is not needed because under N.J.A.C. 13:44G-4.3 "an applicant need only submit an official transcript to be eligible for the CSW certificate. . . . Any additional regulation or policy would only make the certification process more complicated."

RESPONSE: The Board does not understand this comment but points out that provisions for certification without a bachelor's degree were established by the legislature.

Subchapter 7. License and Certification Renewals

N.J.A.C. 13:44G-7.1 Biennial license and certification renewal

COMMENT: A commenter stated he wanted to clarify that the word biennial means every two years.

RESPONSE: The commenter is correct that the biennial licensing means a two-year period.

COMMENT: A commenter made suggestions for continuing education requirements.

RESPONSE: The Board is currently developing continuing education requirements which will appear in a future issue of the New Jersey Register for a 30-day comment period.

N.J.A.C. 13:44G-7.2 Reinstatement

COMMENT: The reinstatement period should be changed to four rather than five years to coincide with two biennial periods.

RESPONSE: The Board appreciates the commenter's suggestion but believes that five years is an appropriate amount of time during which an applicant may reapply without resubmitting the proofs required of initial applicants.

Miscellaneous comments

COMMENT: Several individuals commented upon the fee schedule. One commenter stated "Until social worker salaries become a living wage, we could at least be compensated for our charitable choice of profession by being offered licensing at a token fee."

RESPONSE: In response to comments made at the public hearing concerning the fee schedule, the hearing officer stated as follows:

"The fee schedule is not part of the current proposal and will not be reconsidered at this time. I recommend that the Board reiterate to members of the profession, informally or otherwise, that funding for the Board, its staff and actions it takes (including, for example, this public hearing) must come from the holders of licenses and certificates and that the Board is committed to keeping fees at the lowest possible level consistent with its obligation to perform its responsibilities."

Accordingly, the Board reiterates that it is required by statute to allocate its operating costs among licensees in the form of fees. (See N.J.S.A. 45:1-3.2.) The Board has endeavored to keep its costs at the minimum necessary to efficiently and responsibly fulfill its obligations under the statute.

COMMENT: One commenter sent a 10-page letter offering suggestions to amend the legislation.

RESPONSE: As previously stated, the Board's authority extends only to promulgating regulations to implement the legislation; it cannot amend the legislation.

COMMENT: Several individuals wrote letters explaining their circumstances and asking specific questions about whether they will qualify for licensure.

RESPONSE: This public forum is not the appropriate place to respond to individual licensing concerns. If upon reading this notice of adoption, individuals continue to have specific questions about their qualifications for licensure, these concerns should be addressed to the Board.

COMMENT: One individual requested a reduction in NASW dues.

RESPONSE: This request should be directed to the NASW, not the State licensing board.

Summary of Agency-Initiated Change:

N.J.A.C. 13:44G-4.1(b)3ii

As proposed, this regulation will permit an applicant who obtained an MSW degree on the non-clinical track to obtain the required 12 clinical credits subsequent to receipt of the MSW. Accordingly, the Board wishes to clarify that the law requires the 12 credits to be in graduate level clinical courses.

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

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:44G-1.1 Purpose and scope

(a) The rules contained in this chapter implement the provisions of the Social Workers' Licensing Act of 1991, P.L. 1991, c.134, and regulate the profession of social work within the State of New Jersey.

(b) Except as set forth in (c) below, this chapter shall apply to all individuals who render clinical social work services and social work services, as hereinafter defined, and to anyone within the jurisdiction of the Board of Social Work Examiners.

(c) This chapter shall not apply to those individuals exempt from the provisions of the Act pursuant to N.J.S.A. 45:15BB-5, including an individual acting within the scope of a profession or occupation licensed by this State and doing work of a nature consistent with the person's training, as long as the person does not hold himself or herself out to the public as possessing a license or certificate issued pursuant to the Act.

13:44G-1.2 Definitions

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

"Clinical social work" means the professional application of social work methods and values in the assessment and psychotherapeutic counseling of individuals, families, or groups.

"Clinical social work services" mean social work services which may be performed only by a licensed clinical social worker or a licensed social worker under supervision pursuant to N.J.A.C. 13:44G-8. Clinical social work services include, but are not limited to, the following:

1. Clinical assessment, defined as the process of evaluation in which a licensed clinical social worker or a licensed social worker conducts a differential, individualized and accurate identification of the psycho-social/behavioral problems existing in the life of the individual client, the family or group for the purpose of establishing a plan to implement a course of psychotherapeutic counseling. A clinical social work assessment includes, but is not limited to, a mental status examination and a psycho-social history. The clinical social worker may utilize currently accepted diagnostic classifications including, but not limited to, the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised (DSM-III-R), as amended and supplemented.

2. Clinical consultation, defined as ongoing case discussion and evaluation focusing on, but not limited to, clinical social work data, clinical goals and treatment plans for the implementation of psychotherapeutic counseling with individuals, groups and families. Clinical consultation may also include intervention with appropriate individuals and entities;

3. Psychotherapeutic counseling, defined as ongoing interaction between a social worker and an individual, family or group for the purpose of helping to resolve symptoms of mental disorder, psychosocial stress, relationship problems or difficulties in coping with the social environment;

4. Client centered advocacy, defined as the service in which, as part of the psychotherapeutic process, the social worker functions on behalf of individuals, families or groups to bring about or influence change to improve the quality of life, enhance empowerment and assure the basic rights of the client; and

5. Clinical supervision of individuals pursuant to the standards set forth in N.J.A.C. 13:44G-8.1.

"Social work" means the activity directed at enhancing, protecting or restoring a person's capacity for social functioning, whether impaired by physical, environmental, or emotional factors.

"Social work services" mean services which may be performed only by a Board licensee or certificate holder. Social work services include, but are not limited to, the following:

1. "Social work assessment," defined as identifying problems and gathering sufficient information to make referrals and to determine and implement a plan of social care and action;

2. "Social work consultation," defined as discussion and evaluation focusing on data, goals and objectives, including intervention with individuals, agencies, businesses, organizations, groups and communities for purposes of problem solving;

3. "Social work planning," defined as specifying future objectives, evaluating the means for achieving them, including identifying appropriate resources, and making deliberate choices about appropriate courses of action in order to enhance social well-being;

4. "Social work community organization," defined as the process of social interaction and the method of social work concerned with meeting broad needs and bringing about and maintaining adjustment between needs and resources in a community or other areas; helping people to deal more effectively with their problems and objectives by helping them develop, strengthen and maintain qualities of participation, self-direction and cooperation; and bringing about changes in community and group relationships and in the distribution of decision-making power. The community which is the primary client may be an organization, neighborhood, city, county, state or national entity;

5. "Social work policy," defined as the practice concerned primarily with translating laws, technical knowledge and administrative rulings into organizational goals and operational policies to guide organizational behavior; designing organizational structure and procedures or processes through which social work goals can be achieved; securing resources in the form of material, staff and clients; and obtaining the public support necessary for attaining social work goals;

6. "Social work administration," defined as applying specialized social work knowledge, skills and techniques to the coordinated totality of activities in a social welfare organization in order to transform policies into services; also, a method of practice by which the social worker plans, assigns, coordinates, evaluates and mediates the interdependent tasks, functions, personnel, and activities that are called upon to achieve the mission of the organization;

7. "Social work research," defined as the formal organization and the methodology of data collection and the analysis and evaluation of data; and

8. "Social work client-centered advocacy," defined as the service in which the social worker functions on behalf of individual clients, groups, or other entities including but not limited to social work and governmental agencies, and specific issues related to those organizations. The purpose of client centered advocacy is to bring about or influence change to improve the quality of life, enhance empowerment and assure the basic rights of the entity or individual being served by the social worker.

13:44G-1.3 Persons requiring licensure; persons requiring certification

Unless exempted from licensure or certification pursuant to N.J.S.A. 45:15BB-5, a person whose activities are within the scope of practice of N.J.A.C. 13:44G-3.1 is required to be licensed as a clinical social worker; a person whose activities are within the scope of practice of N.J.A.C. 13:44G-3.2 is required to be licensed as a social worker; and a person whose activities are within the scope of practice of N.J.A.C. 13:44G-3.3 is required to be certified as a social worker.

SUBCHAPTER 2. AGENCY ORGANIZATION AND ADMINISTRATION

13:44G-2.1 Description of the Board

(a) The State Board of Social Work Examiners, created in the Division of Consumer Affairs, Department of Law and Public Safety, pursuant to P.L. 1991, c.134, shall consist of nine members as follows:

1. Two public members;

2. The Commissioner of Human Services, or his or her designee;

3. Three individuals who have been actively engaged in the practice of social work for at least five years immediately preceding their appointment and, except for members first appointed, licensed or certified pursuant to P.L. 1991, c.124, as follows:

i. A licensed clinical social worker;

ii. A licensed social worker; and

iii. A certified social worker; and

4. Three individuals who, except for members first appointed, shall be licensed or certified pursuant to P.L. 1991, c. 124, as follows:

i. A social work educator representing a baccalaureate level program;

ii. A social work educator representing a master's level program; and

iii. A social worker with a doctorate level degree.

(b) The Governor shall appoint all Board members other than the Commissioner of Human Services or his or her designee. Except for members first appointed, all Board members shall be appointed for three-year terms.

(c) The Director of the Division of Consumer Affairs shall appoint an Executive Director and may hire any assistants as are necessary to administer the work of the Board.

13:44G-2.2 Office location and mailing address

The offices of the Board are located at 124 Halsey Street, Newark, New Jersey 07102. The mailing address of the Board is Post Office Box 45033, Newark, New Jersey 07101.

SUBCHAPTER 3. AUTHORIZED PRACTICE

13:44G-3.1 Practice as a clinical social worker; scope

(a) The scope of practice of a licensed clinical social worker includes, but is not limited to:

1. Clinical social work services***. Clinical social work services include, but are not limited to, clinical assessment, clinical consultation, psychotherapeutic counseling, client centered advocacy, and clinical supervision of individuals pursuant to the standards set forth in N.J.A.C. 13:44G-8.1. These terms are more specifically****[, as]* defined in N.J.A.C. 13:44G-1.2; and

2. Social work services***. Social work services include, but are not limited to, social work assessment, social work consultation, social work planning, social work community organization, social work policy, social work administration, social work research, and social work client-centered advocacy. These terms are more specifically*** *[, as]* defined in N.J.A.C. 13:44G-1.2.

13:44G-3.2 Practice as a licensed social worker; scope

(a) The scope of practice of a licensed social worker includes, but is not limited to:

1. Social work services***. Social work services include, but are not limited to, social work assessment, social work consultation, social work planning, social work community organization, social work policy, social work administration, social work research, and social work client-centered advocacy. These terms are more specifically*** *[, as]* defined in N.J.A.C. 13:44G-1.2; and

2. Clinical social work services, *[as defined in N.J.A.C. 13:44G-1.2,]* under the supervision of a licensed clinical social worker pursuant to the clinical supervision standards set forth in N.J.A.C. 13:44G-8.1***. Clinical social work services include, but are not limited to, clinical assessment, clinical consultation, psychotherapeutic counseling and client centered advocacy. A licensed social worker may not, however, provide clinical supervision. These terms are more specifically defined in N.J.A.C. 13:44G-1.2***.

i. For a three-year period commencing *[(on the effective date of these rules)]* ***April 4, 1994***, a licensed social worker may practice clinical social work under the supervision of any other supervisor acceptable to the Board pursuant to N.J.S.A. 45:15BB-6(a)(2) and N.J.A.C. 13:44G-8.1(c).

ii. Subsequent to *[(three years after the effective date of these rules)]* ***April 4, 1997***, a licensed social worker shall practice clinical social work only under the supervision of a licensed clinical social worker.

13:44G-3.3 Practice as a certified social worker; scope

(a) The scope of practice of a certified social worker includes, but is not limited to, social work services***. Social work services include, but are not limited to, social work assessment, social work consultation, social work planning, social work community organization, social work policy, social work administration, social work research, and social work client-centered advocacy. These terms are more specifically****[, as]* defined in N.J.A.C. 13:44G-1.2.

(b) A certified social worker shall not engage in clinical social work services.

SUBCHAPTER 4. APPLICANT QUALIFICATIONS; BOARD-APPROVED EXAMINATION

13:44G-4.1 Eligibility requirements; licensed clinical social worker

(a) For purposes of this section, "two years of full-time clinical social work" means 1,920 hours of face-to-face client contact over any three consecutive year period under direct supervision pursuant to the standards set forth in N.J.A.C. 13:44G-8.1.

(b) An applicant for licensure as a clinical social worker shall submit the following, on forms provided by the Board.

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. An official transcript indicating that the applicant:

i. Received a master's degree in social work from an educational program accredited, or in candidacy for accreditation, by the Council on Social Work Education; or a doctorate degree in social work from an accredited institution of higher education;

ii. Completed 12 semester hours of ***graduate level*** course work in methods of clinical social work practice, exclusive of field placement, from an educational program accredited, or in candidacy for accreditation, by the Council on Social Work Education. The applicant shall obtain 12 credits in any of the following areas of study:

(1) Human behavior and the social environment;

(2) Diagnosis and assessment in social work practice;

(3) Models of psychotherapy or clinical practice (for example, psychodynamic, behavioral, cognitive therapies, task-centered, psychosocial, crisis intervention approaches, etc.);

(4) Clinical supervision and consultation; and/or

(5) Intervention with special populations;

4. A supervisor's certification or the applicant's affidavit in lieu of supervisor's certification indicating that the applicant has engaged in full-time clinical social work under supervision for at least two years as defined in (a) above; and

5. Proof that the applicant has successfully completed the clinical examination administered by the American Association of State Social Work Boards, unless the applicant is applying for licensure without examination pursuant to the provisions of N.J.A.C. 13:44G-5.1.

13:44G-4.2 Eligibility requirements; licensed social worker

(a) An applicant for licensure as a social worker shall submit the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. An official transcript indicating that the applicant has received a master's degree in social work from an educational program accredited, or in candidacy for accreditation, by the Council on Social Work Education; or a doctorate in social work from an accredited institution of higher education; and

4. Proof of successful completion of the intermediate examination administered by the American Association of State Social Work Boards, unless the applicant is applying for licensure pursuant to the provisions of N.J.A.C. 13:44G-5.2.

13:44G-4.3 Eligibility requirements; certified social worker

(a) An applicant for certification as a social worker shall submit the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1; and

3. An official transcript indicating that the applicant has received a baccalaureate degree in social work from an educational program accredited, or in candidacy for accreditation, by the Council on Social Work Education, unless the applicant is applying for certification pursuant to the provisions of N.J.A.C. 13:44G-5.3.

13:44G-4.4 Refusal to issue, suspension or revocation of license or certification

The Board may refuse to issue or renew or may suspend or revoke any license or certification issued by the Board, after an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for any of the reasons set forth in N.J.S.A. 45:1-21.

SUBCHAPTER 5. LICENSURE WITHOUT EXAMINATION; CERTIFICATION WITHOUT PROOF OF EDUCATIONAL CRITERIA; ENDORSEMENT

13:44G-5.1 Licensure without examination; clinical social worker

(a) Until *[(180 days after application procedures are established)]* ***November 1, 1994***, an individual who has not completed the board-approved examination may qualify for licensure as a clinical social worker upon submission of the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. An affidavit indicating that the applicant has acquired at least three years of full time clinical social work experience during the five-year period beginning May 6, 1986 and ending May 5, 1991;

4. A supervisor's certification or, if the supervisor is unavailable, the applicant's affidavit in lieu of supervisor's certification indicating that the applicant has acquired at least two years of supervised full time clinical social work experience, defined as 1,920 hours of direct face-to-face client contact over any consecutive three-year period; and

5. An official transcript indicating that the applicant completed the educational requirements set forth in N.J.A.C. 13:44G-4.1.

(b) For purposes of this section, "three years of full-time clinical social work experience" means 2,880 hours of direct *[face-to-face]* client contact *[or]***;*** the providing of clinical supervision***; or the teaching of clinical social work courses*** subsequent to earning a master's degree in social work. The applicant shall have provided the clinical supervision pursuant to the standards set forth in N.J.A.C. 13:44G-8.1.

13:44G-5.2 Licensure without examination; licensed social worker

(a) Until *[(180 days after application procedures are established)]* ***November 1, 1994***, an individual who has not completed the Board-approved examination may qualify for licensure as a social worker upon submission to the Board of the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. An affidavit indicating that the applicant has acquired three years of full time social work experience during the five-year period May 6, 1986 to May 5, 1991; and

4. An official transcript indicating that the applicant completed the educational requirements set forth in N.J.A.C. 13:44G-4.2.

(b) For purposes of this section, "three years of full time social work experience" means 4,800 hours of social work practice ***or the teaching of social work courses*** subsequent to earning a master's degree in social work.

13:44G-5.3 Certification without baccalaureate degree in social work

(a) Until *[(180 days after application procedures are established)]* ***November 1, 1994***, an individual who has not received a baccalaureate degree in social work may qualify for certification as a social worker upon submission to the Board of the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1; and

3. An affidavit indicating that the applicant has acquired two years of full-time social work experience during the five-year period May 6, 1986 to May 5, 1991.

(b) For purposes of this section, "two years of full time social work experience" means 3,200 hours of social work practice.

13:44G-5.4 Endorsement

(a) An applicant who is licensed or registered under the laws of a state, territory or jurisdiction of the United States and who otherwise meets the requirements of N.J.A.C. 13:44G-4.1 and 4.2 may be exempted from the examination requirements of N.J.A.C. 13:44G-4.1 and 4.2 provided that:

1. The educational and experiential requirements of the state, territory or jurisdiction are substantially the same as the requirements of the Social Workers' Licensing Act of 1991; and

2. The applicant has taken an examination similar to the Board-approved examination.

(b) An applicant for licensure pursuant to this section shall submit the following to the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. The documentation required pursuant to N.J.A.C. 13:44G-4.1 or 4.2 relative to educational and experiential requirements for the type of licensure sought; and

4. Examination results.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. LICENSE AND CERTIFICATION RENEWALS

13:44G-7.1 Biennial license and certification renewal

(a) Prior to the expiration of the current biennial period, the licensee or certificate holder shall complete and sign the biennial renewal notice form provided by the Board and shall return the form to the Board together with the biennial renewal fee.

(b) If the licensee fails to renew his or her license or certification on or before the date specified in the biennial renewal notice, the license or certification shall automatically expire and the individual shall immediately cease practice.

13:44G-7.2 Reinstatement

(a) If a license or certificate expires due to nonpayment of the biennial renewal fee, it may be reinstated within five years upon application to the Board, payment of the biennial license or certification fee and the reinstatement fee as set forth in N.J.A.C. 13:44G-14, and demonstration that any other requirements for license renewal have been met.

(b) The Board will not renew a license or certificate if the renewal application is submitted to the Board more than five years after the date of license or certificate expiration. In such event, the individual shall be required to apply for an initial license and to take the Board-approved examination or to apply for initial certification.

SUBCHAPTER 8. CLINICAL SUPERVISION

13:44G-8.1 Clinical supervision

(a) An applicant for licensure as a clinical social worker shall be required to document at least two years of full time, supervised

clinical social work experience, as defined in N.J.A.C. 13:44G-4.1, in accordance with the following clinical supervision standards:

1. Clinical supervision shall consist of contact between a social worker and a supervisor during which at least the following occurs:

i. The social worker apprises the supervisor of the diagnosis and treatment of each client;

ii. The social worker's cases are discussed;

iii. The supervisor provides the social worker with oversight and guidance in diagnosing and treating clients;

iv. The supervisor regularly reviews and evaluates the professional work of the social worker; and

v. The supervisor provides at least one hour of face-to-face individual clinical supervision per week.

2. Clinical supervision may be rendered by:

i. A clinical social worker licensed by this State;

ii. A Board certified psychiatrist licensed by the New Jersey Board of Medical Examiners;

iii. A psychologist licensed by the New Jersey Board of Psychological Examiners; or

iv. Any other supervisor the Board may deem acceptable.

3. All applicants, except those applying pursuant to the provisions of N.J.A.C. 13:44G-5, shall obtain the Board's prior written approval of any person rendering supervision other than a person identified in (a)2*i* through *iii* above.

4. The supervisor shall retain responsibility for the standards of clinical social work practice with respect to treatment being rendered to the client.

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION
Automotive Dispute Resolution
Adopted Amendments: N.J.A.C. 13:45A-26

Proposed: September 7, 1993 at 25 N.J.R. 3939(a).
Adopted: March 4, 1994 by Emma N. Byrne, Director, Division of Consumer Affairs.
Filed: March 10, 1994 as R.1994 d.176, **without change.**

Authority: N.J.S.A. 56:12-49 and N.J.S.A. 52:17B-122.

Effective Date: April 4, 1994.
Expiration Date: November 9, 1995.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed amendments to N.J.A.C. 13:45A-26, relating to the implementation of amendments to the Lemon Law, N.J.S.A. 56:12-29 et seq.

The official comment period ended on October 7, 1993. Announcement of the opportunity to respond to the Division appeared in the New Jersey Register on September 7, 1993 at 25 N.J.R. 3939(a). Announcements were also forwarded to The Star Ledger, The Trenton Times, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Division of Consumer Affairs, 124 Halsey Street, 7th Floor, Newark, NJ 07102.

Summary of Public Comments and Agency Responses:

During the 30 day comment period, the Division received two written comments regarding the proposal from the following individuals:

Dionne A. Colvin, State Government Affairs Representative, Toyota Motor Sales

Charles E. Walton, President, New Jersey Automobile Dealers Association

Following is a summary of the comments received together with the responses:

N.J.A.C. 13:45A-26.3(a)

COMMENT: On behalf of Toyota Motor Sales, Dionne Colvin expressed concern that compliance with the recordkeeping requirement in this paragraph will be extremely difficult for manufacturers. Ms. Colvin stated that because the manufacturer is not actually involved in the sales transaction, there is no means of guaranteeing notification in each and every transaction.

RESPONSE: N.J.S.A. 56:12-35 requires that the manufacturer provides the written statement "to the dealer or lessor and the dealer or lessor provides [it] to the consumer." Accordingly, the manufacturer's obligation here is to document provision of the written statement to the dealer or lessor, who subsequently provides it to the consumer.

N.J.A.C. 13:45A-26.3(b)1

COMMENT: Ms. Colvin suggested that the words "or other proceeding" be deleted from the required statement to avoid giving the false impression that the title was branded because of significant action other than a repurchase, an informal dispute settlement procedure or a legal action under the Lemon Law.

RESPONSE: The Division does not believe that the words "or other proceedings" are in themselves perjorative or in any way injurious to the interests of automobile manufacturers and dealers. In fact, these words provide, within the confines of the limited space available on the title certificate, significant information to the consumer. Deletion of these words may render the message misleading by giving the mistaken impression that the return could not have occurred through any other, more consensual method such as a repurchase.

COMMENT: On behalf of the 760 members of the New Jersey Automobile Dealers Association (NJADA), Charles Walton stated general support for the regulation as proposed. Mr. Walton expressed concern, however, with respect to the language that will appear on a New Jersey certificate of ownership to denote a buy-back. NJADA's position is that use of the word "lemon" is both unfair and uncalled for, especially because the sponsors of the original legislation and three later amendments "never allowed the word 'lemon' to creep into the legislation." The commenter suggested other brands which he contents will evenly treat both the public, the dealer and the car manufacturer.

RESPONSE: Use of the word "lemon" is best suited to serving consumers' needs because this common term will enable consumers to more readily comprehend what the branding designation is about. The additional words used in the statement—"or other proceeding"—will, for the reasons set forth above, provide within the confines of limited space necessary information that will be helpful to the public, the dealer and the car manufacturer.

N.J.A.C. 13:45A-26.3(b)2

COMMENT: Ms. Colvin suggested that the manufacturer should be required to send the original title, rather than a copy, to the Division of Motor Vehicles in order to eliminate use of the original in defrauding purchasers.

RESPONSE: The Division of Motor Vehicles cannot reissue a title on the basis of a copy of the title document. Requiring the manufacturer to stamp ("brand") the title and send a copy of the stamped title document to DMV within 10 days of the manufacturer's receipt of the vehicle serves as a mechanism to expedite the branding process. The DMV should be able to reissue the title certificate more quickly once the original is submitted because the necessary information will already be on file.

N.J.A.C. 13:45A-26.3(b)5

COMMENT: Ms. Colvin stated that the manufacturer should be eliminated from this requirement to notify the DMV of the resale of the vehicle because the manufacturer is not involved in the sales transaction.

RESPONSE: P.L. 1993, c.21, section 1 states that the brand must appear on each certificate of ownership issued as a result of any subsequent sale or transfer and that any person who transfers or attempts to transfer a motor vehicle in violation of this section is subject to fine. Accordingly, in those instances when the manufacturer is involved in the sales transaction, that is, when selling at auction, the manufacturer is responsible for ensuring that the brand continues to appear on the certificate of ownership.

N.J.A.C. 13:45A-26.11(a)3iv

COMMENT: Ms. Colvin contends that there is no authority in P.L. 1993, c.21 for an award of attorneys fees in an informal proceeding. Ms. Colvin states that informal dispute resolution is not a legal proceeding and is designed as a low-cost alternative to litigation.

RESPONSE: N.J.S.A. 56:12-36, Informal Dispute Settlement Procedure, provides authority as follows:

d(4) A consumer shall be given an adequate opportunity to contest a manufacturer's assertion that a nonconformity falls within intended specifications for the vehicle by having the basis of the manufacturer's claim appraised by a technical expert selected and paid for by the consumer prior to the manufacturer's informal dispute settlement procedure. **If the dispute settlement body rules in favor of the consumer, his costs and reasonable attorney's fees shall also be awarded.** (emphasis supplied)

Full text of the adoption follows:

13:45A-26.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

. . .

"Lemon Law" means P.L. 1988, c.123, an Act concerning new motor warranties and repealing P.L. 1983, c.215, as amended by P.L. 1993, c.21.

. . .

"Title" means the certificate of ownership of a motor vehicle.

13:45A-26.3 Statements to consumer; other notices

(a) At the time of purchase or lease of a motor vehicle in the State of New Jersey, the manufacturer, through its dealer or lessor, shall provide the following written statement directly to the consumer on a separate piece of paper, in 10-point boldface type:

"IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER NEW JERSEY LAW TO A REFUND OF THE PURCHASE PRICE OR YOUR LEASE PAYMENTS. FOR COMPLETE INFORMATION REGARDING YOUR RIGHTS AND REMEDIES UNDER THE RELEVANT LAW, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS, LEMON LAW UNIT, AT POST OFFICE BOX 45026, 124 HALSEY STREET, NEWARK, NEW JERSEY 07102, TEL. NO. (201) 504-6226.

The manufacturer, through its dealer or lessor, shall maintain a record substantiating compliance with this section and shall make the record available to the Division upon request.

(b) If a motor vehicle is returned to the manufacturer under the provisions of the Lemon Law or a similar statute of another state or as the result of a legal action or an informal dispute settlement procedure, the motor vehicle shall not be resold or released in New Jersey unless the following steps are taken:

1. Immediately upon receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall cause the words "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING" to be clearly and conspicuously stamped on the face of the original certificate of title, the manufacturer's statement of origin, or other evidence of ownership.

2. Within 10 days of receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall submit a copy of the stamped document to the Special Title Section of the Division of Motor Vehicles to indicate that title to the vehicle shall be permanently branded.

3. The manufacturer shall provide to the dealer or lessor, and the dealer or lessor shall provide to the consumer prior to the resale or re-lease of the motor vehicle a copy for the consumer's records of the following statement on a separate piece of paper, in 10-point boldface type:

NOTICE OF NONCONFORMITY

"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTUER'S WARRANTY AND THE NONCONFORMITY WAS NOT CORRECTED WITHIN A REASONABLE TIME AS PROVIDED BY LAW."

(This notice is required under the New Jersey "Lemon Law", N.J.S.A. 56:12-1 et seq., for vehicles that have been replaced or repurchased by the manufacturer as the result of any one of the following: a court judgment, or a final decision pursuant to a hearing or settlement by the Office of Administrative Law, or an arbitration proceeding between the manufacturer or its agent and a consumer.)

4. Upon delivery to the consumer of the statement in (b)3 above the dealer or lessor shall obtain from the consumer a signed receipt, on a separate sheet of paper, which shall state the following, in underlined 10-point boldface type:

"I ACKNOWLEDGE RECEIPT OF NOTICE OF NONCONFORMITY OF THIS VEHICLE, VIN NO. _____ AS REQUIRED BY N.J.S.A. 56:12-35 (THE 'LEMON LAW')."

Alternatively, the dealer or lessor may fulfill this requirement by making the following notation in underlined boldface type on the front page of the vehicle buyer order form or the lease form:

"NOTICE OF NONCONFORMITY OF THIS VEHICLE, VIN NO. _____, HAS BEEN PROVIDED TO THE PURCHASER OR LESSEE, AS REQUIRED BY N.J.S.A. 56:12-35 (THE 'LEMON LAW')."

5. The manufacturer, dealer or lessor shall notify the Special Title Section of the Division of Motor Vehicles of the resale or release of the vehicle by requesting transfer of the branded title to the new owner or lessor, in writing.

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

13:45A-26.4 Lemon Law Unit

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

(c) All correspondence by consumers or manufacturers to the Division of Consumer Affairs regarding Lemon Law matters shall be directed to the attention of the Lemon Law Unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
P.O. Box 45026, 124 Halsey Street
Newark, New Jersey 07101
Telephone (201) 504-6226

13:45A-26.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4(a) of the Lemon Law, whether through the Division of Consumer Affairs automotive dispute resolution system or a manufacturer's informal dispute resolution process, shall include:

1.-2. (No change.)

3. Other charges or fees, including but not limited to:

i. Reimbursement for towing, if any;

ii. Reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor-vehicle was out of service due to a nonconformity;

iii. Filing fee for participation in the Division's dispute resolution system; and

iv. Reimbursement for reasonable attorney's fees, fees for reports prepared by expert witnesses, and costs.

13:45A-26.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15-day review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, the OAL, and, if the vehicle in question is to be returned to the manufacturer, the Special Title Section of the DMV. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

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

13:45A-26.14 Manufacturer's informal dispute resolution procedures

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

(c) On January 15 and July 15 of every year, the LLU shall mail a questionnaire by certified mail, return receipt requested, to every manufacturer on the roster compiled pursuant to (a) above, requesting the following information:

1. Any and all informal dispute settlement procedures utilized by the manufacturer. If the informal dispute settlement procedure is an in-house customer assistance mechanism or private arbitration

or private buy-back program instituted by the manufacturer, the information provided shall include the reasons for establishing and maintaining such programs.

2. The number of purchase price and lease price refunds requested, the number awarded by any dispute settlement body or other settlement procedure identified in (c)1 above, the amount of each award and the number of awards satisfied in a timely manner.

Recodify existing 2.-4. as 3.-5. (No change in text.)

(d) (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Notice of Administrative Correction
Restricted Parking and Stopping
Route 47 in Gloucester County
N.J.A.C. 16:28A-1.33

Take notice that the Department of Transportation has discovered an error in the current text of N.J.A.C. 16:28A-1.33. In the process of incorporating into the Code an adopted amendment to that section (see 25 N.J.R. 2649(a) and 4118(a)) through the 9-20-93 Code update, the first line of paragraph (a)3 was inadvertently deleted. Through this notice, published in accordance with N.J.A.C. 1:30-2.7, the deleted line will be replaced.

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

16:28A-1.33 Route 47[1]

(a) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act and N.J.A.C. 1:30. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. (No change.)

2. No stopping or standing in Cumberland County:

i.-ii. (No change.)

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

i.-iv. (No change.)

4.-10. (No change.)

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions
Route N.J. 52 in Cape May County
Adopted New Rule: N.J.A.C. 16:31-1.34

Proposed: January 18, 1994 at 26 N.J.R. 332(a).
Adopted: March 1, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: March 11, 1994 as R.1994 d.179, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Effective Date: April 4, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:31-1.34 Route 52

(a) Turning movements on certain parts of State highway Route 52 described in this subsection are regulated as follows:

1. In the City of Ocean City, Cape May County:

i. No left turn in both directions within the corporate limits of the City of Ocean City between mileposts 0.0 to 1.90.

ii. No "U" turn in both directions within the corporate limits of the City of Ocean City between mileposts 0.0 to 1.90.

TREASURY-GENERAL

(c)

DIVISION OF PENSIONS AND BENEFITS
Public Employees' Retirement System
School Year Members
Adopted Amendment: N.J.A.C. 17:2-4.3

Proposed: January 3, 1994 at 26 N.J.R. 108(a).
Adopted: February 24, 1994 by the Board of Trustees, Public Employees' Retirement System, Wendy Jamison, Secretary.
Filed: March 1, 1994 as R.1994 d.162, **without change.**

Authority: N.J.S.A. 43:15A-17.

Effective Date: April 4, 1994.
Expiration Date: November 8, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:2-4.3 School year members

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

(d) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer and begins employment on or before the date that was established by the previous year's contract position, such member will receive service credit within the Public Employees' Retirement System for the period between the end of the previous contract and the employment date of the new 12 month position.

(d)

DIVISION OF PENSIONS AND BENEFITS
Teachers' Pension and Annuity Fund
Board Meetings; Procedures
Adopted Amendment: N.J.A.C. 17:3-1.1

Proposed: December 20, 1993 at 25 N.J.R. 5762(b).
Adopted: February 24, 1994 by the Board of Trustees, Teachers' Pension and Annuity Fund, Regina Trauner, Secretary.
Filed: March 1, 1994 as R.1994 d.161, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:66-56.

Effective Date: April 4, 1994.
Expiration Date: December 20, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

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

17:3-1.1 Board meetings

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

(c) The current rules within Roberts' Rules of Order, effective as of *[the effective date of this amendment]* ***April 4, 1994***, as well as future amendments thereto, are adopted and incorporated herein by reference as the source to be used by the Board of Trustees of the Teachers' Pension and Annuity Fund in the conduct of its monthly meetings.

(a)

DIVISION OF PENSIONS AND BENEFITS

Teachers' Pension and Annuity Fund
School Year Members
Adopted Amendment: N.J.A.C. 17:3-4.3

Proposed: January 3, 1994 at 26 N.J.R. 108(b).

Adopted: February 24, 1994 by the Board of Trustees, Teachers' Pension and Annuity Fund, Regina Trauner, Secretary.

Filed: March 1, 1994 as R.1994 d.163, **without change.**

Authority: N.J.S.A. 18A:66-56.

Effective Date: April 4, 1994.

Expiration Date: December 20, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:3-4.3 School year members

(a) Members whose salaries for a school year are considered as a full year's compensation shall be given service credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's credit shall be given during any consecutive 12 months.

(b) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer and begins employment on or before the date that was established by the previous year's contract position, such member will receive service credit within the Teachers' Pension and Annuity Fund for the period between the end of the previous contract and the employment date of the new 12 month position.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Casino Licensees
Employee Licenses
U.S. Citizenship or Federal Authorization to Work
Adopted Amendment: N.J.A.C. 19:41-1.3

Proposed: January 18, 1994 at 26 N.J.R. 339(a).

Adopted: March 2, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: March 4, 1994 at R.1994 d.171, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 82, 84, 85, 89b, 90b, 91b, 92, 95.12 and 102b-c.

Effective Date: April 4, 1994.

Expiration Date: April 15, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division), the Sands Hotel and Casino (Sands), and Trump Castle Casino Resort (Trump's Castle).

COMMENT: The Division noted that the proposed amendments comply with Federal law and support its adoption.

RESPONSE: Accepted.

COMMENT: The Sands took no position with regard to the adoption of the proposed amendments but noted typographical errors in the proposal circulated to it.

RESPONSE: A technical correction to the proposal has been made upon adoption at N.J.A.C. 19:41-1.3(b).

COMMENT: Trump's Castle suggests that the proposed amendment be modified to prohibit casino licensees from "knowingly" hiring individuals lacking Federal authorization to work to make it consistent with the Immigration Reform and Control Act of 1986, Pub. L. No. 99603 (1986).

RESPONSE: The Immigration Reform and Control Act with which casino licensees are required to comply makes two types of conduct unlawful. The first is to "knowingly" employ an alien who is not authorized to work in the United States. The second is to employ anyone without examining certain listed documents to establish the individuals identity and work authorization. 8 U.S.C. 1324a(b). Thus, employers have an affirmative duty to determine that their employees are authorized to work in the United States. The proposed amendment is not inconsistent with this standard and therefore is not being modified upon adoption.

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

19:41-1.3 Employee licenses

(a) No natural person shall be employed in the operation of a licensed casino or a casino simulcasting facility in a supervisory capacity or be empowered to make discretionary decisions which regulate casino or casino simulcasting facility operations or the management of an approved hotel unless he or she is over 18 years of age, is a citizen of the United States or is authorized pursuant to Federal law to work in the United States, and holds a current and valid casino key employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino key employee license:

1.-11. (No change.)

(b) No natural person shall be employed in the operation of a licensed casino or a casino simulcasting facility or in a position whose employment duties require *[of authorized]* ***or authorize*** access to restricted casino areas unless he or she is over 18 years of age, is a citizen of the United States or is authorized pursuant to Federal law to work in the United States, and holds a current and valid casino employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino employee license:

1.-8. (No change.)

(c) No natural person shall be employed to perform services or duties in the conduct of the business of an approved hotel which are not included within the definition of casino employee or casino key employee unless he or she is a citizen of the United States or is authorized pursuant to Federal law to work in the United States and holds a current and valid casino hotel employee registration. The following positions, without limitation, require a casino hotel employee registration:

1.-6. (No change.)

(c)

CASINO CONTROL COMMISSION

Internal Controls
Procedure for Filling Payout Reserve Containers of Slot Machines and Hopper Storage Areas
N.J.A.C. 19:45-1.41

Take notice that the Casino Control Commission has discovered an error in the text of N.J.A.C. 19:45-1.41(b)7. In the paragraph's first sentence, the term "loose coins" was changed to "loose coin or tokens" effective September 21, 1992 (see 24 N.J.R. 2137(a) and 3336(a));

however, the change was not incorporated into the Code. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

19:45-1.41 Procedure for filling payout reserve containers of slot machines and hopper storage areas

(a) (No change.)

(b) The filling of a hopper or a hopper storage area by means of a Hopper Fill Slip shall be accomplished as follows:

1.-6. (No change.)

7. All coins or tokens distributed from a slot booth to a slot machine or its corresponding hopper storage area shall be transported in pre-wrapped secured bags containing loose coin[s] **or tokens** directly to the slot machine or its corresponding hopper storage area by a casino security department member who shall at the same time transport the duplicate Hopper Fill for signature. The casino security department member shall observe the deposit of the coins or tokens in the slot machine hopper or the slot machine's corresponding hopper storage area, and the closing and locking of the slot machine or its corresponding hopper storage area by the slot mechanical or slot attendant before obtaining the signature of the slot mechanic or attendant on the duplicate copy of the Hopper Fill.

8.-11. (No change.)

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

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Dealing Shoes
Adopted Amendment: N.J.A.C. 19:46-1.19

Proposed: January 18, 1994 at 26 N.J.R. 349(a).

Adopted: March 2, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: March 7, 1994 as R.1994 d.172, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(a) and 99(a).

Effective Date: April 4, 1994.

Expiration Date: April 15, 1998.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement does not object to the proposal.

RESPONSE: Accepted.

Full text of the adoption follows:

19:46-1.19 Dealing shoes.

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

(f) A pai gow poker dealing shoe, in addition to meeting the requirements of (d) above, may, in the discretion of the casino licensee, also contain a device approved by the Commission on the front of the face plate so as to preclude the players from viewing the next card to be dealt.

(g) (No change.)

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session April 20, 1994

Take notice, that the following agenda items are scheduled for Notice of Proposal in the April 4, 1994 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, April 20, 1994 from 3:00 P.M. to 6:00 P.M. in the 8th Floor Training Room, Department of Education, 225 East State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609)292-0739 by 12:00 noon, Friday, April 15, 1994.

Rule Proposals:

N.J.A.C. 6:28, Special Education
N.J.A.C. 6:39, Evaluation (Statewide Testing)

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF PARKS AND FORESTRY

Natural Areas System Notice of Adopted Boundary Change Oswego River Natural Area

DEPE Docket No. 57-93-10/321

Take notice that in accordance with N.J.A.C. 7:5A-1.12, the Department of Environmental Protection and Energy (Department), Division of Parks and Forestry, hereby modifies the boundary of the Oswego River Natural Area, located within Wharton State Forest, Washington and Bass River Townships, Burlington County, to be generally defined as follows: beginning at the intersection of Chatsworth Road and Route 679, proceed south on Chatsworth Road approximately 1.5 miles crossing the Oswego River at Harrisville Pond to the intersection with Old Martha Road; proceed northeast on Old Martha Road approximately 3.5 miles to the current edge of State ownership approximately one-half mile north of Buck Run; proceed west along the current edge of State ownership approximately one mile to the point of intersection with a sand road extending southwest; proceed southwest to residential development and then follow the edge of State ownership east of Chatsworth Road to the starting point at the intersection of Chatsworth Road and Route 679 and excluding any inholdings not currently under State ownership.

As per N.J.A.C. 7:5A-1.12(f), a proposal to change the boundary of the Oswego River Natural Area was submitted by the Office of Natural Lands Management to the Natural Areas Council, the Division of Parks and Forestry and Wharton State Forest (the administering agency) for review. At its April 19, 1993 meeting, the Natural Areas Council, after considering comments from the Division and the administering agency, determined that the proposed change would result in a net change of more than 25 percent of the total acreage of the natural area. Under N.J.A.C. 7:5A-1.12(i) the Department was required to accept public comment on the boundary change proposal. On December 6, 1993 the Department published notice of the boundary change proposal. See 25 N.J.R. 5702(e). A public hearing concerning the proposal was held on December 14, 1993, 7:00 P.M., at the Lebanon State Forest Office in Woodland Township. No written comments were received by the Department as of the public comment closing date of January 5, 1994, and there was no attendance at the public hearing held on December 14, 1993.

Prior to the adoption of this modified boundary, the Oswego River Natural Area encompassed 640 acres of State-owned property in Wharton State Forest along the Oswego River. This boundary revision expands the size of the natural area to approximately 1,927 acres, by adding extensive areas of property owned by the State of New Jersey in Wharton State Forest that lie both to the north and south of the former boundary. The expansion incorporates into the Natural Areas System (System) several populations of globally and State endangered species known to exist outside of the former boundary of this natural area, thereby furthering the management objective for this natural area. The expansion also satisfies the requirement at N.J.A.C. 7:5A-1.12(b) that all boundaries of natural areas must conform to physical features identifiable in the field or the edge of State ownership. In addition, species of lesser rarity status and additional undocumented species are believed to be present in the areas added to the Oswego River Natural Area.

Additional information on the Oswego River Natural Area or the boundary change may be obtained by contacting the New Jersey Department of Environmental Protection and Energy, Office of Natural Lands Management, CN 404, Trenton, NJ 08625-0404, (609)984-1339.

HEALTH

(c)

THE COMMISSIONER

Notice of Invitation for Certificate of Need Applications for Designation as a Level II Trauma Center in Hudson County

Take notice, that in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Leonard Fishman, Acting Commissioner, New Jersey Department of Health, is inviting certificate of need applications for designation as a Level II trauma center in Hudson County in accordance with the provisions of N.J.A.C. 8:33P, and N.J.S.A. 26:2H-1 et seq.

Three Level I and five Level II trauma centers have been designated in New Jersey. Among the counties which do not currently have a designated trauma center, Hudson County has the largest population. The county's population of about 550,000 and its large traffic volume indicate the need for a viable trauma program. In addition, Hudson County's volume of violent crime-related trauma, which tends to be more severe than unintentional trauma, is greater than most other counties which now have designated trauma centers. Further, there are access barriers to designated trauma centers outside Hudson County. Timely ground transportation of major trauma cases to the trauma center in Newark, Essex County is not always possible due to traffic congestion on connecting bridges. Air transport is also difficult because aeromedical helicopters often cannot find a safe landing area close to the trauma scene due to the density of development in Hudson County, which is the most crowded county in the state.

Therefore, this call is being issued for certificate of need applications which will propose to meet the needs of Hudson County for designation as a Level II trauma center.

Geographic area to be served: Hudson County
Date application is due: May 1, 1994
Date completeness review decision issued: July 1, 1994

Date local advisory boards will review the applications and submit recommendations to the Commissioner and the State Health Planning Board: On or before August 15, 1994.

Date State Health Planning Board will review the applications and submit recommendations to the Commissioner: On or before October 1, 1994.

Applications may be requested from and must be filed with:
Certificate of Need Program
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360
609-292-6552

Applications must also be filed with: Local advisory board(s) serving the region of the proposed service.

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 February 7, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JANUARY 18, 1994

NEXT UPDATE: SUPPLEMENT FEBRUARY 22, 1994

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
25 N.J.R. 1309 and 1620	April 5, 1993	25 N.J.R. 4695 and 4812	October 18, 1993
25 N.J.R. 1621 and 1796	April 19, 1993	25 N.J.R. 4813 and 4980	November 1, 1993
25 N.J.R. 1797 and 1912	May 3, 1993	25 N.J.R. 4981 and 5382	November 15, 1993
25 N.J.R. 1913 and 2150	May 17, 1993	25 N.J.R. 5383 and 5728	December 6, 1993
25 N.J.R. 2151 and 2620	June 7, 1993	25 N.J.R. 5729 and 6084	December 20, 1993
25 N.J.R. 2621 and 2794	June 21, 1993	26 N.J.R. 1 and 280	January 3, 1994
25 N.J.R. 2795 and 3050	July 6, 1993	26 N.J.R. 281 and 520	January 18, 1994
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-9.4	Accelerated proceedings	26 N.J.R. 284(a)	R.1994 d.173	26 N.J.R. 1493(a)
1:1-11.1	Subpoenas	26 N.J.R. 1276(a)		
1:10-1.1, 9.1, 9.2, 14.1, 14.2, 14.3, 18.1	Family Development hearings	25 N.J.R. 3888(a)		
1:13A	Lemon law hearings	25 N.J.R. 5387(a)	R.1994 d.107	26 N.J.R. 1223(a)
1:13A-11.1	Subpoenas	26 N.J.R. 1276(a)		
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
	Most recent update to Title 1: TRANSMITTAL 1993-2 (supplement September 20, 1993)			
AGRICULTURE—TITLE 2				
2:2	Animal Disease Control Program	25 N.J.R. 5387(b)	R.1994 d.108	26 N.J.R. 1223(b)
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:32-2.1, 2.7, 2.9, 2.27	Sire Stakes Program conditions	26 N.J.R. 1181(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
	Most recent update to Title 2: TRANSMITTAL 1994-1 (supplement January 18, 1994)			
BANKING—TITLE 3				
3:1-2.17, 2.25, 2.26	Closing of branch offices	26 N.J.R. 883(b)		
3:1-2.25, 2.26	Charter conversions	26 N.J.R. 286(a)		
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-8.2, 8.3, 17	Charter conversions	26 N.J.R. 286(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:13-5	Mutual holding companies	26 N.J.R. 1213(a)		
3:14	Bank service corporations	26 N.J.R. 3(b)	R.1994 d.117	26 N.J.R. 1223(c)
3:32-3	Mutual holding companies	26 N.J.R. 1213(a)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
	Most recent update to Title 3: TRANSMITTAL 1994-1 (supplement January 18, 1994)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
PERSONNEL—TITLE 4A				
4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.10	State service: demotional pay adjustments	25 N.J.R. 4821(a)	R.1994 d.71	26 N.J.R. 794(a)
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.2, 2.14	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)
4A:4-2.9	Make-up examinations	25 N.J.R. 4823(a)	R.1994 d.114	26 N.J.R. 1225(a)
4A:4-2.9	Make-up examinations	26 N.J.R. 1183(a)		
4A:4-7.8	Voluntary demotions	25 N.J.R. 4823(b)	R.1994 d.74	26 N.J.R. 795(a)
4A:6-1.1, 1.8, 1.10, 1.21A	Family and medical leave	26 N.J.R. 1183(b)		
4A:6-1.2, 1.6, 1.11, 1.12, 1.13	Leaves of absence	25 N.J.R. 4824(a)	R.1994 d.73	26 N.J.R. 795(b)
4A:6-1.3	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.1, 2.1, 2.2, 2.3, 3.1	Equal employment opportunity	25 N.J.R. 4821(b)	R.1994 d.72	26 N.J.R. 794(b)
4A:7-1.3, 3.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		

Most recent update to Title 4A: TRANSMITTAL 1993-8 (supplement December 20, 1993)

COMMUNITY AFFAIRS—TITLE 5

5:11	Relocation assistance and eviction	26 N.J.R. 289(a)	R.1994 d.174	26 N.J.R. 1493(b)
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:23-2.22, 4.18, 4.20, 4.22, 4.26, 4.29, 4.31, 4.39, 4A.1-4A.5, 4A.7-4A.2, 4B, 4C	Uniform Construction Code: industrialized/modular buildings	25 N.J.R. 5388(a)	R.1994 d.96	26 N.J.R. 1073(a)
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-4.20	Uniform Construction Code: administrative correction regarding Departmental fees	———	———	26 N.J.R. 796(a)
5:23-5.5	Licensed electrical inspectors: administrative correction	———	———	26 N.J.R. 1495(a)
5:25-5.5	New home warranties and builder registration: claims procedure	25 N.J.R. 4986(a)	R.1994 d.50	26 N.J.R. 796(b)
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)		
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)		
5:80-9.14, 9.15	Housing and Mortgage Finance Agency: rent increases for projects without Federal rent subsidies and for low/market rate projects	26 N.J.R. 1188(a)		
5:80-23.7, 23.9	Housing Incentive Note Purchase Program: fees; subordinate financing	26 N.J.R. 9(a)		
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:80-24	Housing and Mortgage Finance Agency: Lease-Purchase Program	25 N.J.R. 4826(a)	R.1994 d.106	26 N.J.R. 1080(a)
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)		
5:80-32	Housing and Mortgage Finance Agency: housing investment sales	25 NJ.R. 4828(a)	R.1994 d.105	26 N.J.R. 1082(a)
5:91-1.3	Counseling on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:92-1.1, 13.1	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		

Most recent update to Title 5: TRANSMITTAL 1994-1 (supplement January 18, 1994)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

5A:6	Veterans' programs and services: policies and procedures	26 N.J.R. 530(a)		

Most recent update to Title 5A: TRANSMITTAL 1993-1 (supplement December 20, 1993)

EDUCATION—TITLE 6

6:1 et seq.	Title 6, New Jersey Administrative Code: opportunity for public comment	25 N.J.R. 4369(b)		
6:28	Special education	25 N.J.R. 5734(a)	R.1994 d.127	26 N.J.R. 1495(b)
6:29-1.7	Eye protection in public schools	26 N.J.R. 537(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:29-9.1, 9.2	Reporting of allegations of child abuse	26 N.J.R. 538(a)		
6:30	Adult education programs	26 N.J.R. 884(b)		
	Most recent update to Title 6: TRANSMITTAL 1994-1 (supplement January 18, 1994)			
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)		
7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		
7:1G-1.2	Community Right to Know Survey: administrative correction	———	———	26 N.J.R. 1337(a)
7:1G-1–5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)	R.1994 d.3	26 N.J.R. 200(a)
7:1I	Sanitary Landfill Facility Closure and Contingency Fund: processing of damage claims	25 N.J.R. 5116(a)	R.1994 d.83	26 N.J.R. 1114(a)
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)	R.1994 d.51	26 N.J.R. 842(a)
7:7	Coastal Permit Program	26 N.J.R. 917(a)		
7:7	Coastal Permit Program	26 N.J.R. 918(a)		
7:7E	Coastal zone management	26 N.J.R. 943(a)		
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9B-1.5, 1.15	Surface water quality standards: Wallkill River	25 N.J.R. 3755(a)	R.1994 d.84	26 N.J.R. 1124(a)
7:9B-1.15	Surface water classifications: administrative corrections	———	———	26 N.J.R. 1226(a)
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)		
7:12-1.2, 2.1, 2.2, 3.2, 4.1, 9.1	Shellfish growing water classifications	26 N.J.R. 789(a)		
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)		
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)		
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1–3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)	R.1994 d.98	26 N.J.R. 1132(a)
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:23	Flood Control Bond Grants	26 N.J.R. 1334(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-6.22	1994-95 Fish Code: snapping turtles, bull frogs and green frogs	26 N.J.R. 1047(a)		
7:25-7.13, 14.1, 14.2, 14.4–14.8, 14.10–14.13	Crab management	25 N.J.R. 4831(a)	R.1994 d.152	26 N.J.R. 1337(b)
7:25-18.1, 18.2	Marine fisheries: size and possession limits; pound nets	26 N.J.R. 291(a)		
7:25-18.5, 18.6, 18.12	Delaware Bay gill net permits	25 N.J.R. 5397(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)	Expired	
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)	Expired	
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)	R.1993 d.300	25 N.J.R. 2718(a)
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)	R.1994 d.99	26 N.J.R. 1142(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3, 25.4, 25.9, 25.10, 25.11, 25.12	Oxygenated fuels program	25 N.J.R. 4039(a)	R.1994 d.85	26 N.J.R. 1148(a)
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		
7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Oxygenated fuels program penalties	25 N.J.R. 4039(a)	R.1994 d.85	26 N.J.R. 1148(a)
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:45	Delaware and Raritan Canal State Park Review Zone	25 N.J.R. 4836(b)	R.1994 d.100	26 N.J.R. 1153(a)
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		
	Most recent update to Title 7: TRANSMITTAL 1994-1 (supplement January 18, 1994)			
HEALTH—TITLE 8				
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 1057(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill—patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:33L	Home Health Agency Policy Manual	26 N.J.R. 1065(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b), 6060(b))	25 N.J.R. 875(a)	R.1993 d.155	26 N.J.R. 1347(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a))	25 N.J.R. 2802(b)	R.1994 d.40	26 N.J.R. 364(b)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b))	25 N.J.R. 4844(a)	R.1994 d.156	26 N.J.R. 1347(b)
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